New Jersey. Legislature. Joint committee to ascertain the sentiments of the people of the state as to the various proposals and recommendations for change in the New Jersey Constitution made by the commission on revision of the New Jersey Constitution. —

STATE OF NEW JERSEY

c‡

Record of Proceedings

before

The Joint Committee of the New Jersey Legislature constituted under Senate Concurrent Resolution No. 19, entitled

"A Concurrent Resolution creating a joint legislative committee to ascertain the sentiment of the people of the State as to the various proposals and recommendations for change in the New Jersey Constitution made by the Commission on Revision of the New Jersey Constitution and to report thereon to the Legislature," adopted June 15, 1942:

HON. LLOYD L. SCHROEDER, *Chairman*
HON. JOHN M. SUMMERILL JR.
HON. H. RIVINGTON PYNE
HON. EDWARD J. O'MARA

Members appointed from the New Jersey Senate

HON. MANFIELD G. AMLICKE
HON. DOMINIC A. CAVICCHIA
HON. VINCENT S. HANEMAN
HON. MILDRED A. PREEN

Members appointed from the New Jersey House of Assembly

CHARLES DEF. BESORÉ, ESQ., *Secretary*

Printed by order of the Joint Committee and arranged for printing by the Chairman and Secretary of the Committee.

TABLE OF CONTENTS

	Page
Senate Concurrent Resolution No. 19, adopted June 15, 1942....	9
Public Hearing, July 8, 1942, Morning Session—Article I "Rights and Privileges"*	11
Communication, New Jersey Federation of Business and Professional Womens Clubs	45
Communication and Brief entitled "Equal Rights", Women's Consultative Committee on Constitutional Amendments	46
Communication and Brief, North Jersey Committee on Discrimination	90
Brief, William L. Becker, State Organizer, etc.	92
Public Hearing, July 8, 1942, Afternoon Session—Article II "State Government"*	93
Public Hearing, July 15, 1942, Morning Session—Article III "Legislature"*	112
Public Hearing, July 15, 1942, Afternoon Session—Article III "Legislature"*	146
Brief, Arthur J. Edwards	187
Brief, Kirk Brown	189
Brief, New Jersey Farm Bureau and New Jersey State Grange....	192
Brief, Walter J. Bilder	195
Brief, University of Newark School of Law	202
Public Hearing, July 22, 1942, Morning Session—Article IV "Executive and Administrative"*	203
Public Hearing, July 22, 1942, Afternoon Session—Article IV "Executive and Administrative"*	226
Brief, New Jersey Farm Bureau and New Jersey State Grange....	266
Communication and Brief, New Jersey Professional Examining and Licensing Boards	268
Public Hearing, July 29, 1942, Morning Session—Article V "Judicial"*	271
Public Hearing, July 29, 1942, Afternoon Session—Article V "Judicial"*	301
Communication and Brief, New Jersey Farm Bureau and New Jersey State Grange	332
Public Hearing, August 5, 1942, Morning Session—Article V "Judicial"*	335
Public Hearing, August 5, 1942, Afternoon Session—Article VI "Public Officers"*	369
Brief, Arthur J. Edwards	397

* "Proposed Constitution (1942)", Appendix III, pp. 930 et seq.

667970

Page

Public Hearing, August 19, 1942, Morning Session—Article VII "Finance"* 398

Public Hearing, August 19, 1942, Afternoon Session—Article VII "Finance"* 435

Communication and Briefs—In re. Utility, Franchise and Gross Receipts Taxes—History of Road Funds and Inheritance Tax Funds—History of Utility and Railroad Taxes, Arthur Pierson 472
Communication, Robert C. Hendrickson, State Treasurer..... 478
Brief, John F. O'Brien 478
Brief, Communist Party of New Jersey 480
Brief, New Jersey League of Municipalities..... 481
Communication, B. H. Faulkner, Director, etc 482
Communication, Alfred W. Kiefer 483
Brief, New Jersey Professional Examining and Licensing Boards 483
Brief, New Jersey Farm Bureau and New Jersey State Grange.... 484

Public Hearing, August 26, 1942, Morning Session — Article VIII "Elections and Suffrage"* and Article IX "Amendments"* 489

Communication, Proposed Amendment to New York Constitution 540
Brief, New Jersey Farm Bureau and New Jersey State Grange.... 543
Brief, Communist Party of New Jersey on Article VIII..... 546
Brief, Communist Party of New Jersey on Article IX..... 547

Public Hearing, September 17, 1942, Morning Session — Address of Hon. Charles Edison, Governor of the State of New Jersey, on Necessity of Constitutional Revision and Hearing on Article V "Judicial"* 548

Public Hearing, September 17, 1942, Afternoon Session—Article V "Judicial"* and Methods of Submission of Changes in the Constitution to the People 586

Brief, James D. Carpenter, Jr. 631
Brief, New Jersey State Bar Association 640
Brief, William D. Lippincott 650
Communication, Frederic R. Colie, Justice of the Supreme Court 655
Communication, Joseph L. Bodine, Justice of the Supreme Court and Brief of Charles W. Parker, Justice of the Supreme Court 658
Communication, Joseph L. Bodine, Justice of the Supreme Court 661

Public Hearing, September 17, 1942, Evening Session—Article V "Judicial"* and Methods of Submission of Changes in the Constitution to the People 662

Brief, Arthur J. Edwards 691
Brief, Arthur J. Edwards 693
Briefs, Chamber of Commerce of City of Newark..... 703
Communication, Opinion of Edmund Wilson, Attorney General.... 715

* "Proposed Constitution (1942)", Appendix III, pp. 930 et seq.

Page

Public Hearing, September 18, 1942, Morning Session—General Discussion Including Hearing on the Desire of the People to have their Fundamental Law Changed..... 731

Public Hearing, September 18, 1942, Afternoon Session—General Discussion Including Hearing on the Desire of the People to have their Fundamental Law Changed..... 772

Brief, New Jersey Farm Bureau and New Jersey State Grange.... 813
Brief, New Jersey Motor Vehicle Agents' Association..... 817
Brief, Robert Carey 841
Brief, Arthur Pierson 848
Brief, Ely Chinoy 852
Communication, Thomas N. McCarter 859
Communication, New Jersey Veterans' Legislative Committee..... 860
Communication, State Board of New Jersey Division of American Association of University Women 861
Communication, Dorothy C. Mills 861
Communication, Marion Peck 861
Communication, Mrs. O. H. Hubbard 861
Communication, Emma G. Foye 862
Communication, Roseland Woman's Club 862
Communication, Livingston Women's Club 862
Communication, Herzel H. E. Plaine and others 862

Report of the Joint Legislative Committee..... 868

Minority Report of Manfield G. Amlicke, a Member of the Joint Legislative Committee 870

Minority Report of Dominic A. Cavicchia, a Member of the Joint Legislative Committee 872

Appendix I—Constitution of the State of New Jersey..... 885

Appendix II—Joint Resolution No. 2, approved November 18, 1941 and Joint Resolution No. 1, approved January 24, 1942, as amended April 1, 1942 905

Appendix III—Report of the Commission on Revision of the New Jersey Constitution 909

Appendix IV—Proposed Constitution (1942); Constitution of 1844, as amended—Comparison 959

Appendix V—Report on the Constitutional Courts of the State of New Jersey with Letters of Transmittal.....1057

* "Proposed Constitution (1942)", Appendix III, pp. 930 et seq.

FOREWORD

On May 18, 1942 the Commission on Revision of the New Jersey Constitution, constituted under Joint Resolution No. 2, approved November 18, 1941 and reconstituted under Joint Resolution No. 1, approved January 24, 1942, as amended April 1, 1942, of the New Jersey Legislature, reported to the Legislature and to the Governor, in writing, a copy of which Report is annexed to this Record as Appendix III (infra, pp. 909-958).

Annexed to and included in said Report there was transmitted to the Legislature and to the Governor the text of "A Revised Constitution for the State of New Jersey" which appears as Part II of said Report (infra, pp. 930-956).

Upon receipt of said Report, the Legislature adopted Senate Concurrent Resolution No. 19 of the 1942 Session, which appears on page 9 of this Record and which provides that a Joint Legislative Committee, to consist of four Members of the Senate to be appointed by the President thereof and four Members of the House of Assembly to be appointed by the Speaker thereof, be constituted and that the Report of said Commission be referred to said Joint Legislative Committee and that it shall be the duty of said Joint Legislative Committee to "hold public hearings to ascertain the sentiment of the people of the State as to the various proposals and recommendations made by said commission in its report and to ascertain, also, the sentiment of the people of the State as to whether or not they desire the fundamental law of the State to be changed."

On the same day Hon. I. Grant Scott, President of the Senate, appointed Hon. Lloyd L. Schroeder, Senator from Bergen County, Hon. John M. Summerill, Jr., Senator from Salem County, Hon. H. Rivington Pyne, Senator from Somerset County and Hon. Edward J. O'Mara, Senator from Hudson County, as the Senate Members of said Joint Legislative Committee and Hon. John E. Boswell, Speaker of the House of Assembly, appointed Hon. Manfield G. Amlicke, Assemblyman from Passaic County, Hon. Dominic A. Cavicchia, Assemblyman from Essex County, Hon. Vincent S. Haneman, Assemblyman from Atlantic County and Hon. Mildred

A. Preen, Assemblywoman from Hunterdon County, as the Assembly Members thereof.

On June 24, 1942 the Joint Legislative Committee met and organized by the election of Hon. Lloyd L. Schroeder as Chairman and determined to hold a series of public hearings for the consideration of the text of said "Revised Constitution for the State of New Jersey" proposed by said Commission, Article by Article, and to hold one or more additional hearings for the discussion of the methods of submission of the proposed changes in the New Jersey Constitution to the people of the State and for the purpose of inviting suggestions as to proposed changes in the Constitution which were not suggested by the Commission in its Report or in the text of its proposed "Revised Constitution." At a later meeting Charles DeF. Besoré, of counsel with the New Jersey Commission on Statutes, was elected Secretary of the Joint Legislative Committee.

Pursuant to its determination, the Joint Legislative Committee held public hearings in the Assembly Chamber in the State House in Trenton, New Jersey, on July 8, 1942, July 15, 1942, July 22, 1942, July 29, 1942, August 5, 1942, August 19, 1942, August 26, 1942, September 17, 1942 and September 18, 1942.

On September 28, 1942 the Joint Legislative Committee filed its Report with both Houses of the Legislature, together with a Minority Report of Manfield G. Amlicke and a Minority Report of Dominic A. Cavicchia, members of said Joint Legislative Committee.

Subsequently the Joint Legislative Committee determined to print and publish the proceedings had before it together with such other pertinent documents as the Chairman and Secretary of the Joint Legislative Committee should determine and for this purpose Senate Concurrent Resolution No. 4 of the 1943 Session was adopted on February 15, 1943.

To the record of the proceedings before the Joint Legislative Committee have been added, in this work, all Briefs and Communications submitted to the Joint Legislative Committee, Senate Concurrent Resolution No. 19, adopted June 15, 1942 (infra, p. 9), the Report of the Joint Legislative Committee (infra, p. 868), the Minority Reports of Manfield G. Amlicke (infra, p. 870), and of Dominic A. Cavicchia (infra, p. 872), Members of the Committee,

and the following Appendices:

Appendix I—Constitution of the State of New Jersey (infra, p. 885);

Appendix II—Joint Resolution No. 2 creating the Commission on Revision of the New Jersey Constitution and Joint Resolution No. 1 continuing and reconstituting the same (infra, p. 905);

Appendix III—Report of the Commission on Revision of the New Jersey Constitution (infra, p. 909);

Appendix IV—Comparison of the Proposed Constitution (1942) and the Constitution of 1844 as amended (infra, p. 959);

Appendix V—Report on Constitutional Courts of New Jersey by Ralph Temple, including letters of transmittal (infra, p. 1057).

In preparing this work for printing the running page numbers of this work have been added in parentheses in each case in which reference is made in the text to the page numbers of any document included in or annexed to this Record.

LLOYD L. SCHROEDER,
Chairman.

CHARLES DEF. BESORÉ,
Secretary.

SENATE CONCURRENT RESOLUTION No. 19

Adopted June 15, 1942

A CONCURRENT RESOLUTION creating a joint legislative committee to ascertain the sentiment of the people of the State as to the various proposals and recommendations for change in the New Jersey Constitution made by the Commission on Revision of the New Jersey Constitution and to report thereon to the Legislature.

WHEREAS, By Joint Resolution No. 2, approved November eighteenth, one thousand nine hundred and forty-one, the one hundred and sixty-fifth Legislature created a Commission on Revision of the New Jersey Constitution, and charged said commission with the duty of inquiring into the subject of constitutional revision, of suggesting in what respects the Constitution should be changed, and of making recommendations to provide for the more effective working of present-day representative processes; and

WHEREAS, Said commission was continued and reconstituted by joint resolution approved January twenty-fourth, one thousand nine hundred and forty-two; and

WHEREAS, After months of diligent research and inquiry, said commission has made a comprehensive report which includes, among other things, the text of a revised Constitution for New Jersey, which text in the judgment of said commission, as expressed in its said report, sets forth "the requirements to secure to New Jersey the benefits of experience in public affairs extending over a century and a half" and comprises "a document which can meet the demands of sound government", and

WHEREAS, The full report of the commission is of such vital significance that it merits prompt, thorough and careful consideration by the people of this State as well as by their representatives in the Legislature; and

WHEREAS, To the end that this Legislature may have the benefit of public opinion before acting upon the proposals of the commission, it is desirable that the people of this State be afforded full and ample opportunity to be heard thereon; and

WHEREAS, This Legislature feels that the best method of recording a fair cross-section of public sentiment is through orderly

public hearings before a joint legislative committee; now, therefore,

BE IT RESOLVED *by the Senate of the State of New Jersey (the House of Assembly concurring)*:

1. There is hereby constituted a joint committee of the Legislature, which shall consist of four members of the Senate to be appointed by the President thereof and four members of the House of Assembly to be appointed by the Speaker thereof, who shall serve without compensation.

2. Said joint committee shall organize by electing a chairman from their own number and a secretary, who need not be a member of said joint committee, and shall be empowered to employ such clerical assistance as may be necessary to the performance of its duties and fix their compensation.

3. Said report of the Commission on Revision of the New Jersey Constitution is referred to the joint committee created hereby. It shall be the duty of said joint committee to hold public hearings to ascertain the sentiment of the people of the State as to the various proposals and recommendations made by said commission in its report and to ascertain, also, the sentiment of the people of the State as to whether or not they desire the fundamental law of the State to be changed.

4. The joint committee shall be entitled to call to its assistance and to require the services of such employees of any State department, board, bureau, commission or agency as it may deem necessary in order to perform its duties.

5. The joint committee shall keep a record of its hearings and proceedings and shall report to the Legislature the result thereof to the end that the Legislature may be informed of the public sentiment of the State as to the various proposals for changes in the fundamental law of the State made in said report of said commission and in the course of said hearings.

PUBLIC HEARING

July 8, 1942.

Morning Session

on

Proposed Revision of the New Jersey Constitution

Article I. "Rights and Privileges"

The Joint Legislative Committee appointed pursuant to Senate Concurrent Resolution No. 19, passed June 15, 1942, convened in the Assembly Chamber in the State House at Trenton, on Wednesday, July 8, 1942, at ten-thirty o'clock A.M., for the purpose of holding a Public Hearing in connection with the Proposed Revision of the New Jersey Constitution (1942) pursuant to announcement previously made.

The following members of the Joint Committee were present:

Hon. Lloyd L. Schroeder, Senator from Bergen County, Chairman, (presiding),
Hon. H. Rivington Pyne, Senator from Somerset County,
Hon. Edward J. O'Mara, Senator from Hudson County,
Hon. John M. Summerill Jr., Senator from Salem County,
Hon. Manfield G. Amlicke, Assemblyman from Passaic County,
Hon. Dominic A. Cavicchia, Assemblyman from Essex County,
Hon. Vincent S. Haneman, Assemblyman from Atlantic County,
Hon. Mildred A. Preen, Assemblywoman from Hunterdon County.

The Chairman opened the Hearing and the Hearing proceeded as follows:

MR. SCHROEDER: The public hearing will be opened.

I want to say at the outset that the procedure to be adopted will be that we will discuss, first, Article I of the Proposed Revision of the New Jersey Constitution—Article I, Rights and Privileges. We will hear first the proponents of Article I, then the opponents of Article I, and then those who favor modification of Article I.

When we complete the discussion on Article I, we will proceed to Article II and adopt the same procedure.

The first speaker on the list here who is desirous of talking on Article I is Mr. Spencer Miller Jr., representing the New Jersey Committee on Constitutional Convention. Commissioner Miller.

MR. SPENCER MILLER JR.: Mr. Chairman and Members of the Joint Committee:

May I take this opportunity at the outset to congratulate you

upon your selection as members of the Joint Legislative Committee charged with this highly responsible task of conducting hearings on a new Constitution for the State of New Jersey. I can think of no more important burden that any committee could be charged with at this time than to conduct such public hearings on the fundamental law of our State.

I am here this morning as a citizen of this State, and in my capacity as Chairman of the New Jersey Committee on Constitutional Convention, to offer the cooperation of that committee and to explain briefly the point of view of this committee of citizens throughout the State. This committee, which was organized a little over a year and a half ago, has become today the accredited spokesman of an increasing number of citizens and citizen organizations who are committed to the proposition that the Constitution of this State should be revised and modernized to meet the needs of our age.

The common ground upon which they have come together may be described in the two affirmations which were unanimously endorsed in a statement of principles which was adopted by this organization when it was organized in February 1941:

1. "The New Jersey Constitution is in many respects a serious barrier to economical, efficient, and responsible government.

2. "The whole process of reexamining and restudying our basic law should be carried on in the open and with the fullest public discussion of all issues."

We adopted the name "The New Jersey Committee on Constitutional Convention" because when the people of a State deliberately set out to consult together about their Constitution with a view to the revision of their fundamental law, they are in effect holding a Constitutional Convention. This is true whether a revised constitution ultimately submitted for public approval is produced by a body of specially elected delegates to a constituent assembly, an appointed commission, or the Legislature itself, provided the drafting agency acts with the authority of the people and in the light of public discussion.

The Committee on Constitutional Convention feels, therefore, that New Jersey has for some months been to all intents and purposes in an informal constitutional convention. We welcome the opportunity offered by the hearings that your honorable committee has planned for the next few weeks, to expand the actual public participation in the formulation of the revised Constitution, which we trust will in due course be submitted for their approval. For surely the people in a representative democracy have the right to determine the basic charter under which they are to live.

The Committee on Constitutional Convention does not propose as a body to take a stand for or against every detail which might possibly be included in a modern Constitution for the State. We have no such mandate from our constituent organizations. The Committee has, however, expressed its satisfaction in the basic job done by the Commission on Revision of the New Jersey Constitution, which reported to the Legislature on May 18th. I quote from the statement of the Board of Trustees, dated May 28, 1942:

> "Present plans to revise the State Constitution provide a great opportunity to accomplish what we have been trying to do for fifty years. The draft of the Constitution as prepared by the Commission on Revision of the New Jersey Constitution presents a sound outline upon which the State Legislature can proceed to evolve a thorough-going revision in our constitutional framework.
>
> But the process by which the final draft is prepared must provide for the widest measure of popular participation. Public legislative hearings should be held, citizens and groups throughout the State should be invited to submit their proposals. This process of popular participation might well engage the State Legislature during the summer months.
>
> Without passing judgment on details of the Constitution proposed by the Commission, the Committee feels that the changes in the executive, legislative, and judicial departments constitute a forward step towards providing New Jersey for the first time, with a frame of government based on tested American principles and adequate to modern needs. The details of the plan are open to discussion and improvement, but the pattern set by the Commission gives the Legislature and the people a head start towards the formulation of the document to be submitted in the fall.
>
> Any final draft, however, should clearly and unequivocally give to the people the fullest opportunity to amend their Constitution by a majority vote of the Legislature after which amendments should be offered to the people for prompt action. The final draft should also provide further opportunity for the people to examine and revise their entire fundamental law at least every twenty years.
>
> When a revised Constitution has thus evolved by cooperation of the people, it should be submitted to the whole body of the electorate for their approval."

This is the end of the statement to which I have just referred. As this statement indicates, most of the members of our Committee are convinced that as a whole the proposed new Constitution would be a vast improvement over the present document. The easing up of the present method of amendment and the provision for peri-

odical constitutional revision, which most of our members would like to see, will be presented to your committee at the appropriate hearing. Many of the members of our Committee on Constitutional Convention feel that as long as the proposed Constitution is up for discussion, there are other changes which they as individuals or representatives of organizations would like to see made. For this reason I suspect that they, in common with most other people who want a substantial revision of the Constitution, will not appear as uncompromising advocates of the document as drawn by the Revision Commission. The members of our Citizens Committee will appear rather as advocates of revision, hoping that they, together with all other citizens, may ultimately have the opportunity to vote for a new Constitution, which may include what all citizens regard as the good points of our present Constitution and of the proposed revision, in addition to other refinements in one or more of the articles. The Commission itself was aware of the fact that this draft was not a model Constitution but rather the basis on which to evolve a document to meet the needs of sound government. They knew that in the give and take of public discussion, improvements could and would be made. We approach these hearings in that spirit.

I think I am safe, Mr. Chairman, in saying with respect to the first three Articles, that practically all of our members feel that the changes proposed by the Revision Commission are, with few exceptions, in the right direction; that those changes will have the effect of making the personal liberties and constitutional rights of the citizens more secure and of substantially assisting our Legislature to perform its representative and law-making functions more expertly and efficiently and more consistently with the general interest. In all probability most of the changes which will be made here today will be thought of by their proponents as further steps in the same direction.

Speaking specifically of the Bill of Rights, it is gratifying to us that the Commission has seen fit to make few changes in the State's ancient Charter of Liberties. When the rights of free men are being challenged throughout the world, it is well that we guard well our ancient liberties. It is well to remember that the Bill of Rights in our present Constitution was patterned in 1844 after our own Federal Bill of Rights. The changes then that have been proposed are in the direction of strengthening rather than weakening the public and private rights of our citizens. I have no doubt that the new provision giving any citizen the right to restrain any violations of the Constitution will be hailed with general satisfaction, because it emphasizes the fact that the Constitution belongs to the people, and at the same time it provides an important bulwark against weakening of the Constitution by evasions ordinarily hard to reach by judicial process.

The Founding Fathers did well in the construction of the Bill of Rights because they knew the devices of tyranny and understood the dangers to guard against. If their prescriptions concerning governmental organization and the internal distribution of powers within government do not seem so satisfactory today, it is because the conditions of modern industrial society impose burdens which in kind and amount were necessarily unforseen a century or more ago. The basic principles of liberty as outlined in the Bill of Rights remain essentially unchanged, but the machinery required to maintain those principles must necessarily change to meet changing conditions. The universal determination to preserve the Bill of Rights intact is an important clue to the motive and spirit behind the present movement for Constitutional Revision in New Jersey. It is essentially a conservative movement designed to insure our continued growth in liberty and democracy, and to provide governmental tools fashioned in accordance with tested American principles and geared to the tempo and burdens of these troubled times. Our forefathers never hesitated to change their governmental machinery when experience or new conditions proved that it was not working in such a way as to achieve their fundamental objectives. We will be unworthy of their example if we do not do likewise in our own day.

I should like, in conclusion, to thank this Committee for the opportunity given to me and to all other citizens of the State to take part in this great job of demonstrating again that democracy is the best form of government, because it knows best how to meet every emergency and to adjust to new problems without sacrificing that human liberty which is its essential spirit. I speak, I think, this morning for the entire Committee on Constitutional Convention in offering your committee our fullest co-operation. Our members and our resources are at your disposal. Our contacts with citizens from all parts of the State and in all walks of life have convinced us that the vast majority who have given serious thought to problems of State Government are convinced that New Jersey needs a new Constitution. Furthermore, it has been our observation that more people are thinking more seriously about this problem than ever before. We believe that there can be no doubt of the desire of the people that the Legislature should give them the opportunity this November to authorize either the Legislature or a specifically selected commission or convention to prepare a definitive revision of our State Constitution, after a full public discussion, and to submit it for the approval of the people the following November.

May I suggest, sir, that if your Committee entertains any doubts on this score, it would be an illuminating experience to hold general hearings on the subject in each of the counties and important centers of population in the State. We do not consider this

by any means a necessary preliminary to asking the people whether or not they want to have an opportunity later to vote on a new Constitution. We suggest it merely as a way of resolving any doubts that may exist.

If I know the temper of the people in this State, where I have lived for more than fifty years, it is that the time is here and well past when our Constitution needs to be revised if it is to provide the basis for a more responsible and orderly conduct of our State Government. Members of the Joint Committee, you have a great commission from the State Legislature. We are sure you will prove worthy of your high trust.

MR. SCHROEDER: The next gentleman to be called on will be Mr. Winston Paul.

MR. PAUL: Mr. Chairman, I would rather not make a speech, but I would like to introduce a few of the people, to save the committee's time, who will speak as proponents of this measure. First, I would like to call on Mr. Russell Watson, Director of the New Jersey Chamber of Commerce, to speak on Article I as a proponent.

MR. RUSSELL E. WATSON, Vice-President, New Jersey State Chamber of Commerce: Mr. Chairman and Members of the Committee:

Before speaking specifically on Article I, may I make, in behalf of the New Jersey State Chamber of Commerce, a brief opening statement?

The New Jersey State Chamber of Commerce favors a thoroughgoing revision of our State Constitution at this time. The Chamber believes that, although there may be arguable differences of opinion concerning some of the provisions of the revised Constitution recently submitted by the Revision Commission, the Commission's proposals as a whole may well be used as the framework of a sound revision program.

The Chamber pays tribute to the skill, industry, integrity and self-sacrifice which the members of the Legislative Commission brought to their task, and acknowledges the tremendous debt owed to them by the citizens of New Jersey. The Commission's report is a State paper of exceptional merit.

Whatever disposition may finally be made of the specific recommendations of the Commission, the Chamber urges the Legislature to take appropriate action as soon as possible, preferably by requesting authority from the people, at the general election in November 1942, to submit a revised constitution for their approval. If this authority is thus granted the Legislature, then that body would proceed to incorporate a revised constitution in a law providing for its submission to the people at the general election in November 1943.

This would give ample time for thorough consideration of the subject by the Legislature and by the people.

The Chamber disagrees with the view expressed by some that the time is not opportune for constitutional revision. The Chamber holds that it is imperative that New Jersey's archaic Constitution be modernized so that the State and its subdivisions will be better prepared to meet the post-war emergency, whatever form it may take.

The fundamentals of the problem are best stated by the Legislative Commission in its statement of transmittal: "The constitutional machinery, however, can be no better than those who operate it. The transformation from a program—the Constitution—to a government functioning with adequacy and integrity, and in the public interest, can only be carried out by an intelligent, conscientious and observant electorate."

This axiom places the final power and responsibility where they belong—with the people. The revised Constitution would be their tool. Let it be a good one.

Now, speaking specifically to Article I of the proposed revision, it is necessary to say only at this time that the State Chamber favors the Article as proposed. We think that the changes and modifications are sound and are in the right direction.

It is difficult, Mr. Chairman, not only respecting this Article, concerning which I should think there would be but little controversy—it is difficult for the proponents to speak in favor of those Articles which may be controversial until the ground of the opposition is known. It is difficult to anticipate what form the opposition will take. So, therefore, we content ourselves at this time by saying that we favor Article I as proposed.

MR. SCHROEDER: Will you proceed to introduce the next speaker, Mr. Paul?

MR. PAUL: I want to ask, Mr. Chairman and Members of the Committee, Mr. Thomas Parsonnet, Legislative Counsel of the American Federation of Labor, to speak on Article I.

MR. THOMAS PARSONNET: Mr. Chairman, Members of the Committee, Ladies and Gentlemen:

I am authorized by the State Federation of Labor to state that the Federation is strongly in support not only of Article I, but ir support of the entire revision as proposed, with certain slight exceptions, and to say also that if no changes can be made, they are in favor of the adoption of the revision as proposed rather than to proceed under our present Constitution.

The only suggestion we have to make with respect to Article I concerns the Bill of Rights, naturally. We were told by a member of the Commission some months ago that in their deliberations they came to the conclusion that some protection should be given to the

rights of Labor and that they were of the opinion, and were of the opinion even after their letter of transmittal was sent, that their provision for the protection of the rights of Labor was the only provision in any Constitution of the United States protecting the rights of Labor. That they were in error does not reflect upon their ability or integrity, whatsoever. But they did include a provision in Article III which we feel is highly inadequate to properly protect the rights of Labor. Article III, dealing with legislative powers, simply says that the right of Labor to organize and bargain collectively shall not be impaired. There is no definition of the right nor is there anything but a prohibition against legislative action to impair that right. We feel that the provision of the New York Constitution is far more adequate to protect the rights of labor than that included in this proposed revision because, in the first place, it is included in the Bill of Rights of the Constitution and not in the limitation of legislative power, and because, in the second place, it is an affirmative statement and not a negative prohibitory statement.

The New York Constitution has in its Bill of Rights a reference to the rights of Labor, and contains three separate sections: The first, while an excellent statement, is so well established in our law today that we feel it is not absolutely necessary to include it in the Constitution. It reads as follows: "The labor of human beings is not a commodity nor an article of commerce and shall never be so considered . . . " That is an excellent statement of what we all agree with but it is a statement that has been declared by the courts so often that I think it is not necessary to include it as a separate statement in the Bill of Rights.

The second clause in the New York Constitution contains a prevailing wage law in public employ and on public works requiring a maximum of an eight-hour day and requiring payment of prevailing wage on public works. There, I think, if the committee will permit, there may be changes in our system of economy in the future, and to include a strict prohibition against working over eight hours might be unwise, because fifteen years from now we might want to have a provision against working over six hours a day. That is, I think, a legislative rather than a constitutional matter and as such I think perhaps might not well be included in the constitutional revision.

The third, however, relates to the suggestion made by the Revision Commission and it is included in the Bill of Rights, and reads affirmatively, as follows: "Employees shall have the right to organize and bargain collectively through representatives of their own choosing." Now, that provision was adopted in the State of New York in 1936. It is a provision which guarantees to workers in any industry or trade their right to bargain collectively

with their employer. It is a broad provision which must be recognized not only by the Legislature, as would be provided in your proposed revision today, but also by the courts, and as such gives far more adequate protection to labor and to the employees in general in the State. We therefore urge upon this committee the transposition of the section which now appears in Article III in a negative way into the first article of the Bill of Rights, and ask that it read precisely as follows: "Employees shall have the right to organize and bargain collectively through representatives of their own choosing."

Now, it has been held in a recent California case that employees do have that right and employers who discharge employees for joining Unions may be compelled by the ordinary processes of the common law to reinstate those employees with back pay. However, we feel there should be some specific recognition of the problem by including in an effective and efficient way a statement guaranteeing the right to organize and bargain collectively, and as it is now included in Article III it is neither efficient nor effective, and we ask that the committee recommend the transposition as suggested before.

Thank you.

MR. PAUL: Mr. Chairman and Members of the Committee, I would like to introduce Mrs. Andrew J. Steelman, representing the New Jersey League of Women Voters.

MRS. ANDREW J. STEELMAN: Mr. Chairman and Members of the Committee:

I speak for the League of Women Voters in connection with Article I, but before proceeding specifically to a discussion of the article, I would like to reiterate the League's stand behind the Constitution Convention. We believe that the political power is inherent in the people themselves and therefore the fundamental law of their State should be revised by delegates elected by the people to a convention. However, Mr. Miller has stated in general the position of the Constitutional Convention group, and as a member organization of that group the League does believe that the Revision Commission has made an excellent report. We feel that the open hearings which your committee is holding are a step in the direction of the Constitutional Convention and therefore we are very happy to cooperate in that.

The philosophy of our democratic form of government is expressed in the several paragraphs of Article I of both the present State Constitution and of that proposed by the Revision Commission. These paragraphs set forth the rights and privileges guaranteed to all citizens of our State. It is of the utmost importance that changes to be made should be for the purpose of clarifying

and strengthening or to prevent the dominance of the selfish interest of an individual as opposed to the welfare of many.

The New Jersey League of Women Voters is in agreement with the changes to Article I of the Constitution which are proposed by the Revision Commission. We realize some people may feel that the change in paragraph nine of the words "criminal offense" to "a capital or other infamous crime" may produce an infringement of individual rights. However, there are cases of minor crimes where the individual would benefit if his case could be speedily disposed of by a competent committing magistrate in the local community. It is our opinion that the changes in this paragraph have a direct relationship to needed changes in the State court system. If the lower courts could be brought under direct State supervision, undoubtedly much of the fear regarding the impairment of the individual's rights would be removed.

As to the omission in this same paragraph of the words "or in cases cognizable by justices of the peace," the League has long advocated the abolition of the justice of the peace as a constitutional officer.

We commend the addition of Paragraph 19 in the proposed Constitution as strengthening the rights and privileges guaranteed to all citizens.

MR. PAUL: I will call on Mrs. Charles F. Robbins, Retiring President of the League of Women Voters of the Oranges.

MRS. CHARLES F. ROBBINS: I thought I was just to be introduced for the purpose of taking a bow and not to speak. I simply want to say that we support Mrs. Steelman.

MR. PAUL: I would like to call on Robert McManus of Hunterdon County, Editor of the New Jersey Spokesman:

MR. ROBERT MCMANUS: Mr. Chairman and Members of the Committee:

There has never been the slightest substance to the argument that those who wanted a new Constitution for New Jersey were seeking to undermine the Bill of Rights of the Constitution of 1844. In our opinion, there was never any sincerity on the part of those who advanced this argument; they used it merely to confuse and excite the public mind, in order to forestall any revision whatsoever, so that they could continue to enjoy the special privileges which they now enjoy under the Constitution of 1844.

Therefore, no one should be surprised that the Bill of Rights of the Constitution of 1844 is not only reiterated, but is also strengthened and added to, in the proposed Constitution now being considered by this committee. All of the traditional American rights of free government, freedom of religion, press, speech and assembly, trial by jury, habeas corpus and security against unreasonable search and seizure, are enumerated in this new document. And, in addition, the people are given added guarantee in Paragraph 19 of Article I, which states: "Any citizen or taxpayer may restrain the violation of any provision of this Constitution by a suit with leave of the Superior Court upon notice to the Attorney-General."

Therefore, we wish to express our approval of Article I and venture the prediction that the specious Goodbye-Bill-of-Rights argument will be utterly exploded at these hearings when it becomes apparent that there is no serious advocate of a new Constitution who wishes to infringe on the Bill of Rights in any way whatsoever. On the contrary, those who have violated and are violating these rights will be found among the defenders of the Constitution of 1844. It will always be remembered that in the notorious case of CIO versus Hague, the CIO believed it necessary to seek relief in the *Federal* Court to establish the right of a free press.

I would also like to add that we are in sympathy with the statement of Mr. Parsonnet that the statement as to labor rights should be included in Article I rather than Article III.

MR. PAUL: I will now call on Mr. Mortimer Eisner.

MR. MORTIMER EISNER: Mr. Chairman, Ladies and Gentlemen: Most of the views that have already been expressed on Article I represent the views that I have on that subject. I would, however, ask your indulgence to make one personal observation, and that is this: In 1921 I think, I was admitted to the bar of the District of Columbia and I practiced there for three or three and a half years before returning to New Jersey, my native State. I may say to you that the experience of a young lawyer who practiced under a modern judicial system returning to New Jersey to practice under the obsolete, archaic system under which we labor, is one that very few people recognize or experience, but it is one which very pertinently, very sharply shows the need for a revision of the State Constitution.

With respect to Article I, there is only one suggestion here that seems to me to call for further discussion, because to discuss the Bill of Rights here would be like arguing for the validity of the Ten Commandments. We accept it. With respect to the subject of Paragraph 9, the only change therein is the change which deletes from the present Article 9 of our present Constitution the provision that no person shall be held to answer for a criminal offense, unless on the presentment or indictment of a Grand Jury. That is changed under the revision to "No person shall be held to answer for a capital or other infamous crime" and then continues on with the statement except the statement about the justices of the peace. Now, with respect to that change, if I may

anticipate a few of the remarks that might be said against it, I would say that doesn't in any way change the fundamental law that the Grand Jury still remains as a bulwark of the rights of the innocent. The Grand Jury still remains to prevent the arbitrary or malicious or oppressive action of any group or individual but it has come about in the passing of the years that our Common Pleas Court is loaded now with small offenses which take time and expense to try, and it also appears that that Common Pleas Court is gradually deteriorating into nothing more than a high-grade police court or recorder's court, and it also appears that the delays incident to trying matters before Grand Juries or obtaining indictments or presentments in many cases bring suffering to innocent people who want their trial brought about promptly. It is, I assume, with that object in mind that the committee revised the Constitution and changed Paragraph 9 and used now the words that are in the Fifth Amendment to the Constitution of the United States, and brought it in line with other Constitutions of the United States so that it effects a change in the dispatch with which small criminal cases are carried on without in any way affecting or disturbing the elementary or fundamental rights of the people.

The words "infamous crime" in common law have only to do with crimes, the penalty for which means incarceration for over a year in a State Penitentiary, and it is to those crimes which were felonies that the Bill of Rights still speaks and says as to them that there must be an indictment or presentment of a Grand Jury. But if you have a violation of the gambling law as by the operation of a Bingo game, we have come to conclude it is taking a lot of time of the Grand Jury and of a higher court to require that such an offense be first investigated by the Grand Jury, and we have come to believe that those minor offenses — and they are multitudinous — can be tried by police courts on information of prosecuting attorneys or by smaller, lower courts, so I submit to you that that only change effects no real change in the rights of the people but it does bring about expedition and dispatch in smaller criminal cases where that facilitation and expedition is necessary.

May I say as a personal opinion that having read this revision and having studied its summary, I have come to the conclusion that, so far as it is humanly and reasonably possible to bring together all the equalities and all dissenting views, this revision and this report does so, and subject to such modifications as the majority feel are necessary, I would heartily favor its enactment and its enactment promptly.

MR. PAUL: I will now call on Mr. Morris Isserman, representing the C.I.O. and the American Labor League.

MR. MORRIS ISSERMAN: Mr. Chairman and Members of the Joint Committee:

I would just like to make a brief statement before I comment on Article I. I appear here in behalf of the New Jersey State Industrial Union Council and on behalf of the American Labor League, representing some three hundred thousand men and women of organized labor. We still believe that the only democratic method for the revision of the State Constitution is through the calling of a Constitutional Convention, wherein delegates duly and legally elected by the voters of the state, would meet to deliberate, consider and prepare a new Constitution to be submitted to the people.

Without detracting from the merit of the work done by the Commission on Revision, we nevertheless maintain that such a document, prepared by a commission of seven men, behind closed doors, and without the advice and benefit of public counsel and public hearings, does not represent the will of the people. The procedure followed is undemocratic and against all established precedents, for it does not permit that full measure of discussion which a revision of the Constitution requires.

The report prepared by the Commission on Revision falls far short of the objectives which we had hoped would be attained through a Constitutional Convention. Fundamental human rights which should receive constitutional protection under the Bill of Rights have been ignored, and the framers have failed to provide adequate and proper representation for the people of this State. We had hoped that the Constitution submitted by this report would in truth provide for "a government of the people, for the people and by the people," and that the Commission would recommend the calling of a Constitutional Convention.

We cannot overlook, however, that the proposed revision under discussion is a considerable improvement over the Constitution of 1844. The report submitted shows that the Commission has given considerable time and study to the problem of revising the Constitution to meet present-day demands. A careful reading of the report must clearly indicate the necessity for a revision.

The hearings held by this committee partially overcome our objections to the manner in which the document has been prepared and in view of that fact we urge that the Legislature submit to the people at the next general election one of these two propositions:

1. Shall the Legislature enact a law convening a Constitutional Convention to revise the Constitution; or

2. Shall a revised Constitution prepared by the Legislature be submitted for a vote?

Our position in approving the report of the Commission on Revision and requesting that it be submitted to the people for a vote, is predicated, however, upon two major amendments to the revision:

1. The right of collective bargaining should be guaranteed absolutely to labor.

2. The method of amendment should be changed so as to permit amendments to be submitted to the people upon passage by a majority vote at one session of the Legislature.

Unless these amendments are made, we will have to oppose the revision in its present form.

Let me reiterate that we are in favor of this revision provided the two modifications which we have set forth are included therein. However, we feel that a Constitution which will really meet with present-day requirements should include the following modifications, and we hereby submit them:

1. Article I, Section 3, should be revised by adding thereto the following: "And no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief."

2. Article I, Paragraph 4. After the words "public trust," the words "or public employment" should be added.

3. Article I, Paragraph 6. Add the following:

> "The right of the people to be secure against unreasonable interception of telephonic and telegraphic communications shall not be violated and ex parte orders or warrants shall issue only upon oath or affirmation that there is reasonable ground to believe that evidence of crime may be thus obtained and identifying the particular means of communication and particularly describing the person or persons whose communications are to be intercepted and the purpose thereof."

4. Article I, Paragraph 9. This should be changed to read as it did in the old Constitution: "No person shall be held to answer for a criminal offense."

5. Article I, Paragraph 15. This should be changed to read "excessive and unreasonable," instead of "cruel and unusual."

6. A new paragraph, known as 19 (a), should be added, as follows:

> "No person shall be denied the equal protection of the laws of this State, or any subdivision thereof. No person shall, because of race, color, creed or religion, be subject to any discrimination in his civil rights by any other persons or by any firm, corporation or institution, or by the State or any agency or subdivision of the State, or in any public employment by the State or any agency or subdivision thereof. No person shall be deprived of life, liberty or property without due process."

7. A new paragraph, known as 19 (b), should be added, as follows:

> "Labor of human beings is not a commodity nor an article of commerce, and shall never be so considered or construed. Employees shall have the right to organize and to bargain collectively through representatives of their own choosing, and to engage in concerted activities for their mutual aid or protection."

Let me state again that both the C. I. O. and the American Labor League are affiliates of the Committee on Constitutional Convention; and with the modifications submitted by us, we wholeheartedly support the position taken by Spencer Miller Jr., the chairman of our committee.

MR. PAUL: I would like to call next on Mrs. Barth, Chairman of the Legislative Committee of the Consumers' League of New Jersey.

MR. SCHROEDER: I wish you would call on the proponents of Article I first, and then we will proceed with the opponents.

MR. ISSERMAN: I asked to go on as a proponent because, while we feel there should be some modification, the C.I.O. wanted to go on record as being generally in favor.

MRS. BARTH: Mr. Chairman, Members of the Committee, Ladies and Gentlemen:

While the Consumers League, too, had hoped for a general Constitutional Convention as the most democratic method for obtaining a new Constitution for the State of New Jersey, we have been extremely gratified with the report of the Commission which has been submitted to the Legislature, and, except as far as method of amendment and general revision is concerned, we are prepared to approve the Commission's Report.

Rather than being called upon as you take it paragraph by paragraph, may I say that the Consumers League of New Jersey endorses the first three sections that are up for discussion today.

MR. PAUL: The next speaker will be Mrs. Dorothy S. Isserman, Chairman, Legislative Committee, New Jersey Conference, National Council of Jewish Women.

MRS. DOROTHY S. ISSERMAN: Mr. Chairman, Members of the Committee, Ladies and Gentlemen:

The New Jersey Conference, National Council of Jewish Women, is highly appreciative of this opportunity to publicly state our viewpoint on a revision of the New Jersey Constitution before this honorable committee.

Careful study of our present New Jersey Constitution has brought us to the realization that in a twentieth century way of life we are permitting ourselves to be governed by a nineteenth

century document. In this fast-moving world of today we are brought face to face with the challenge of a spreading totalitarianism. We must keep proving over and over again that democracy does work well in the midst of upheaval.

What more dramatic demonstration of "Democracy at Work" could be devised than the formulation of a new Constitution by a body of duly elected representatives of the people of New Jersey, meeting together in convention? Most of us are re-reading the history of the formation of our Federal Constitution with pride. The precedent is too valuable to discard in times like these.

We are well aware of the care and thought put into the proposed revision of the New Jersey Constitution under discussion today. But surely it is conceivable that some portions of it might well be subjected to change. As an instance, Article I, the Bill of Rights, will probably need to be added to in order to preserve the essential rights and liberties of our citizens and promote the general welfare of our people. These hearings, beginning today and to go on for the next few weeks as we understand, will be valuable to a limited extent. We hope that your honorable committee will agree with us that this is only the starting point. We urge that you yourselves recommend to the Legislature that the people of our State be given the opportunity to elect special representatives to a Constitutional Convention, who would have your proposed revision to work from. The Convention ought to be called this coming year and the people given the chance to vote on a new Constitution in the following general election.

We feel that your proposed Constitution contains many valuable and important improvements over the present document, and are grateful for your diligence. The people of New Jersey want a new Constitution—and want it NOW.

MR. SAMUEL DRESCHER, President, Civic Association of South Orange:

Mr. Chairman, Members of the Committee:

I have heard the views of a number of people here today and particularly some representing special interests, and it seems to me that no one has yet made any mention of the work of the Commission as appointed by the Legislature. It seems to me from a reading of the report submitted by this Commission that they have labored hard and earnestly and without private or selfish interest. I think they speak for all of us in the State of New Jersey. I particularly listened with interest to the words of Mrs. Steelman, who spoke as to what they thought of the proposal. I feel that all of us who are assembled here today feel, no doubt, that the Commission has done a very good job and has produced what they think is an unselfish and a worthwhile document.

Now, the important thing in considering a proposed Constitution is the amount of time we spend considering it. We as lawyers know that when you represent one interest or another, whether it be one client or another, you can never get even two lawyers together in the one room to agree on the same words in the same document. I have seen that from experience and very often we have argued for hours about several words and in the end we came to the proposition that what we meant was the same thing but we meant it in a different way. I have heard the recommendations for change. When you get right down to the basic fundamental problem underneath the proposed change to the report of the Commission, you find that the change isn't important, and that that change, if you put it in there, may affect somebody else who may want a different change, so you can keep on changing to the tune of probably 75 people assembled here today—I haven't counted them but I think that is about the number—and you can find 75 different ways of reciting the chapters of Article I and so on that the Commission has labored so hard and so strenuously on and has certainly given every consideration to all these changes and has put into these changes what we think is a proper change in order to have a proper Constitution, as the young lady just said, of the Twentieth Century rather than of the Nineteenth Century.

Those of us who were fortunate enough to hear a real good explanation of what the Constitution is—and I don't know how many of us are constitutional lawyers or familiar with all phases—I don't hold myself out as a constitutional lawyer, and I don't know how many of us can, but those of us who were fortunate enough to hear an educational explanation, will understand what it is all about. That is the difficulty with our entire problem, not having an educational explanation of what it means. We had the other evening the pleasure of hearing Commissioner Spencer Miller Jr., of South Orange, who happens to be one of our residents and fellow-citizens, who gave us an explanation with charts, which showed the workings of the old as well as the new Constitution. I tell you right now, no matter whether you represent one interest or another—or whether you represent a private citizen—and Mr. Eisner came here as a citizen—if you just listen to the learned words of the people who know and explain to you what it means to have these changes, then you will understand it is not important whether you go on using the word "capital" or "criminal"—that those words are not the important things. We have gotten along very well with even the archaic words born in the nineteenth century. We should be able to get along with the new revised Constitution, so I say that we as an organization feel that the work of the Commission should be complimented and approved, and although we may not be able to be here when the discussion on the following Articles takes place, we would like to go on record as favoring the

adoption of the revised Constitution and the report of the Commission, and with all speed possible.

MR. SCHROEDER: The next speaker will be Mr. Walter T. Margetts Jr., representing the New Jersey Taxpayers Association.

WALTER T. MARGETTS JR.: Mr. Chairman and Members of the Joint Legislative Committee:

I represent the New Jersey Taxpayers Association.

The New Jersey Taxpayers Association is in accord with the basic principles of the revision of the State Constitution proposed in the report of the Commission on Revision of the New Jersey Constitution and we wish to take this opportunity to congratulate each and every member of the Commission on their splendid accomplishment.

The Board of Directors of the Taxpayers Association, comprised of fifty representatives from all parts of the State of New Jersey, expressed unanimous approval of the principles in the proposed revision, believing that adoption of the proposals would represent a noteworthy improvement in the State's basic law.

So far as the taxpayers are concerned they are vitally interested in the subject of revising the State's basic law, particularly because of the recognized need for changes which will provide for more effective controls over spending the taxpayers' money and which will erect barriers against the passage of legislation for unwarranted spending measures.

The long range program of the New Jersey Taxpayers Association, as reflected in our own Constitution and in our annual platforms has consistently set forth a number of objectives in the interest of the taxpayers which imply revision of the State Constitution.

Chief among these objectives are:

a. Restrictions upon enactment of mandatory "spending" laws, those laws which are enacted by the State Legislature, imposing spending requirements upon local government by determining the salaries, terms, and tenure of office of public officers or employees in local government;

b. Reorganization of the State government to simplify, revise, eliminate and consolidate State departments along the line of efficiency and economy in order to eliminate the waste and inefficiency resulting from the present complicated and uncoordinated structure of the State Government;

c. Revision and strengthening of the State's fiscal methods to eliminate dedicated funds (except debt service upon existing bond issues), to provide for all appropriations of the State government in a single appropriation bill, and to restrict supplementary appropriations to those approved by

a two-thirds vote of the membership of each House of the Legislature.

The report of the Commission on Revision of the New Jersey Constitution acknowledged in several of its provisions the need for alterations which will strengthen the controls over public spending. Speaking for the New Jersey Taxpayers Association and the hundreds of thousands of home-owners and business men represented by the Association, I most strongly urge that such revisions be made in the State's basic law.

Thank you.

MR. SCHROEDER: The next speaker will be Mr. Kirk Brown, of Montclair.

MR. BROWN: I wish to speak on Article II, not Article I.

MR. SCHROEDER: Are there any other individuals who wish to speak as proponents of Article 1? If not, we will proceed with the opponents. I would like to call on Mr. R. Robinson Chance, representing the Manufacturers Association of New Jersey.

MR. CHANCE: Mr. Chairman, Members of the Committee:

I am happy and honored to have this opportunity to address this honorable body on behalf of the Manufacturers Association of New Jersey concerning the proposal for a new Constitution for our State.

The management of that Association, representing as it does such a large part of the industry and citizenry of this State, have felt that the Association should be represented at the discussion and consideration of such a matter of vital importance as a revision of the basic and fundamental law. They have not authorized me to commit the Association finally to any attitude or course of action in advance of the determination of this Committee as to whether you will recommend the submission of all or parts or none of the proposal to the consideration of the electorate.

My position in opposition to the proposal is that I shall, with your permission, explore and review the significant features of the proposal in the hope of aiding you in your decision as to what action or inaction you will report and recommend.

In my instructions prominent place was given to the proposition that the Manufacturers Association should not take a merely obstructive attitude, but that if some of the results sought by the proposal seem desirable, other means of accomplishing them may be suggested.

Furthermore, it should be clearly understood that anything said with respect to any department of Government is not to have any implication of approval or antipathy on the part of the Manufacturers Association of New Jersey toward any persons in or out of public life. We speak from the standpoint of what are deemed

fundamental principles of Government—applicable no matter who holds any public office now or who may hold office hereafter.

This last thought is especially stressed because it is believed that the proposed revision of the Constitution tends toward executive domination and legislative insignificance, and we are opposed to legislative insignificance.

It is understood that this hearing is particularly directed to the first three articles of the proposal, and let me say here for the sake of clarity that in my subsequent remarks I shall refer to the proposed new Constitution as Proposal and the present Constitution, adopted in 1844 and amended in 1875, 1897, 1927 and 1939, as the Constitution. I shall confine my remarks within that scope, but in so doing shall ask your indulgence with respect to certain general observations which have common application to all provisions including the first three Articles.

Now, you perhaps notice that in referring to the Constitution I have mentioned the dates of amendments. This was done designedly. We hear some inference and innuendo against our Constitution as well as some general suggestion that it is archaic and ancient and other expressions based on its age. We deny that age alone is an argument against a Constitution. We are not so sure that the Commission on Revision is really so positive that age is a defect in our Constitution. We see that at page 15 of their report (p. 915) they use the expression "time tested provisions" when they speak of the Bill of Rights. If provisions of the Bill of Rights deserve special recommendation because "time tested," no good reason is perceived why other "time tested" provisions should not likewise receive respect. We do not subscribe to the doctrine that experiment is everything and experience nothing. Our attitude is that if there is anything wrong we should change it because it is wrong. We urge that you should not base your position upon the fallacy that the Constitution as it now stands was adopted in 1844.

The natural rights of man and the real American standards of Government are much the same now as when Jefferson penned the Declaration of Independence in 1776. The question is not how old is the Constitution but what is in it.

In examining the Proposal we shall check the statements in the so-called highlights and summary and explanation prefacing the Report of the Commission against the text of the Proposal, and express our views as to the scope and meaning of the particular provisions and the accuracy of the Commission's comment concerning the same.

Of course, I suppose it would be the popular thing for me to pat the Commission on the back and say what a splendid thing they have done, and I note so many have come up here and said that, while they are not in accord with everything in the Report, they think it is a fine thing because it is a starter from which you

can get a real thing that amounts to something. On the contrary, I am not going to take the popular stand. I am not going to pat them on the back but I am going to say "The mountain labored and the mountain brought forth a mouse." Now, the first suggestion I take up, applicable to Articles I to III as well as to all the rest of the Proposal is the recommendation that the submission of the revised Constitution shall be in such form that the people will vote either for or against the document "as a whole." We consider this suggestion contrary to sound procedure.

The suggestion would require the voters to take all or none of the Proposal. The voters would not be allowed to express any view as to the adoption of some part or parts and the rejection of others. The voters would be forced to estimate the good and the bad in the Proposal, strike a balance and then determine on that balance whether to submit to what they consider evil and vicious in the hope they might get what they consider good in it.

Submission on an all or none basis assumes that the voter will be able to strike a nice balance on whether the Proposal preserves or decreases his liberty, security and protection, or the contrary—whether it gives him free and unimpeded access to his governmental representatives or not, and whether it gives him an opportunity to be heard in the formulation and administration of the laws or the contrary, and whether or not the Proposal will make for unprejudiced formulation and administration of the laws that will govern him. This all or none idea seems like an arbitrary requirement, because there are separable things in that document. If they want it submitted separately, it could easily be separated. I want to call your attention particularly to the fact that even in their own report, they don't think this idea of all or none is such a bright idea because in this provision they have with respect to amendments, on page 54 (p. 953) you will see that there is this provision, which is like the one in the present Constitution:

> "If more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly."

This is in the proposed revision. Now, if the principle is so sound that the Commission felt that it was desirable that separate matters be separately submitted when the time comes to amend their proposed Constitution, they have no justification for requiring submission of their present Proposal on an all or none basis.

Earlier in my remarks I said that it seemed to us that this Proposal tends to executive domination and legislative insignificance. In this connection we note that the Commission making this Proposal states:

> "Our greatest need, to which this revision is directed, is the strengthening of executive authority."

This is in line with the thought that executive domination is an objective implicit in this Proposal.

It is impossible to strengthen executive authority save at the expense of the authority of other governmental departments and of the liberties of the people. Even to shift authority from other governmental departments to the executive is to force the people to deal with one person alone. The people, if we have an executive despotism established in the State, will be forced to see subordinates dependent upon the executive. There will be no recourse, for the Governor will have but one term and will never have an opportunity to stand on his record and answer to what he did, and his subordinates do not come up for reelection. This would leave the Governor with powers to do as he (not the people) thinks should be done.

The Commission's Report says at page 20 (p. 920):

> "His" (the Governor's) "program can be planned in consultation with his chief administrative assistants, and his policies can be carried out under his supervision."

Then on page 21 (p. 921):

> " . . . The Governor's term of office is lengthened to four years in order to provide him with ample opportunity to carry out his program."

On through there on page 21, (p. 921) you will see about carrying out his program.

Now, coming directly to the text of this Article I—the first thing is the Preamble. I see no change, and of course unchanged provisions need no discussion.

Then I come to the Bill of Rights. That throughout is pretty much the same as we have at the present time, and of course it is not necessary for me to comment on those time-tested provisions which are just copied out of the old one. The Commission in its report, page 15 (p. 915) says that no change had been made in the time-tested provisions of the Bill of Rights with the exception of the addition of a provision guaranteeing every citizen and taxpayer the right to restrain any violation of the Constitution. It is said further that the new provision wipes out the impediment now existing which requires one to show that there is injury to him different in kind from what every other citizen suffers, before he can successfully attack a violation of the Constitution.

We maintain that this added clause guarantees nothing and show you why. It reads as follows:

> "Any citizen or taxpayer may restrain the violation of any provision of this Constitution by a suit with leave of the Superior Court upon notice to the Attorney-General."

Particular attention is directed to the fact that the clause where it is said a citizen or taxpayer may restrain the violation of the Constitution is coupled with the words "with leave of the Superior Court." There is no statement whatever of the matters which must be shown in order to get the leave of the court. This means that the matter would rest in the discretion of the court. There is no reason to suppose that the court will feel that its discretion should operate against any governmental activity simply because someone sees fit to ask for a restraint. There is nothing in this clause which says that the court would not be at liberty to refuse leave to bring the suit and to base such refusal on the fact that the complaining citizen or taxpayer cannot show a personal concern any different in kind and degree from what every other citizen suffers. There is nothing which describes what the court should find in order to grant such leave. Without such a thing as that, you would still have the court's discretion and still have the same situation. That being so, this supposed guarantee is a guarantee that guarantees nothing.

Incidentally it is by no means free from debate that every citizen and every taxpayer should be allowed to start a suit to restrain violation of the Constitution just for the sake of having a point of constitutional law settled. We think that the leave of court should be necessary but if it is desired to make any guarantee of any substantial significance it would also be necessary to specify what basis must be shown to require the court to give the leave, and without that this clause means nothing.

As a suggestion with respect to this nineteenth clause, we note it refers to the Superior Court also. We think the Superior Court reference should be stricken out in favor of some other language which would make it apply to existing courts, if this thing is going to be submitted to the people at all. This reference to a Superior Court is all there is in the first three articles which expressly ties them in with the judicial provisions. With that reference out, the judicial provisions could be submitted separately and no good reason is seen why the subject of judicial reform is not a separable matter which could be submitted apart from any proposal with respect to change in the scope of the legislative and executive and other provisions.

It is also noted that although the summary and explanation seem to indicate that there are no other changes in the Bill of Rights, there are other provisions of change in Paragraphs 7, 9, and 16 of Article I.

Paragraph 7, by using the word "persons" instead of "men" makes women eligible to sit on juries as well as men. The propriety of the change in the seventh paragraph is not questioned. Nobody objects to that; they do it anyhow. I don't think the change is

necessary because the court considers men to embrace women, and that makes it all right for women to be on the jury.

I don't think I will say too much with respect to the criminal provision because it has been discussed. It does seem to me, though, that the meaning of the present Constitution on this clause has been judiciously construed. We all know what it means. If we are going to make the new clause mean the same, why do it? Why not use the old one instead of throwing any doubts around the meaning of it by new phraseology? The wording of the Proposal is similar to but not identical to the Fifth Amendment to the Constitution of the United States. If it is desired to make the State Constitution run parallel to the Federal Constitution on the matter of indictments, it will still have to be changed. The word "other" would have to be "otherwise."

I will pass to the 16th paragraph of Article I. The opening sentence of Paragraph 16 in both the Proposal and the Constitution is: "Private property shall not be taken for public use without just compensation." That is in the new Constitution. The Proposal then makes this new statement:

> "Possession of land may be taken by any agency, instrumentality or political subdivision of the State, but not by any individual or private corporation, pending and prior to the determination and payment of such compensation."

The point especially brought to your attention is that the present Constitution requires legislative authority before any agency, instrumentality or political subdivision of the State may take possession of property in the exercise of eminent domain.

The transferring of this sentence from another place to the Bill of Rights in this form may create a situation in which some ambitious administrative agency may suggest that although there is no statute on this subject, this provision gives the adminstrative agency the power of eminent domain. They can do that because Article X, page 54 (p. 953) when you come to it, says this Constitution shall be self-executing. In other words, this gives every agency the power of eminent domain, the power to take possession without any act of the Legislature to say so. I think it deserves your consideration when you come to decide whether you are going to do anything about this or not. My suggestion is, if it is desired to put this thing in, that it could be made all right by putting in something which says: "When authorized by legislation providing for such compensation, possession of land may be taken by any agency, instrumentality or public subdivision of the State . . ." In other words, put something in that says you have to have the Legislature say you have the right rather than execute a provision of the Constitution which says go ahead, take it, and we will force the Legislature to pay for it. While they have the moral responsibility, they won't actually have to do it, but still the moral responsibility will make them pay for it when this self-appointed agency goes in.

Now, I sum up by saying, in our view, the guarantee which the Report suggests is not furnished by this Article and it contains two other provisions of debatable merit, and on the whole it does nothing of substance to improve the present Bill of Rights. That being so, we see no good reason why Article I, which improves nothing substantially and gives no such guarantee as pretended, should be submitted to referendum.

The labor discussion came under this but I think it should come under one of the later Articles and I will cover it later.

MR. CAVICCHIA: Mr. Chance, I may have misunderstood you but will you show me where, in the report of the Commission, the Commission recommends that its product should be submitted to the voters?

MR. CHANCE: Its product?

MR. CAVICCHIA: Yes, its own draft of a revised Constitution? I think you err in assuming that the Commission suggests that its draft be submitted to the electorate.

MR. CHANCE: That is what I thought, that it was to be put up at the primary.

MR. CAVICCHIA: We are considering all the proposals of the Commission, and one of the proposals is that the Legislature shall be empowered to write a new Constitution. The Commission does not say "We suggest that our draft be submitted to the voters." As a matter of fact, I think the Commission is very careful not to say that its product is the best possible. It makes the suggestion that the Legislature be empowered by the people to write a Constitution.

MR. CHANCE: Well, if I am mistaken and if the Commission is not recommending that this Constitution be submitted to the people, then I agree with the Commission that this Constitution should not be submitted to the people. Next question.

MR. CAVICCHIA: Wouldn't you differentiate between the time-honored Bill of Rights and that part of the Constitution which deals with the framework of government?

MR. CHANCE: We are on Article I just now. When we come to the subsequent provisions, you will be sure to hear what I have to say about that. Let's confine ourselves to Article I.

MR. CAVICCHIA: You drew the analogy. You said that the Commission itself said that because the Bill of Rights was time-honored, it should be kept, and that by using that argument the Commission was arguing against itself with respect to changes in other parts of the Constitution. What I mean to say is this: Wouldn't you

differentiate between guarantees of personal rights as contained in the Bill of Rights and the other features of government which deal with governmental setup? In other words, wasn't the Bill of Rights supposed to limit the government in so far as any action against any individual is concerned? Wasn't that the original concept of the Bill of Rights?

MR. CHANCE: I have a provision in my subsequent discussion where I will take up what I conceive to be the fundamental fallacy of your conception of the government of this State. If the Chairman wants me to tell you now, I will tell you now.

MR. SCHROEDER: We would like to confine ourselves to Article I, and when we come to that we will appreciate it if you will go into it at that time.

MR. CHANCE: All right.

MR. SCHROEDER: Are there any other opponents to Article I? If not, we will proceed with those individuals who are in favor of modification of Article I.

We will now hear from Mr. H. Earl Probst, representing the New Jersey Farm Bureau and State Grange:

MR. PROBST: Mr. Chairman and members of the Committee:

The governing bodies of the Farm Bureau and the State Grange are deeply interested in the current effort to revise the Constitution. During the year our executive officers have devoted much time to its consideration. We have been in frequent consultation with legal counsel, who has favored us with comprehensive memoranda. We recognize some shortcomings in the present document. We have read with much appreciation the report of the Revision Commission now before you. And we take this opportunity again to express the high regard we have both for the Commission's work and for its personnel. In so lengthy a work it is inevitable that we should not be in complete agreement. In some ways we think the Commission has not gone as far as it might well have gone; in a few it would seem they have accepted principles adverse to that which we consider "American Ideals"; and in one case, probably unwittingly, they have made recommendations injurious both politically and economically to members of the organizations we represent.

Today's hearing, as we understand, will be limited to consideration of the first three articles of the Commission's report. Our suggestions here, as well as at subsequent hearings, will be based upon conceptions of an inherently free, sovereign people, who create limited purpose, corporate states, to protect that freedom and to represent that sovereignty; as opposed to conceptions of political sovereignty; or of dictatorship of any kind, whether it be tyrannical, despotic or paternal; and whether composed of aristocrats or totalitarians, or of despotic majorities. Our aim is a limited state devoted only to the service of self-governing people, who regard the Deity as the only lawful ruler of mankind; as opposed to subject people in the service of sovereign states, and of temporal rulers by any name whatever. We know that both are ideals only, that no people are good enough fully to enjoy the first, or bad enough entirely to justify the second; but that all of us are tending either toward one or the other. We regard it our duty, and your duty, to promote trends towards the first, and away from the second. This is particularly so when revision of constitutions are at issue.

And first, may we consider improvements in the Bill of Rights. The Commission's proposed addition seems excellent. Of course, interested parties should have the power to restrain violations of the Constitution. The fact that such an amendment became desirable seems a reflection upon the understanding of those who may have questioned the right.

But the Bill of Rights seems capable of improvement in other respects. Here we can pause to suggest only a few. First, why should not the word "privileges" be removed? By what reasoning is "privilege" either "retained by" or "conferred upon" sovereign citizens? Who among free men is there to confer or to accept "privilege"? The word has no place in societies of sovereign individuals. Is it not the thoughtless use of such survivals of despotism that dim conceptions of equal, free, sovereign peoples and of limited states? Their use in constitutions seems inexcusable. There are four places in our Bill of Rights where the word is used. We suggest that "right" be substituted where it is used in the third and eleventh sections, and that the word be stricken from the title and from the twentieth section.

Second, we think Bills of Rights specifically should direct restraint of abuse of "the police power". This is an important power, and as dangerous as important. We specifically limit the powers of the state, and then proceed to authorize it to exercise a power which in the hands of personal power-seeking officials tends to defeat that limitation. With the return of peace both the importance and the menace of the police power is likely to be enhanced. Furthermore, our Federal Constitution undertakes to protect life, liberty and property—except when taken through "due process of law". But what is that? There seems to be no comprehensive definition. In our present mental development probably there can be none. But power-loving jurists increasingly are likely to support power-loving executives and legislators in their own egoistic conceptions of the meaning of the phrase. Of course the subject is too deep for us to suggest a remedy. Probably none is presently possible. But abuse of power always has been restrained when due effort has been made. And may there not even now be

found at least a palliative. At least, should we not now "try" to find one?

In our opinion there may be made many other needful improvements in the Bill of Rights. The very right of free men to work, or not to work, just now is being challenged. Do we lack the courage to oppose this basic attack upon one of mankind's inalienable rights? We think we can assure you that the organizations we represent do not.

MR. SCHROEDER: The next speaker will be Miss Emma Dillon, President of the New Jersey Federation of Business and Professional Women's Clubs of New Jersey:

MISS DILLON: Mr. Chairman, Members of the Joint Legislative Committee:

The New Jersey Federation of Business and Professional Women's Clubs would call your attention to the fact that while it should not seem necessary to include the word "women" in Article I, because the language would imply that its provisions should apply equally to women, whether married or not, as well as to men, it is not true, nor is it true under our present Constitution. Somehow or another our courts seem to have done some rather tortuous reasoning and there has been some misdirected sympathy for the poor working gal, and so on. The courts do not seem to have heard of the rule of Mr. Chance that the male always embraces the female, even in grammar. We would like to give you four suggestions that we would like you to consider and include somewhere in the proposal you will bring forth.

The first is Article I, Section 1—that you include two words: "and women," so that it will read, "All men and women are by nature free and independent, etc." It seems like a very simple and unnecessary thing but it is necessary because of the rules that have been made.

Next, add a section to Article I which shall read: "No citizen shall be deprived of any rights, privileges or responsibility because of sex or marital status." I hope you will notice we have included the word "responsibility" because our organization believes that women have and should take full responsibility.

Add a section: "There shall be no discrimination against citizens because of race, color, creed, sex, age or marital status." That is the new thinking.

The fourth suggestion would be to add a paragraph to Article III, Section 7, which shall read: "No act shall be passed which shall not apply equally to men and women."

In closing, I want to call your attention to the fact that there is a world war going on today for the purpose of getting liberty and freedom throughout the world, and it is time we began to have

it right here in New Jersey. I would like to call your attention to the fact of our very present historical situation.

We are so close to it that perhaps we cannot get its full significance. We know in Germany there was a far wider freedom for women than there is in this country today. That does not seem believable but it is true. But the first group to be attacked when Hitler came into power was the women. From that, they went to the organizations of men. Your lodges and other organizations were wiped out. And then labor took its turn. So, today, you have no freedom in Germany at all. The United States has done a little more forward-thinking than we have, but now there is to be—I think we all admit that—a revision of the Constitution in New Jersey. Our organization requests that New Jersey put itself on record as being truly democratic.

MR. SCHROEDER: The next speaker will be Mr. Manuel Cantor, representing the Communist Party of New Jersey.

MR. MANUEL CANTOR: Mr. Chairman, Ladies and Gentlemen:

These discussions of changes in the New Jersey Constitution come at a moment rendered most propitious by the impact of sweeping historical forces. The American people, in unshakeable unity with the free democratic peoples of the whole world, are locked in a gigantic death-struggle against Nazi-fascist barbarism. In a bond sealed with the blood of the heroes of our brave allies, the entire nation is battling once again to the end that "government of the people, by the people and for the people shall not perish from the earth."

Our Commander-in-Chief, President Franklin D. Roosevelt, has listed the general objectives of our struggle in the four freedoms of the Atlantic Charter—freedom of religion, freedom of assembly, freedom from want, and freedom from fear. Vice-President Henry A. Wallace and Undersecretary of State Sumner Welles have sketched in bold outline the goals of human liberty for which we strive today, arms in hand as did our forefathers.

> "I say that the century on which we are entering—the century which will come into being after this war—can be and must be the century of the common man . . . The methods of the 19th century will not work in the peoples' century which is about to begin." (Henry Wallace, May 8.)
>
> If this war is in fact a war for the liberation of peoples, it must assure the sovereign equality of peoples throughout the world, as well as in the world of the Americas. Our victory must bring in its train the liberation of all peoples. Discrimination between peoples because of their race, creed or color must be abolished." (Sumner Welles, May 30.)

Certainly there can be no better time to carry into life right here in our own State the ideals for which New Jersey boys are

giving their lives on the far-flung battle fields. Particularly is it timely to discuss Article I of the proposed Constitution, the Bill of Rights.

This committee, through these hearings and the consequent report to the Legislature, can make a considerable contribution to the unity and morale of the people of New Jersey and of the whole country, if it embodies in its recommendations for the proposed Constitution inalienable rights and privileges consonant with the present majority concept of American democracy. The recommendation in the report of the Committee on Revision that there be no material change in the Bill of Rights adopted in the year 1844 falls completely short of such a concept. We readily accept the fact that the "time-tested" safeguards now contained in Article I are to be valued and cherished. But no reasonable person will maintain that the concept of the people's democratic rights is static, fixed and immutable; that the rights guaranteed in a simple, largely agrarian, social and economic structure of 1844 are complete and adequate for a complex, highly industrialized, radically changed society 100 years later. The argument that the United States Constitution is even more ancient is a subterfuge behind which opponents of progress cannot be permitted to hide.

We also wish to state our emphatic opinion that the only effective and truly democratic method of revising our State Constitution is through a Constitutional Convention. However, we welcome these hearings which provide some channel for public discussion and examination which will serve to hasten and facilitate the thorough revision which must be made.

What are some of the rights and privileges, accepted features of present-day democratic practice, which Article I of the New Jersey Constitution should include?

In a modern world where, admittedly, means are readily at hand to guarantee every child on earth a quart of milk per day, it becomes the right of every person to have security from the ravages of want and privation resulting from unemployment. The time has come to incorporate this concretely in Section 1 of the Bill of Rights.

The general statement in Section 2 that "political power is inherent in the people" is too vague. Further provisions giving practical effect to this power must be included as basic rights. Among specific means by which the people can exercise their right to "alter or reform" their government are such institutions as the initiative, the referendum and the recall. These should be stipulated in the Bill of Rights section, though elaboration can follow in the Legislative Article.

Section 4 deals with guarantees against religious discrimination and persecution. The present provision should be amended to

include qualifications not only "for any office or public trust" but also for ANY PUBLIC OR PRIVATE EMPLOYMENT. The protection should also be extended for the enjoyment of ANY RIGHT and not just any "Civil" right.

Section 5 establishes certain civil rights in general terms. The development of a great labor movement as a permanent feature of our democracy makes imperative the inclusion under this heading of the right of labor to organize and bargain collectively; and, further, to protect their bargaining power by the inclusion of the right to strike and to picket peacefully. The fact that labor has voluntarily relinquished the latter rights for the duration in no way diminishes the need for their inclusion in the basic law.

Section 9, limiting the right to indictment, should be extended to ALL criminal offenses; otherwise, the right to trial by jury may be circumvented in certain cases.

In section 15, the phrase "cruel and unusual punishments" should be altered so as to include excessive or unreasonable sentences against which there is no remedy under present court interpretations.

Free and public education is now an established fact in American life. The right of the people to free education should be established as a principle in the Bill of Rights of our State Constitution.

A provision guaranteeing no deprivation of life, liberty or property without due process of law should also be incorporated in Article I, to give effect to the federal decision in the New Jersey courts of law.

A special provision of the greatest importance must be included barring discrimination of any kind on account of race, color or creed in the personal rights, property rights, civil rights or rights of employment of any person. The passage of a statute on this crucial democratic guarantee is not enough. It must be embodied in the Bill of Rights without further delay.

There may well be other safeguards which should be included in the Bill of Rights which better-trained legal minds should be able to suggest.

It is to aid in the speedy adoption of a State Constitution which will be the instrument for welding in firm unity the entire population of New Jersey that the Communist Party respectfully submits the foregoing proposals to this committee.

MR. SCHROEDER: The next speaker will be Miss Mary Philbrook, Chairman, Executive Committee of the Women's Consultative Committee on Constitutional Revision.

MISS PHILBROOK: I would like to ask that Miss Evelyn Seufert, one of our Vice-Chairmen, speak in my place.

MISS SEUFERT: Mr. Chairman, Members of the Committee:

The Women's Consultative Committee on Constitutional Amendments is composed of a number of women's organizations throughout the State. This committee believes, along with representatives of several organizations represented here today, that laws which deal with discrimination—laws rather which would prevent discrimination against people because of race, color, creed or sex—are of such fundamental importance they should not be separate, but should be placed within the Constitution itself; consequently, this committee, because it is composed of so many organizations throughout the State, requests permission from you to submit a brief at a later date, after these organizations have had an opportunity to prepare such a brief jointly, and we would like to do that instead of discussing this subject today, with your permission, if we may.

MR. SCHROEDER: Yes, surely, you will have permission.

The next speaker will be Mr. E. Morgan Barridale, Chairman, Committee of Chamber of Commerce and Civics of the Oranges and Maplewood.

MR. BARRIDALE: Mr. Chairman, Members of the Joint Committee:

The Committee of the Chamber of Commerce and Civics of the Oranges and Maplewood has not had an opportunity to go thoroughly over the report of the Commission and has therefore taken no action either for or against. However, I feel that some matters should be brought to the attention of the committee for its consideration.

Under the plan set up for these public hearings, the policy of setting up a discussion as you have and limiting it not quite successfully to Article I, to my mind, is a very wise movement because I think we are very apt to pass over the concept of a Constitution which is adequately expressed in the Preamble of the Constitution of Massachusetts—a social compact made between the individual citizen and the citizens as a whole, and the citizens as a whole with the individual citizen. Article I in this Proposal and Article I in our existing Constitution, commonly called the Bill of Rights, is that part of the compact which establishes the rights, and the privileges of individuals and citizens, and the obligation of the group is to protect those individual rights. I have asked to be placed in the group of modifiers because there are some things which we would like to have changed. On the whole, I think that the Bill of Rights as suggested is fairly adequate, and in discussing the matter I don't think we ought to confuse it with the mechanism or frame of government which composes practically the balance of the Constitution. The Bill of Rights as we have it today represents very largely the progress of the Anglo-American people for over seven centuries in the

development of the individual rights which the confreres in society must respect. I think we should tamper with existing clauses with a great deal of temerity because they represent the blood and fortune of our forebears, which have been spent for our benefit. There are two clauses which I think merit considerable attention. I cannot agree with those who have accepted the changes proposed in Section 9 as being inconsequential. If they are, there is no merit in proposing them. It is all very easy for us as a group to criticize our procedure in bringing one of our fellow-citizens to trial on a criminal charge. We all know from history that that procedure has been the chief instrument of tyranny and oppression throughout the history of mankind. Change of wording means that we must rely upon our courts to redefine what the individual rights are in this particular field. The wording which we have in our existing Constitution was originated in 1844; whereas, the words proposed were originated in 1789. The words in the Federal Constitution in 1789 cover an entirely different relationship from the relationship between the individual citizen and the group constituting a sovereign State. I don't believe that we should parallel the words when the situations are not parallel. I don't believe we should deprive the individual of the protection of the Grand Jury even in minor crimes. The Grand Jury represents public opinion and filters out of our courts those cases ordinarily which would represent partisan or passionate action. The proposed change would place in partisan hands the decision as to whether a man should be brought before the bar of public opinion to substantiate in fact his innocence, despite our principle of government that one is innocent until proven guilty, because public reaction always is against the man charged with crime and though he be acquitted he is never restored to his original position. I believe that this should never be placed in the hands of an appointive officer, but should always remain in the bosom of our people as a whole. I think that every protection should be thrown around the individual when it comes to a criminal charge, and despite delays and despite expense—and the expense of individual defense is more out of proportion to his ability to bear it than the expense of prosecution is to the group, and he therefore ought to receive every protection under the Bill of Rights against the necessity of defending himself against a criminal charge.

As to Paragraph 16, some allusion has been made to that and I think it a very definite step in the derogation of private rights. We all of us who have had any experience in public life realize why this change is proposed. We have been greatly hurt by certain individuals who have asserted their right to private property, and have delayed public improvements, but why should we take the life savings of an individual which have been invested in a piece of property, which we take for public use and let him wait

until his great grandchildren shall inherit it as a result of legal proceedings. I believe the individual is entitled to keep his property until the State or an agency of the State is willing to pay him just compensation for it, and not take the property and let him wait for the public agency to produce the money which he has worked for and saved to invest in that property.

My third suggestion is that the Bill of Rights of New Jersey, like a few other Constitutions, is weak in that it does not contain a provision guaranteeing to the individual citizen the right to bear arms. We are all familiar with the situation abroad. We know how ineffective is the opposition to the tyrant who is now in other lands; how impossible it is for the individual to protect himself and his family because for centuries the right to bear arms is denied him. We are cheering the efforts of the guerillas in Yugoslavia to protect their homes through the use of arms which are smuggled into their country. The Americans as a whole have been brought up to not bear and use arms, and the United States Constitution and the Constitution of thirty-three other states provides that this right shall be given to the individual, and I see no reason why New Jersey should not follow that trend and include such a provision in its Bill of Rights. We are all conversant with the oppression in the State of New York due to the so-called Sullivan Act, which is declared constitutional because their Constitution, like ours, does not contain a provision in the Bill of Rights guaranteeing the right to bear arms. Citizens usually are brought up on charges of violation of the Sullivan Act who are innocent of any improper motive in owning arms but it is an effective agency on the part of the crimes department to harass the people, and it does not gain the objective for which the statute was passed; that is, to take arms away from those who are criminally inclined.

I therefore respectfully suggest to you that a new provision be added to the proposal under Article I that the right to keep and bear arms be guaranteed to every citizen of this State.

Thank you.

MR. SCHROEDER: The Committee will now recess for one hour, from one until two o'clock.

(Recess.)

BRIEFS AND COMMUNICATIONS SUBMITTED AT THIS SESSION.

WHEREAS a committee of the Legislature of the State of New Jersey is now considering proposed changes in the Constitution of the State:

BE IT RESOLVED by the New Jersey Federation of Business and Professional Women's Clubs that the committee be urged to approve and recommend the inclusion in the State Constitution of a provision forbidding distinctions under the law between the rights of men and women to vote, or to hold public office, or to enjoy equally all civil, political, economic and religious rights and privileges.

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the Chairman and to each of the members of the aforementioned committee of the Legislature.

Hon. Lloyd Schroeder and
Members of the Legislative
Committee on Constitutional Revision.

Gentlemen:

This Committee was organized for the sole purpose of furthering the movement to secure a Constitutional provision which will safeguard the rights of women.

We are enclosing a copy of the brief which was submitted to the Constitution Revision Commission.

Full constitutional rights are now denied women by legislative enactment. We submit that the denial of such rights by legislative enactment is contrary to the great principles on which this country is founded, and that deprivations of such rights should not be permitted without the right of all citizens, and particularly those whose rights are placed in jeopardy, to have the chance to protest.

We ask you to trust the people to vote rightly on this question, and to denounce any proposal to suppress such a vote as violative of the spirit of democracy.

The liberties of one-half of our population are involved and thousands of women throughout the State want this question brought into the foreground and a full and free discussion of it by the people. Year after year the people have supported equal rights planks in Party platforms and have virtually given their approval to this principle. We ask the Legislature to recognize an obligation to submit it to the people without further delay.

Yours very truly,

Trenton, N. J.
July 10, 1942

WOMEN'S CONSULTATIVE COMMITTEE
ON CONSTITUTIONAL AMENDMENTS.
Katharine B. Rogers, Secretary.

EQUAL RIGHTS

MEMORANDUM PREPARED BY STEPHEN E. RICE, ASSISTANT LEGISLATIVE COUNSEL OF THE SENATE FOR THE SUBCOMMITTEE OF THE JUDICIARY COMMITTEE CONSIDERING SENATE JOINT RESOLUTION 8

This memorandum is in reply to your request for my comments on some of the legal issues, both State and Federal, that would arise upon ratification of the equal-rights amendment to the Constitution. The proposed amendment reads as follows:

> Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction.
>
> Congress shall have power to enforce this article by appropriate legislation.

GENERAL PRINCIPLES OF CONSTITUTIONAL LAW

At the outset, it will be noticed that the form of the amendment does not follow the main structure of the Constitution and more particularly the fourteenth, fifteenth, and nineteenth amendments. Those amendments state a rule in broad terms, but the objective toward which such rule is directed is specific. On the other hand, the proposed amendment departs entirely from this precedent and lays down a rule which will apply in almost all fields of the law.

The first paragraph of the proposed amendment would seem to envision geographical uniformity as to equal rights throughout the United States and places subject to its jurisdiction.

If geographical uniformity is required, a woman in New York must have equal rights with a man in Pennsylvania as well as equal rights with a man in New York. Assuming that the Supreme Court would accept that doctrine, it would follow that a New York divorce law which allowed a divorce to the husband or the wife equally but which permitted a divorce only on the grounds of adultery would be unconstitutional, since the Pennsylvania law permitted, for example, a divorce on the grounds of incompatability. A woman in New York would not have an equal right to a decree of divorce as a man in Pennsylvania. If geographical uniformity is the correct interpretation of the language, it would seem that the only practical way such uniformity could be achieved would be by the enactment of numerous Federal statutes covering the entire field of law dealing with the rights of men and women.

The proponents of the proposed amendment say that its language does not mean geographical uniformity. Mrs. Burnita S. Matthews, of the National Woman's Party, testified, at page 145 of the 1938 Senate Judiciary Committee hearings, as follows:

> The Woman's Party has no idea of attempting to say that every State shall have no divorce laws, as in South Carolina, or that every State shall have 11 grounds, like they do in Mississippi.

> All that the Woman's Party is undertaking to do is to say that in a given State men and women shall have equal rights, but not necessarily that the rights should be the same for men and women in all the States.

Miss Dorothy A. Moncure, of the National Woman's Party, testified, at page 122 of the hearings, as follows:

> There is no unwarranted interference with State rights under the amendment. Every constitutional amendment presupposes that the States are surrendering certain rights inherent in the State governments and not surrendered to the Federal Government at the time the Constitution was adopted. This amendment will not concentrate in the Federal Government at Washington any additional power, for it is no more than the surrender by the States of their sovereign power to deal with the rights of their citizens unequally on the basis of sex. The rights affected by the amendment may thereafter be adjudicated within the jurisdiction of the Federal courts, but it is believed that no Federal administrative machinery will be set in motion by such amendment.
>
> The right to control wages and hours has been held to be within the police power of the State, as are all industrial laws regarding sanitation, etc. If the States adopt this amendment they agree among themselves that they will not discriminate against either the rights of men and women on the basis of sex. The amendment deprives the State of none of its police power but merely sets a standard for industrial laws based upon the nature of the work and not upon the sex of the workers. In general, the amendment qualifies the absolute authority of the State to deal with its men and women on an unequal basis but does not deprive the State of any sovereign power.

If the language of the proposed amendment was as simple as the above witnesses seemed to think, there would be no necessity for it to be subsequently construed by the Supreme Court, as they both admit will eventually have to be done. Webster defines "equal" to mean "uniform" among other things and "throughout" to mean "in every part of." If the word "uniform" was substituted for "equal" in the amendment and the words "in every part of" substituted for "throughout," there would be no doubt that the language meant geographical uniformity. The amendment does not specify that men and women shall have equal rights in the State in which they reside but that they shall have equal rights throughout the United States. The view that the amendment means geographical uniformity is held by many eminent constitutional authorities, from whom I will quote a few:

> By the same token that the courts will have a wide domain in which they must adjudicate, Congress will be given a roving commission to legislate. This congressional legislation may inject itself into, if not supersede, a State's own municipal law on any subject in which the rights of men and women are involved—a very considerable part, it must be observed, of the entire legal structure. The proposal constitutes too large an order of indeterminate powers to be handed over to Congress. (Noel T. Dowling, Esq., Professor of Constitutional Law, Columbia University law school, hearings, p. 66.)
>
> The generality of the language leaves it doubtful whether this phrase means that the rights of men and women must be identical everywhere within the boundaries of the United States or whether the requirement would be satisfied by equality, as between men and women, in each of the several States and Territories. In other words, does this phrase imply uniformity over the whole area of the Nation, without regard to local differences of tradition, custom, or conditions which may make a provision which is suitable in New York or Massachusetts unsuitable or unworkable in California or in Texas?

Here, again, is the seed for unending conflict and litigation (M. C. Sloss, Esq., former associate justice of the Supreme Court of the State of California, hearings, p. 69).

The equal rights amendment seems to me objectionable, partly because it may cast doubt on the validity of much existing State legislation which is beneficial to women, and partly because it repeats the mistake of the eighteenth amendment, which sought to impose a single national rule in a matter involving social customs and habits which differed widely from locality to locality (Lloyd K. Garrison, Esq., dean of University of Wisconsin law school, hearings, p. 70).

There will be in nearly every situation a choice of rules to be adopted, and this amendment gives no indication whether women should have that status of men or men have that of women. The proposed amendment will confer on Congress the power to make these adjustments and will therefore grant to it a right of control over a wide field of legislation heretofore reserved to the States (Joseph P. Chamberlain, director of legislative drafting research fund and professor of public law, Columbia University law school, hearings, p. 73).

In the form in which the amendment is drawn at present, it seems to me that it undoubtedly vests Congress with affirmative control to legislate as to the rights of men and women throughout the United States and in every State (Charles Warren, hearings, p. 55).

Article I, section 8, clause 1, of the Constitution provides that "the Congress shall have power to lay and collect taxes, duties, imposts, and excises, etc.; but all duties, imposts, and excises shall be uniform throughout the United States." As every student of the Constitution knows, the term "uniform" as used in this clause of the Constitution means geographical uniformity. In the *Head Money cases* (112 U. S. 580), the Supreme Court stated that "a tax is uniform when it operates with the same force and effect in every place where the subject of it is found." Mr. Justice Miller in his Lectures on the Constitution of the United States said (p. 240), in referring to duties, imposts, and excises, "They are not required to be uniform as between different articles that are taxed, but uniform as between the different places and different States." Since the language of the proposed amendment follows so closely the language of the above-cited clause, it would seem to follow that the rule of geographical uniformity would necessarily apply in the instant case also and that laws relating to the rights of men and women would, after the ratification of the amendment, be required to be "uniform as between the different places and different States."

The achievement of geographical uniformity with respect to the laws dealing with the rights of men and women could be brought about only by sweeping Federal legislation preempting the field to the Congress and thereby superseding all State laws dealing with such rights, or by the Congress requiring uniform State laws to be enacted in each State. In either case, the ultimate power would remain in the Congress and the rule of geographical uniformity would have to be adhered to. It might be pertinent at this point to ask why the proponents of the proposed amendment believe that a State, which refuses at the present time to change its laws with

respect to certain rights of men and women, will ratify an amendment to the Federal Constitution giving Congress complete control over such rights and the manner in which they should hereafter be dealt with.

After deciding the first major question—that the amendment requires geographical uniformity—the Supreme Court would immediately be confronted with another major issue. What is a "right"? Bouvier defines "right" as a "well-founded claim" and adds two pages by way of elaboration, explanation, and exception. The late Mr. Justice Holmes said "The word 'right' is one of the most deceptive of pitfalls." Miss Dorothy Moncure, of the National Women's Party, attempted to justify the use of the word on the ground that it was used in the ninth amendment. She said, at page 122 of the hearings, that the ninth amendment contained no definition of the word "rights" as used therein. While this offhand statement is true, it fails to analyze the ninth amendment and the reasons for its insertion in the Constitution. The amendment reads:

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

This amendment was inserted in the Bill of Rights to prevent the exercise of power by the Federal Government with respect to certain rights of the people not specifically dealt with in the Constitution. (See Watson on the Constitution, pp. 1523-1524.) Amendments 1 to 8 in the Bill of Rights contained specific rights of the people which Congress was to be prohibited from infringing and it was felt by those favoring the Bill of Rights that the ninth amendment was necessary to prevent the possible construction that the Congress could legislate with respect to other rights not mentioned in the first eight amendments. Judge Story's comment in this connection was as follows:

This clause was manifestly introduced to prevent any perverse or ingenious misapplication of the well-known maxim that an affirmation in particular cases implied a negation in all others, and, e converso, that a negation in particular cases implies an affirmation in all others. The maxim, rightly understood, is perfectly sound and safe, but it has often been strangely forced from its natural meaning into the support of the most dangerous political heresies (Story on the Constitution, vol. 3, sec. 1905).

A rereading of these first eight amendments also discloses that specific rights are referred to. The first amendment prevents the Congress from making any law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press. While the rule is general, as are all other rules enunciated in the Constitution, the right that is protected is specific. So also with the other seven amendments—the right of the people to keep and bear arms shall not be infringed (II); no soldier shall, in time of peace, be quartered in any house without the consent of the owner (III); the right of the people to be secure in their persons, etc., shall not be violated (IV); and

so forth. If, therefore, the justification for using a concept as vague as "rights" in the proposed amendment rests upon the analogy to be drawn from its use in the ninth amendment, the justification, indeed, becomes tenuous.

Congress, in enacting uniform laws on the manifold subjects encompassed in the words "equal rights," would be confronted, at the outset, not only with grave questions of policy relating to general laws such as dower and curtesy, management of community property, divorce, social security, minimum wages, naturalization, and many others but also with equally grave questions of policy relating to details which would multiply into the thousands. For instance, when would a girl become a woman so as to grant her equal rights under the amendment? Under the civil law a girl became an adult upon attaining the age of 12 years and a boy became an adult upon attaining the age of 14 years. Under the common law they both became adults at 21 years. In most of the States today the ages at which children become adults are 18 for girls and 21 for boys. If Congress, in its wisdom, fixed the age of 21 for both boys and girls, the equal rights amendment would not be applicable until they reached that age. The girl who married at 16, bore three children, and was divorced at 19, would be governed by State law since she is not yet a woman and the Congress could not legislate for her under the equal rights amendment. If Congress had enacted a uniform divorce law treating men and women equally, the girl of 19 would not be able to sue for a divorce under it since she had not become a woman yet. No; she must go to Reno and apply for a divorce under State law which now must be limited to boys and girls. These and countless other problems which would arise to plague Congress, the States, and the courts would lead to such uncertainty and conflict that for this reason alone it would seem that the Congress would be justified in refusing to submit such amendment to the States for their ratification.

What infringements of equal rights by individuals, rather than by legislation, will be held to be a violation of the proposed amendment might also be a fruitful source of uncertainty and conflict. Unlike the fourteenth, fifteenth, and nineteenth amendments, which were specific prohibitions against State or Federal action, the proposed amendment is declaratory in form and would seem to be applicable to individual action as well as to State or Federal action. The countless situations that arise every day which might be considered discriminatory are without the scope of this memorandum but a few will be mentioned by way of illustration. Many of our best law schools require applicants to undergo an intelligence test as a prerequisite to admission to the school. Some 10 years of experimentation with such tests, before they were made mandatory, showed that male students should achieve a grade of

at least 70 on such tests and female students a grade somewhat higher as a condition to admission, otherwise they had small chance of completing the course of study satisfactorily or of becoming a successful practitioner. There is no doubt but that such a rule is discriminatory as between male and female students but there is also no doubt that, as the experiments showed, it is based on common sense. Nevertheless, since it contains discrimination, it would probably violate the equal-rights amendment and would therefore be unconstitutional. There are many industries throughout the United States that systematically exclude women, not because of legislation requiring such exclusion, but because of custom or prejudice or because women are not fitted physically for the work involved. Would such exclusion by an individual factory owner be a violation of the equal-rights amendment? If it were held to be a violation, under what circumstances could a woman insist that such individual give her employment? Women are not prevented by legislation from being employed as bellhops except in a very few States; yet hotel managers for good and sufficient reasons to themselves, systematically employ men in such capacity instead of women. Suppose, for example, we become a belligerent in the present world conflict and the resulting shortage of men required a hotel manager to employ women bellhops for the duration of the war. Would said manager violate the equal-rights amendment if, on the termination of the war, he replaced the women with men? I am inclined to believe such action would on its face be such a discrimination as to amount to a violation. Other professions and occupations that might be cited in passing are seamen, pilots on commercial air lines, locomotive engineers, attendants in men's locker rooms and turkish baths, miners, oil drillers, and professions and occupations of a similar character for which women are neither physically nor temperamentally fitted. If it is borne in mind that such discriminations, if they are discriminations, are generally based on common sense, necessity, or customs differing widely from locality to locality, and that the proposed amendment could be construed to abolish them in one fell swoop and apply one rule with respect to all such actions by individuals in addition to State and Federal action, it might be well to stop and consider again the results achieved under the eighteenth amendment which also, without regard to custom or common sense, attempted to establish one uniform rule throughout the country.

FEDERAL AND STATE LAWS AFFECTED BY THE PROPOSED AMENDMENT

The proposed amendment would automatically strike from the Federal and State laws, organic and statutory, all discriminatory features based on sex. What would be stricken from existing laws, what would remain, and what would need revision is a problem

that will tax the best legal minds of the country. The phrase "discriminatory features" is relatively simple when used in a broad or general sense but, when applied to a particular set of facts under a particular statute or decision interpreting the common law, difficult decisions will have to be resolved. Under the comparatively simple nineteenth amendment, which related only to the right to vote, numerous court decisions were rendered with respect to whether it actually conferred the right to vote, whether it qualified women to hold office, whether it made women eligible for jury duty, and various other issues. If a prohibition with respect to only one right (and, it might be added, a right which is definite and specific) will give cause to that amount of litigation, the possibilities under the proposed amendment would seem to be limitless.

FEDERAL LAWS

Title II of the Social Security Act, as amended, contains very liberal provisions granting benefits to wives and widows which are not extended to husbands and widowers. If a husband retires under the provisions of such title, he is entitled to receive a monthly insurance benefit based on the wages earned by him while he was in "covered" employment, and his wife, by virtue of being his wife and even though she never earned a dime in her life or contributed a penny to the fund, is entitled to receive a monthly insurance benefit in an amount equal to one-half of her husband's insurance benefit. There is no corresponding provision granting to the husband an insurance benefit where the wife was the wage earner. Widows are also extended insurance benefits based on the wages of their deceased husbands, but widowers are not entitled to similar benefits from the wages of their deceased wives. If the equal-rights amendment became a part of the Constitution, the insurance benefits provided for wives and widows would automatically be repealed. The alternative would be to amend the act to place husbands and widowers on an equal basis with wives and widows. It is doubtful whether the old-age insurance system could withstand the financial shock that would result from such an amendment since statisticians of the Social Security Board testified before the House Ways and Means Committee in 1939 that the income and outgo curves of such insurance system would cross in 1955 at the latest. This would mean, according to further testimony, that even under the present law (without the addition of husbands and widowers as beneficiaries) the Federal Government will have to do one of three things on or before 1955. It will have to decrease the benefits, or it will have to raise the social security taxes, or it will have to appropriate additional funds from the General Treasury to the old-age insurance fund. If the Congress decided it would not be in the public interest to include husbands and widowers on the same basis as wives and widows, there would be no alternative

but to strike from the act the benefits now accorded to wives and widows. The logic and justice of such a step would be difficult to explain to the widow with three young children.

The Selective Training and Service Act of 1940 provides for the induction of male citizens into the Army for a 1-year period of training. The purpose of such act is, of course, to prepare an efficient Army for use in time of war. Without attempting to resolve the difficult question as to whether voluntary military service is a right or a duty, it seems clear that if male citizens are inducted involuntarily into our armed forces and required to serve in combatant units in time of war, female citizens must also be so inducted and required to render the same service if the equal rights amendment is to be complied with. The number of men and women in the United States is approximately equal as shown in the last census. Does it therefore follow that, in order to achieve equality between men and women involuntarily inducted into our armed forces, one-half of those inducted must be women and one-half men? If the above examples seem ridiculous to the reader, a rereading of the fifth amendment in connection with the proposed amendment will probably change his mind. The fifth amendment provides, among other things, that no person shall be deprived of life or liberty without due process of law. No distinction is made between men and women. A man has a right to life and a right to liberty as well as a woman. It is, of course, due process of law to require a man to give his life in combat with our enemies and to deprive him of a certain amount of liberty by inducting him into the Army since the Congress has power to raise armies and declare war. It would, similarly, be due process of law to require a woman to give her life in combat with our enemies, but we have never seen fit to do so. The proposed amendment, however, provides that men and women shall have equal rights and so we must hereafter abolish the discrimination that has always existed in this country in time of war. We must hereafter induct our women into our armed forces and deprive them of their right to life and their right to liberty in the same manner and to the same extent as we now deprive our men of such rights. Not even the proponents of the proposed amendment suggest that women be required to perform such combat service and it is extremely doubtful that such service would be required of them even though the amendment became a part of the Constitution, but it might well be asked why a mandate should be included in the law of the land if such mandate is not to be carried out in all particulars.

STATE LAWS

It is not possible, due to limitations of time, to do more under this heading than refer generally to some of the State laws and to raise some of the questions that might arise in connection there-

with under the equal-rights amendment. Beginning with the eight community property States (which include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington), we find that the statutes of those States regulating the community and fixing its status are substantially the same. In all such States there are three classes of property—the separate property of the husband, the separate property of the wife, and the property of the community of husband and wife. Under the laws of all community property States, the husband is given the management and control of the community property and may dispose of the community personalty during the marriage without restraint, except that he cannot make a gift in defraud of his wife. In *Garrozi v. Dastas* (204 U. S. 64 (1907), Chief Justice White said:

> The very foundation of the community and its efficacious existence depends on the power of the husband, during marriage * * * to deal with the community * * * as owner.

Under the equal-rights amendment the wife would become co-manager with the husband and would have the right to deal with the community during marriage as co-owner. In most of the community property States the wife must join with her husband in conveying real property, but if she does not do so she may be estopped by her conduct from objecting to the transfer. In case of the disability of the husband, the abandonment of the wife, or of a limited divorce and the parties living apart, the wife has power to assume the management of community property and may convey and encumber it without the joinder of the husband. The contracts of the wife during the management of her husband are not binding on the community except where such contracts are made for necessaries.

In all the community States, except California, the wife is regarded as having a vested interest in the community property dating from the marriage. The exact nature of this interest and whether it amounts to a present ownership is more difficult to determine. This difficulty is due largely to two causes—the legislatures of common-law States in their zeal to enact laws for the emancipation of married women have shown too little regard for the civil-law conception of the marital community, and the courts in cases coming before them have used a common-law rule to measure a civil-law institution. The relation between the husband and wife during marriage is frequently termed a partnership relation by the civil law and is often referred to in this manner by the law of the community-property States. But this partnership is not a partnership in any accurate sense as partnerships are known in the common law. The agency element is distinctly lacking in the marital community relation and the powers of the spouses do not even suggest it. Morever, there is no liability of the wife, in her personal capacity, for losses occasioned by the husband in handling the marital property, and her separate property cannot be taken to reimburse such losses. The community further differs from a partnership in that the management is placed exclusively in one of the spouses. During the continuance of the marriage relation, the wife cannot exercise any of the powers of a co-owner either against her husband or against third persons, unless the husband attempts to dispose of community property to defraud her, but during this period the husband cannot assert that he is the owner as against her and exercise the powers of an owner to exclude her as he may legally exclude a stranger. In the external relations of the community the husband alone is recognized as owner, and no one can raise the question that his wife has an interest. She clearly holds a right to have a moiety upon the dissolution of the marriage, and this right arises at the time the marriage is celebrated and is a continuing and existing right at all times during the marriage. This gives rise to a peculiar equitable cotenancy between the spouses, the legal title to the community being vested in the husband and the equitable right to a moiety being vested in the wife. The wife is entitled to support from her husband by virtue of the marriage and without any regard to the community of property. She is also, as we have seen, able to bind the community by her contracts for necessities, but she cannot assert a claim for one-half of the community property and obtain possession of it as against her husband without a dissolution of the community. It is clear therefore that her right does not attain the dignity of ownership of an undivided one-half of the community property during the continuance of the marriage relation. The fact is that her interest is hard to define. She cannot take it, she cannot use it, she cannot dispose of it, she cannot encumber it, nor can she even give it away.

As I mentioned above, the proposed amendment would change all this. If geographical uniformity is not required under the amendment, the wife would become a comanager and a coowner with her husband and their relation to the community would probably result in a partnership as known in the common law. If geographical uniformity is required under the amendment, acts of Congress covering property rights of husband and wife might disregard community property laws entirely and be drawn in accordance with the principles stemming from the common law. In that case, the community-property laws would be superseded by the uniform national rules contained in such acts of Congress and, here again, without regard to the diverse customs and local peculiarities of the different States, one national rule or set of rules would be enunciated for all. The community-property States could probably be depended upon to vote against ratification of the proposed amendment for one reason alone, namely, Federal

taxation. Without attempting to cover the 30-year dispute regarding Federal taxation of community property, it is sufficient by way of illustration to point out that one-half of the income from community property is treated as gross income to the husband for Federal income-tax purposes and one-half is treated as gross income to the wife. For Federal estate-tax purposes, only one-half of the community property is included as a part of the estate of the deceased spouse. This means that under our present Internal Revenue Code a husband residing in a community-property State who has a salary of $10,000 a year makes a Federal income-tax return based on $5,000, and his wife makes a return based on $5,000. Since, under the present law, surtaxes do not apply below a surtax net income of $4,000 and since the deductions and credits allowed would reduce the incomes of such couple below the figure at which surtaxes begin, no Federal surtax would have to be paid. If that same couple resided in a State other than a community-property State, the husband would be required to return the $10,000 as his own gross income. This would result in his paying surtaxes, in the average case, on a $2,000 surtax net income. An analogous situation exists with respect to Federal taxation of estates. Ratification of the equal-rights amendment and the passage by Congress of uniform national laws would abolish such difference in the treatment now accorded to persons residing in the community-property States and to persons in other States. This advantage accruing to persons in the community-property States, under our existing revenue laws is, as I pointed out above, the result reached after a dispute between the Treasury Department, the courts, and the community-property States, which has lasted for a period of approximately 30 years. Each time an amendment has heretofore been offered in Congress to provide that persons in community-property States be taxed on the same basis as persons in other States are taxed, opposition strong enough to defeat such an amendment has always developed. In view of such determined opposition by the community-property States with respect to any change in the law that would result in their citizens being treated the same, for Federal taxation purposes, as citizens of other States, it would seem to follow that the community-property States would be extremely reluctant to ratify an amendment that would probably result in eliminating the distinction they have fought so hard and so long to maintain.

The following summary of various State laws has been taken from Senate Document No. 270, Seventy-fourth Congress, and will give the committee at a glance the more important differences that now exist in the treatment accorded to men and women under such laws. References are to such document.

Four States prohibit women from holding certain specified offices. They are Mississippi, Oklahoma, Rhode Island, and Wisconsin (p. 15).

Men only may serve on juries in 27 States, Hawaii, and Puerto Rico (p. 17). Both men and women may serve on juries in 14 States, but such service is permissive for women and mandatory for men (p. 19). Men and women serve on juries on the same terms in 9 States and the Virgin Islands (p. 19).

Men but not women are required to pay poll taxes in 20 jurisdictions (p. 21). In 22 other jurisdictions both are subject to poll taxes (p. 22).

In two States and in Puerto Rico men are preferred to women of the same degree of relationship in appointment as legal guardian of a minor (p. 29).

In 13 States and the District of Columbia men enjoy certain minor preferences over women with respect to appointment to serve as an executor or administrator (pp. 33 and 34).

Men may engage in any occupation but women are prohibited from engaging in some occupations in 26 States and the Philippine Islands (p. 39). Women are barred from mining in 17 States and the Philippine Islands, from work in quarries in 5 States, from employment at the cleaning of moving machinery in 3 States, and from work on certain kinds of moving abrasives in 3 States (p. 40). They are also barred, in 1 State and the Philippine Islands, from employment in any capacity where such employment compels them to remain standing constantly, from work in smelters in 2 States, from employment as bellhops in 2 States, from section work and from employment at reading or testing gas and electric meters and at trucking in 2 States, from work involving the handling of any dry substance or dry compound containing lead in excess of 2 percent, and from the manufacture of nitro and amido compounds in 2 States (p. 41). Women: are either barred from employment or have special restrictions on their work in core rooms in 5 States, they are barred from tasks requiring the lifting of certain weights in 5 States, and are barred in general terms in 7 States from employments under conditions deemed detrimental to their health, welfare, morals, or safety (p. 42). Twenty-five other occupations from which women are barred in an aggregate of 7 States are set out on pages 43 and 44 of such document.

In all but 11 States the hours of work of women in certain occupations are limited or curtailed by law. In 6 States and Alaska the hours of work are limited by law but men and women are treated equally. In 7 jurisdictions the hours of work are not limited by law (pp. 46-53).

Women are prohibited from working at night in specified industries or occupations in 16 States and Puerto Rico (pp. 55-61).

Women are subject to minimum wage laws in specified occupations in 15 States (pp. 63-65).

The age of marriage varies from State to State. In most States the age limit has been raised above that of the common law, which was 12 for girls and 14 for boys. In most States the age of marriage for girls is from 2 to 3 years younger than that for boys. In six states the age of marriage is the same for boys and girls (pp. 71-74).

In all jurisdictions the husband has the right to fix his domicile for all purposes. In all but one he has also the right to fix his wife's domicile for all purposes, except as follows: In 46 jurisdictions the wife may establish her own legal residence for the purpose of a suit for divorce or separation, and in 8 States the wife may have a domicile not controlled by that of her husband for the purpose of voting, holding office, and serving on a jury, as well as for the purpose of bringing suit for divorce or separation (pp. 75-78).

Under the common law, marriage had the effect of making the husband and wife one person in the eyes of the law. Her property and her earning power became his. She, on the other hand, acquired no rights in the property of her husband or in his earnings, except the right of support during the marriage and her interest in his lands in case she outlived him and had not relinquished or forfeited her right. Statutes have altered those common-law rules in the so-called "common-law States" (as distinguished from the community property States which were discussed above), but some discriminations still remain. In 44 jurisdictions the husband and wife each holds as separate property all that he or she acquired before the marriage and all obtained during the marriage, including the personal earnings of each. There is no community of property but husband and wife may own property jointly or in common (pp. 79-82). In 28 jurisdictions the husband or wife each manages and controls his or her own property, and each has like powers to dispose of it, being limited to the same extent in conveying the dower or curtesy interest or the statutory share of the other, or being under no restrictions whatever in disposing of property (p. 84). In 10 jurisdictions the husband has complete management and control of his property and can dispose of it as he wishes, but he cannot convey his real property with the effect of excluding his wife's interest after his death unless she joins him by conveying her right. In the same 10 jurisdictions the wife also has complete management and control of all her property and, in addition, can dispose of it without her husband's consent, thus depriving him of his interest in her realty after her death (p. 85). In 5 States the wife has the management of her own property but she cannot dispose of her realty without the consent of her husband. In the same 5 States the husband can manage and dispose of his personal and real property without the consent or joinder of his wife, subject to her right in his realty after his death if she outlives him (p. 86). Under the laws of one State, Florida, the husband has the care and management of his wife's property unless she asserts her control over it or entrusts it to another or unless she is authorized by a court to act as a free agent. The husband must join in conveying or mortgaging the wife's real property. The wife has no part in the management of the husband's property nor does she have to join her husband in conveying his land (p. 86). In most of the States an estate by entirety is not created by a transfer of property to husband and wife unless it is clearly stated that they shall own the property jointly with the right of taking the whole of it when one dies; but in other States the common-law rule is still followed and an estate by entirety is created by a deed or devise to husband or wife (p. 88).

The common-law rules relating to dower and curtesy have been largely modified by statute. Under the common law dower was the estate a widow took for her life in one-third of all the lands which the husband possessed during the marriage and curtesy was an estate for life which the husband took in all the lands his wife possessed at any time during the marriage if a child was born alive after the marriage. Statutory changes with respect to dower have, in general, (1) limited the right of dower to lands owned by the husband at his death rather than to lands owned at any time during the marriage, and (2) extended the right of dower by converting the life interest in one-third of the real property into absolute ownership of one-third or one-half of the property. Statutory changes with respect to curtesy have, in general, (1) extended the right of curtesy to a husband though no child has been born, (2) restricted it to lands owned by the wife at her death rather than to lands owned at any time during the marriage, (3) restricted it to lands which the wife has not disposed of by will, (4) extended it by converting the life interest to an estate in fee or by converting it into an estate similar to dower, or (5) by abolishing the right of curtesy entirely. As noted above, dower and curtesy do not apply in the community property States where the surviving spouse takes one-half of the community property. The various statutory changes from the common law showing the treatment accorded in the different States with respect to dower and curtesy are set out on pages 148 to 153 of such document.

Under the common law, in the event of intestacy, real property did not go to the surviving spouse unless there was no relative of the deceased spouse to inherit it. As pointed out in the foregoing paragraph, the survivior had only the rights of dower or curtesy. The husband, however, became entitled to all of his deceased wife's

personal property, and, after paying claims against her estate, he retained whatever remained. The wife, on the contrary, had no rights in the personal estate of her deceased husband. Such rules of the common law have been greatly changed by statute. The survivor in many States still gets only a life estate in real property if the deceased leaves children or descendants, but the tendency is to give a share in fee. The right of the husband or wife in the personal property of the other has also been recognized, and today each gets a considerable share of whatever personal property the other leaves. In some States rules for the distribution of personal property differ from the rules by which the real property passes. On the other hand, in many jurisdictions one rule applies to both real and personal property. The rights of a surviving spouse in the intestate estate of a deceased spouse under the laws of the many jurisdictions in the United States may be classified with respect to such jurisdictions into three groups: (1) Those in which real and personal property are distributed under different rules, (2) those in which they pass by one and the same rule, and (3) those in which there is community property as well as separate property. A summary of such statutory changes is set out on pages 155 to 167 of such document.

Under the common law married women were unable to enter into contracts even with the consent of their husbands. Constitutional and statutory provisions have removed such disability and with a few exceptions married women today may enter into contracts on an equal basis with their husbands. For exceptions, see pages 93 to 98 of such document.

Some discriminations still exist with respect to the right of a married woman to sue and be sued in nine jurisdictions. For instance, in Florida the wife must sue by next friend unless she is a licensed free dealer and in Georgia a wife may not sue for her earnings or for damages for loss of her earning power unless she is living apart from her husband or he has consented to her having her own earnings (pp. 100-102).

At common law, it was the duty of the husband to support his wife and family from his own property but there was no such duty on the part of the wife. With the extension of the property rights and legal powers of married women, the common-law rule of liability for support has changed in many States. In 30 jurisdictions the husband is obliged to meet the expenses of his wife's support out of his own property whether he or his wife has contracted the expenses. In those 30 jurisdictions the wife is not obliged to pay for the expenses of her own or her husband's support unless she agrees to do so by special contract. In 11 jurisdictions the community property is primarily liable for the expenses of the family but the husband's separate property is also liable. The

wife's separate property is liable after her husband's and in some States the statute provides that she must support her husband if he is unable to support himself and has no separate property and there is no community property. In 15 jurisdictions the husband and wife are jointly or separately liable for the expenses of the family. In 43 jurisdictions the husband may be required to support his wife who has asked for separate maintenance for cause, but the wife is not required to support her husband under the same circumstances. In 8 jurisdictions the husband or the wife may be required to support the other who has asked for separate support for cause. In many States provision is made for the support of the widow for a specified time from the estate of her deceased husband. A few States contain such a provision for the support of a surviving husband (pp. 107-118).

With respect to divorce, legal separation, alimony, and support, many of the State laws are more favorable to the woman than to the man. A summary of such laws may be found on pages 119 to 135 of such document.

In most States today neither the father nor the mother has a paramount right with respect to the guardianship, custody, or care of their children. Where they are living together they both act as the natural guardian of the children. Where they are living apart neither is preferred over the other but the court will hold the child's welfare supreme. In a few jurisdictions the mother is preferred to the father and in a few others the father is preferred to the mother (pp. 189-194).

In the majority of States the father is primarily liable for the support of his children but the mother becomes liable if the father is incapacitated. In 17 States both the father and the mother are jointly and separately liable for the support of their children. And in 8 other States the father and mother contribute to the support of the children through the community property, but the separate property of each may also be liable (pp. 199-201).

The above summary of State laws shows, at once, the many differences that exist from State to State, in their treatment of the same or similar subject matter. In some instances women are treated more favorably than men and in others men are treated more favorably than women. In many instances they are not treated alike, but whether such different treatment amounts to discriminatory treatment is a difficult question to resolve. Mr. Justice Frankfurter would in general resolve such questions in the negative. At page 69 of the hearings he stated:

> Nature made man and woman different; the law must accommodate itself to the immutable differences of nature. For some purposes men and women are persons, and the law should, for these purposes, treat them as persons, subjecting them to the same duties and conferring upon them the same rights. But for other and vital purposes men and women are men and women—and

the law must treat them as men and women, and, therefore, subject them to different and not the same, rules of legal conduct.

But irrespective of such question, it would seem that with the ratification of the proposed amendment all State laws which treat men and women differently would automatically become invalid or they would be extended, by construction, so that they would be applicable to both sexes in cases where the subject matter would lend itself to such construction. However, if it is held that geographical uniformity is required by the amendment, all such State laws would, as I pointed out above, necessarily have to be replaced with uniform State laws or with a uniform national law enacted by the Congress, which, in either event, would grant to the Federal Government supreme control over a considerable part of our legal structure which has heretofore been deemed to be local in its nature and subject to regulation by the individual States.

Respectfully submitted.

STEPHEN E. RICE, *Assistant Counsel.*

HON. JAMES H. HUGHES,
United States Senate, Washington, D. C.

MAY 22, 1941.

MEMORANDUM FOR THE SUBCOMMITTEE IN SUPPORT OF THE EQUAL RIGHTS AMENDMENT

By George Gordon Battle

This proposed amendment reads as follows:

Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction. Congress shall have power to enforce this article by appropriate legislation.

POINT I. THE PROPOSITION LAID DOWN IN THIS AMENDMENT—I. E., THAT ALL CITIZENS SHOULD HAVE EQUAL RIGHTS—IS A FUNDAMENTAL PRINCIPLE OF REPUBLICAN GOVERNMENT

It seems strange that there should be any question that all citizens of a republic should have equal rights. Our Supreme Court has repeatedly enunciated this great principle. For example:

The equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power (*U. S. v. Cruikshank*, 92 U. S. 542, 555).

These are the words of Chief Justice Waite, one of the greatest jurists who ever sat upon the Bench of our highest Court. The same principle has been enunciated in hundreds of cases in the Supreme Court and other Federal courts and in the State courts of this country.

POINT II. ALTHOUGH WOMEN ARE NOW CITIZENS IN THE FULLEST SENSE OF THE WORD, ALTHOUGH THEY ENJOY ALL THE RIGHTS OF SUFFRAGE, NEVERTHELESS THERE HAVE BEEN AND STILL ARE MANY INSTANCES OF THE GROSSEST INEQUALITY IN THE RIGHTS ACCORDED TO WOMEN AS CONTRASTED WITH THOSE OF MEN UNDER OUR LAWS

It is perfectly clear and obvious that these inequalities between the rights of women and those of men are in patent violation of this fundamental principle which we have just mentioned. The origin of these discriminations is to be found in the "time-honored legal status of subjection which women in this country inherited from England through the common law." (Foreword of the pamphlet compiled by the Inter-American Commission of Women, entitled "A Comparison of the Political and Civil Rights of Men and Women in the United States.")

At the common law which was in force at the time of the adoption of our Constitution in 1789, women were in effect regarded as chattels of their husbands or fathers or of the state. So far as married women were concerned, the legal existence of the wife was merged in that of her husband. As Blackstone said: "The husband and wife are one and that one is the husband." This is, of course, familiar and undisputed law which does not require to be argued or stressed. The history of this country since the adoption of the Constitution has been largely a chronicle of the progress of women on the road to equality with men. Their emergence from subjection has been slow and painful. They have been held back by all the powerful forces of ignorance and of selfish reaction. But although the advance has not been swift, although it has been uneven with periods of retrogression, yet on the whole the road has led ever forward and upward toward the ideal of perfect equality in all human rights.

It was thought that the passage of the fourteenth amendment would go far toward correcting these unjust discriminations. The familiar words of that amendment provided:

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This famous amendment, although its main purpose was to establish the citizenship of the Negro, contained no reference to race or color. These provisions were entirely general and unrestricted. Nevertheless, the courts of this country, led by the Supreme Court, whittled away the full force and meaning of the words of this amendment. So far as women were concerned, it was held that the State still had the power to restrict to men the right

to vote (*Minor* v. *Happersert*, 21 Wall. 162 (1875); *Bradwell* v. *Illinois*, 16 Wall. 130, 138, 173; *Re Lockwood*, 154 U. S. 116 (1894), to regulate and limit the hours of labor for women (*Miller* v. *Wilson*, 236 U. S. 373 (915) as contrasted with men and in many other respects to permit these same discriminations to continue. These regulations of the Court were founded on different reasons, chiefly on the ground that the privileges and immunities permitted are only those that belong to citizens of the United States as distinguished from citizens of the State—those that arise from the Constitution and laws of the United States as contrasted with those that spring from other sources (*Hamilton* v. *University of California*, 293 U. S. 245, 261 (1934). This amendment did not, the courts held, add to the privileges and immunities of a citizen. It simply furnished an additional guaranty for the protection of such as they already had (*Minor* v. *Happersert*, *supra*, *U. S.* v. *Cruikshank*, 92 U. S. 542, 554 (1876).

In many instances the unjust and discriminatory State statutes were upheld as being within the police power of the State. It soon became evident that the right to redress this injustice against women was not to be found in the fourteenth amendment.

Then came in 1920 the enactment of the nineteenth amendment which provided:

> The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Our courts again held down by interpretation the effect of this amendment. The Supreme Court ruled that the amendment did not confer upon women the right to vote but only prohibited discrimination against them on account of their sex in legislation prescribing the qualifications of electors (*The State* (*South Carolina*) v. *Mittle*, 120 S. C. 526, Writ of Errors dismissed, 260 U. S. 705 (1922). It was also held that this amendment referred only to the right of women to vote and did not *ipso facto* render women eligible to serve as jurors. Consequently, a statute absolutely excluding women from jury duty was held not to be invalid as being in violation of this amendment (*Commonwealth* v. *Welosky*, 276 Mass. 398 (1931), certiorari denied, 284 U. S. 684 (1932).

POINT III. ALTHOUGH THE FOURTEENTH AMENDMENT AND THE NINETEENTH AMENDMENT DID NOT AFFORD RELIEF TO WOMEN FROM DISCRIMINATION, IT WAS HOPED THAT THE SUPREME COURT, FOLLOWING THE LIBERAL TENDENCIES WHICH IT HAD SHOWN, WOULD GIVE SUCH RELIEF BY HOLDING THESE DISCRIMINATORY LAWS TO BE AN UNCONSTITUTIONAL INTERFERENCE WITH THE LIBERTY OF CONTRACT; BUT THAT HOPE HAS BEEN DESTROYED BY THE RECENT DECISION OF THE SUPREME COURT IN "WESTCOAST" HOTEL COMPANY V. PARISH (300 U. S. 379)

In the case of *Adkins* v. *Children's Hospital* (261 U. S. 525),

the Supreme Court held an act of Congress fixing minimum wage standards for adult women in the District of Columbia to be unconstitutional as an arbitrary restraint upon the liberty of contract. In the prevailing opinion written by Mr. Justice Sutherland, the Court called attention to the fact that in many previous decisions the statutes relating to the hours of labor for women had been sustained on the ground of "Differences of physical structure" (id., p. 552). Mr. Justice Sutherland went on to say:

> But the ancient inequality of the sexes otherwise than physical, as suggested in the *Müller* case (p. 421) has continued "with diminishing intensity." In view of the great—not to say revolutionary—changes which have taken place since that utterance, in the contractual, political and civil status of women, culminating in the nineteenth amendment, it is not unreasonable to say that these differences have now come almost if not quite to the vanishing point. In this aspect of the matter, while the physical differences must be recognized in appropriate cases, and legislation fixing hours or conditions of work may properly take them into account, we cannot accept the doctrine that women of mature age, sui juris, require or may be subjected to restrictions upon their liberty of contract which could not lawfully be imposed in the case of men under similar circumstances. To do so would be to ignore all the implications to be drawn from the present-day trend of legislation, as well as that of common thought and usage, by which woman is accorded emancipation from the old doctrine that she must be given special protection or be subjected to special restraint in her contractual and civil relationships (id., p. 554).

This case was a long step in the direction of equality of rights between men and women. The well-meant, but, as we believe, wholly mistaken legislation which had fixed different hours of labor for women had prescribed minimum rate of wages for women, and in other respects had been discriminatory as between the sexes, seemed doomed to extinction by the doctrine of this decision. However, the hopes of those who held these views were dashed and destroyed by the *West Coast Hotel Company* v. *Parish* (300 U. S. 379, 1937). This case expressly reversed the *Adkins case*, and distinguished the case of *Morehead* v. *New York, ex rel. Tipaldo* (298 U. S. 587). The *Tipaldo case* had held a New York Minimum Wage Act for women to be invalid. In the *West Coast Hotel case*, Chief Justice Hughes held that the State had a special interest in protecting women against employment contracts which, through poor working conditions, long hours, or scant wages, may leave them inadequately supported, and undermine their health. He therefore held that a statute of the State of Washington providing for minimum wages for women was not an arbitrary discrimination because it did not extend to men. (See Syllabus, p. 379.)

It is interesting to note that in the *Adkins case* Mr. Justice Sutherland, and Justices McKenna, Van Devanter, McReynolds, and Butler voted to hold the Minimum Wage Act for Women unconstitutional as an illegal interference with the right of contract. Chief Justice Taft and Justice Sanford and Justice Holmes dis-

sented and voted to sustain the statute, while Mr. Justice Brandeis took no part.

In the *Morehead case* Justices Butler, Van Devanter, McReynolds, Sutherland, and Roberts held the Minimum Wage Act for Women in New York to be unconstitutional as interfering with the liberty of contract. On the other hand, Chief Justice Hughes, and Justices Brandeis, Stone, and Cardozo dissented, holding that a discriminatory statute was not unconstitutional.

In the *West Coast case* Chief Justice Hughes, and Justices Brandeis, Stone, Cardozo, and Roberts held the law of the State of Washington fixing the minimum rate of wages for women to be constitutional, while Justices Sutherland, Van Devanter, McReynolds, and Butler, holding to their firm views, dissented and held the statute to be unconstitutional as being an illegal interference with the liberty of contract. It is interesting to note that Mr. Justice Roberts apparently changed his views from the decision in the *Morehead case* to the decision in the *West Coast case*. We mention the closeness of these decisions in order to show the very nearly even division of the Court on this important question. Such a situation requires, we submit, a constitutional amendment in order to clarify this question.

It is apparent, therefore, that so long as the doctrine in the *West Coast case* is sustained, discriminatory legislation between men and women will be upheld by the Supreme Court of the United States. It is true that most, if not all, of this legislation was passed as being in favor of women, but if the legislatures can pass laws ostensibly discriminating in favor of women it may well be that such laws actually are harmful to women. As a matter of fact, it is earnestly contended that all such discriminatory legislation is really hurtful to women. The laws fixing minimum rates of wages for women, the laws fixing maximum hours of labor for women, and like legislation have a tendency to drive women out of business and to give the jobs which they would otherwise occupy to men. This is, of course, really harmful to women. We submit that in the long run it is vastly to the interests of women, as it is to men, to have their rights equal. If it is unhealthy for women to work more than a certain number of hours it is almost certainly unhealthful for men to work more than that number of hours. Working conditions unfavorable to the health of women are sure to be unfavorable to the health of men. It is far better to pass legislation making general provisions for restricting the hours of labor, for fixing minimum rates of wages and for regulating working conditions for all workers, whether men or women.

POINT IV. IT WILL BE SEEN, THEREFORE, THAT NEITHER THE FOURTEENTH AMENDMENT NOR THE NINETEENTH AMENDMENT NOR THE HOPED-FOR ATTITUDE OF THE SUPREME COURT FORBIDDING DISCRIMINATION AS BEING UNCONSTITUTIONAL AFFORD ANY SUBSTANTIAL RELIEF FOR THIS DISCRIMINATION AS BETWEEN MEN AND WOMEN, AND THE ONLY RELIEF, THEREFORE, MUST COME FROM A CONSTITUTIONAL AMENDMENT

The fourteenth and nineteenth amendments have already proven inadequate to remedy this discrimination. The tendency of the Supreme Court which looked hopeful in that direction has been balked and thwarted by the decision in the *West Coast case*. There is no hope now except in a constitutional amendment.

POINT V. ALTHOUGH IT IS UNNECESSARY TO STRESS THE CONTENTION THAT THESE DISCRIMINATIONS STILL EXIST IN SPITE OF THE GREATER ENLIGHTENMENT OF MODERN TIMES, NEVERTHELESS, WE WILL CALL A FEW INSTANCES OF DISCRIMINATION TO THE ATTENTION OF THE SUBCOMMITTEE

We cite these instances from a pamphlet prepared by the National Woman's Party written by the chairman of the Lawyers Council of that party, Burnita Shelton Matthews. We attach a copy of this pamphlet to this memorandum and make it a part thereof. We would mention the different subheads in this pamphlet showing the wide range of injustices and of these discriminations:

1. The Rights of Fathers Are Superior to Those of Mothers, pp. 30-31 (pp. 79-80).
2. Women Bear Brunt of Burden of Illegitimate Parenthood, pp. 31-32 (pp. 80-81).
3. Married Women's Disabilities, pp. 32-33 (pp. 81-82).
4. The Double Standard of Morals, p. 33 (pp. 82-83).
5. The Community Property System, pp. 33-35 (pp. 83-85).
6. Husband Collects Damages for Loss of Wife's Services, p. 36 (p. 86).
7. Women Denied Political Equality With Men, pp. 36-37 (pp. 86-87).
8. Women Discriminated Against With Regard to Employment, p. 37 (p. 87).
9. Women Excluded From Jury Service, p. 37 (p. 87).
10. Special Restrictions Prevail for Women Workers, pp. 37-39 (pp. 88-89).

We earnestly ask the committee to read this pamphlet on each of these subheads and to examine the cases cited thereunder. Such a reading and examination will disclose an amazing condition of unjust and wicked discrimination against women still existing in the laws of the different States. It is to remedy this injustice that the enactment of this constitutional amendment is desired.

POINT VI. SUCH BEING THE AFFIRMATIVE ARGUMENTS IN FAVOR OF THE ENACTMENT OF THIS EQUAL RIGHTS AMENDMENT WE WILL NOW TAKE UP THE OBJECTIONS URGED TO THE AMENDMENT AS SET FORTH IN THE MEMORANDUM FILED WITH SENATOR HUGHES BY THE HONORABLE STEPHEN E. RICE, ASSISTANT COUNSEL, TAKING UP, FIRST, THE OBJECTION THAT THE AMENDMENT IS TOO BROAD IN ITS TERMS

It is true that the language of this amendment is broad in its scope. This is necessary because it covers a broad field. The evil which it seeks to remedy is broad in its extent. The language of the amendment would permit congressional statutes to insure equal rights for men and women throughout the United States. It is necessary to give Congress this power in order that it may cope with this situation. It is no objection that the language of the amendment is broad and general. On the contrary, it has a decided recommendation in *Davidson* v. *New Orleans* (96 U. S. 97 (1878). The Court said:

> If, therefore, it were possible to define what it is for a State to deprive a person of life, liberty, or property without due process of law in terms which would cover every exercise of power, thus forbidden to the State, and exclude those which are not, no more useful construction could be furnished by this or any other court to any part of the fundamental law. But, apart from the imminent risk of a failure to give any definition which would be at once perspicuous, comprehensive, and satisfactory, there is wisdom, we think, in the ascertaining of the intent and application of such an important phrase in the Federal Constitution, by the gradual process of judicial inclusion and exclusion, as cases presented for decision shall require, with the reasoning on which such decisions may be founded. This Court is, after an experience of nearly a century, still engaged in defining the obligation of contracts, the regulation of commerce, and other powers conferred on the Federal Government, or limitations imposed on the States.

And in *Strauder* v. *West Virginia* (100 U. S. 303) the Court said:

> The fourteenth amendment makes no attempt to enumerate the rights it designed to protect. It speaks in general terms, and those are as comprehensive as possible. Its language is prohibitory; but every prohibition implies the existence of rights and immunities, prominent among which is an immunity from inequality of legal protection, either for life, liberty, or property. Any State action that denies this immunity for a colored man is in conflict with the Constitution.

And in *Connolly* v. *Union Sewer Pipe Co.* (184 U. S. 54) the Court said:

> What may be regarded as a denial of the equal protection of the laws, is a question not always easily determined, as the decisions of this court and of the highest courts of the States will show. It is sometimes difficult to show that a State enactment, having its source in a power not controverted, infringes rights protected by the national Constitution. No rule can be formulated that will cover every case.

The next objection raised by Mr. Rice is the danger in his mind that the courts might construe this amendment to require geographical uniformity as to equal rights throughout the United States and places subject to its jurisdiction. We submit that this objection is

technical and unreal. There is no human possibility that the question of the amendment could be construed to require uniformity all over and everywhere in the United States. In *Missouri* v. *Lewis* (101 U. S. 22) the decision reads in part:

> * * * There is nothing in the Constitution to prevent any State from adopting any system of laws or judicature it sees fit for all or any part of its territory. If the State of New York, for example, should see fit to adopt the civil law and its method of procedure for New York City and the surrounding counties, and the common law and its method of procedure for the rest of the State, there is nothing in the Constitution of the United States to prevent its doing so. This would not, of itself, within the meaning of the fourteenth amendment, be a denial to any person of the equal protection of the laws. If every person residing or being in either portion of the State should be accorded the equal protection of the laws prevailing there, he could not justly complain of a violation of the clause referred to. For as before said it has respect to persons and classes of persons. It means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or classes of persons in the same place and in like circumstances.
>
> The fourteenth amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversities in these respects may exist in two States separated by an imaginary line. * * * Diversities which are allowable in different States are allowable in different parts of the same State. * * * It would be an unfortunate restriction of the powers of the State government if it could not, in its discretion, provide for these various exigencies.

In *Colgate* v. *Harvey, State Tax Commissioner* (296 U. S. 404, 429), it is said:

> The Government of the United States and of each of the said States are distinct from one another. The rights of a citizen under one may be quite different from those which he has under the other. To each he owes an allegiance; and in turn he is entitled to the protection of each in respect of such rights as fall within its jurisdiction. Citing *U. S.* v. *Cruikshank* (92 U. S. 542, 549).

Mr. Rice appears to be alarmed lest this interpretation of the language of the amendment be made by the courts because Webster defines "equal" to mean "uniform" and "throughout" to mean "in every part of." We do not apprehend that the courts will decide this question on any such narrow ground. The Court will not go to the dictionary to see what "equal" means and then stop. On the contrary, of course, the courts will consider the whole meaning and object of the amendment and will construe the amendment so as to promote this object. To hold that the amendment prescribes geographical uniformity would be to defeat the whole object of the amendment. Such interpretation would make the amendment a wild and perfectly unenforceable farrago of words. We respectfully submit that there is no possibility of such an interpretation.

The next objection urged by Mr. Rice is to the word "right" as used in the amendment. He is compelled to admit that the ninth amendment uses the same word. That amendment reads as follows:

> The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Also, in the familiar phrase of the Bill of Rights, the same

word is used. In amendment 1 there is mentioned—

> the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

In amendment No. 2 it is provided that—

> the right of the people to keep and bear arms shall not be infringed.

Amendment No. 4 says:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated * * *.

In the Annotated Constitution of the United States, printed in Washington, 1938, the heading to the amendment 5 reads as follows:

> Rights of persons.

The same heading of the amendment 6 reads:

> Rights of accused in criminal prosecutions.

In this sixth amendment it is stated:

> In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial—

and so forth.

Amendment No. 7 speaks of—

> the right of trial by jury.

Amendment No. 9 states:

> The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

The heading to the fourteenth amendment is—

> Rights of citizens.

The fifteenth amendment says:

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

The nineteenth amendment reads:

> The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

It will be seen that this word "right" that so much alarms Mr. Rice is found in very many of the amendments. It has a perfectly clear meaning. It is true that there will of necessity be many decisions of the courts clarifying the question on this proposed amendment and applying it to various circumstances that may arise. Such is always the case in the passage of general amendments and it is the wise and proper procedure as we have mentioned already in the *Davidson case*, supra, by the Supreme Court:

> There is wisdom, we think, in the ascertaining of the intent and application of such an important phrase in the Federal Constitution by the gradual process of judicial inclusion and exclusion as cases presented for decision shall require, with the reasoning on which such decisions may be founded. This Court is after an experience of nearly a century, still engaged in defining the obligation of contracts, the regulation of commerce, and other powers conferred on the Federal Government or limitations imposed on the States.

In the edition of the United States Constitution to which we have referred, there are thousands of cases cited which have arisen under the fourteenth amendment, yet the object of the fourteenth amendment was so important and so beneficial that no one, we believe, would desire that amendment to be repealed because it had been found necessary to interpret its language in so many cases. The fact that it might be necessary for the courts to interpret the language of the equal-rights amendment in many cases is no argument against the necessity for its enactment.

Another imaginary danger seen by Mr. Rice in the amendment is his fear that the amendment might be held to prohibit infringement of equal rights by individuals, although not in violation of any specific statute. In other words, we assume from Mr. Rice's argument that he fears that without any enactment of any law either Federal or State covering the case, it might be possible to prosecute individuals for violation of the amendment which requires that men and women shall have equal rights. We submit that such an apprehension is in the highest degree fanciful. The object of the amendment is to provide that no law shall be passed prohibiting the principle of equal rights to a man and woman. It would also be permitted that the Congress should enact affirmative legislation protecting the equality of rights to a man and woman. But any prosecution of any individual must be for a violation of such a law. It would be manifestly impossible to proceed to prosecute an individual because it is claimed that his acts violated the amendment itself. The amendment is not self-executing except insofar as it may prohibit laws inconsistent with its provisions. We submit, therefore, that this objection is without validity.

Mr. Rice next proceeds to consider the effect of this proposed amendment upon various Federal or State laws. It is of course impossible to determine just how the enactment of this amendment would affect these various laws. The amendment would undoubtedly render certain laws inoperative in whole or in part. It would also modify other laws. It is wholly unprofitable to attempt to inquire into such details. The wisdom of Congress in the passage of laws to enforce this amendment must be trusted to provide appropriate legislation. The wisdom of the courts in interpreting such laws must be trusted for their proper enforcement. We shall make no attempt to analyze and answer the various minutiae which Mr. Rice advances in this regard. He attempts to discuss the effect of the whole amendment on the Social Security Act, on the Selective Training and Service Act, upon the community-property laws,

upon the laws affecting the marriage relation and the various State statutes which he enumerates on pages 6 to 14 (pp. 51 to 62) of his memorandum.

As we have said, it is manifestly impossible to determine in advance just how these different points will be met if the equal-rights amendment becomes effective. That must be left to Congress and to the courts. There is one point he mentions as to which we would like to say a word. He raises a question as to whether women could be drafted under selective-service laws in the future for military service. Our answer is that they could and should be so drafted. Women are citizens, they have property, they owe the same obligation to the State that is owed by men. They should be drafted to protect the State in the case of war. As to the service which they render, that would be determined by the appropriate statutes, releases, and regulations. Nurses now form a part of every army. There are many branches of the military service in which women play different parts. This like all other such matters must be left to the wisdom of the legislatures and courts for future determination.

And certainly in view of the world situation, it is most important for our great democracy to get a firm decision on this question. The totalitarian governments frankly avow their determination to reduce women to a most abject and humiliating dependency. It is the practice as well as the theory of the Hitler government that women should be concerned only with kinder, kuchen, and kirche.

Finally, it is evident that Mr. Rice has been trying and properly so to consider the most unfavorable aspects of the law. He has in many instances conjured up imaginary dangers which would never really exist. It is true that there will be a period of adjustment during which the provisions of this amendment must be worked out and applied by our State legislatures and by our Federal and State courts. This has been done in the case of all the other amendments. It can and should be done again. The essential question to be considered is this: Does the object of this amendment justify its enactment? Of course, there should be no amendment to the Constitution unless there is a real and urgent necessity therefor. Every amendment requires legislation for its enforcement and court action, for its interpretation. Such legislative and court procedure causes delay, expense, and uncertainty. Is the game worth the candle? We submit that there can be no more important object than to secure equal rights to all our citizens, men and women alike. The present discrimination against women permitted by our laws is by far the most serious defect in our governmental system. It is the most disgraceful blot upon our claims for Democratic equality. All the arguments that were used

in favor of female suffrage apply with added force to this argument. To grant equal rights to women to vote, was only one of the equal rights to which women were entitled. It was a great step forward, but it was, after all, merely a step in a long progress toward equality of rights. The passage of this amendment will bring us to the top of the hill from which we can survey the land in which equal justice is rendered and equal rights accorded to all its citizens. It is a great and wonderful prospect which we will then see, and we may with propriety quote in this connection the words which Winston Churchill recently used with such majestic eloquence in the House of Commons:

Say not the struggle naught availeth,
The labor and the wounds are vain.
The enemy faints not nor faileth,
And as things have been they remain.

If hopes were dupes, fears may be liars;
It may be, in yon smoke concealed,
Your comrades chase e'en now the fliers,
And, but for you, possess the field.

For while the tired waves, vainly breaking
Seem here no painful inch to gain,
Far back, through creeks and inlets making,
Comes silent flooding in, the main.

And not by Eastern windows only,
When daylight comes, comes in the light;
In front, the sun climbs slow, how slowly;
But westward, look, the land is bright.

Respectfully submitted.

GEO. GORDON BATTLE,
On behalf of the National Woman's Party.

Dated, New York, July 11, 1941.

P. S.: As a part of this memorandum, I beg to submit the admirable paper of Miss Mary Philbrook of the National Woman's Party, entitled "A Brief for Proposed Amendment to the Constitution," and beg that it will be considered as a part of this memorandum.

I am also attaching a copy of a letter written by me on May 6, 1941, to the Honorable Francis E. Walter, chairman of the House subjudiciary committee, which is considering this amendment.

A BRIEF FOR PROPOSED AMENDMENT TO THE CONSTITUTION

By Mary Philbrook, 1939-40, National Woman's Party, 144 B Street N. E., Washington, D. C.

ARTICLE 1. Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction.

ARTICLE 2. Congress shall have power to enforce this article by appropriate legislation.

Introduced in the Seventy-sixth Congress by Senator John G. Townsend, Jr., Delaware; Senator Edward R. Burke, Nebraska; Senator Ernest W. Gibson,

Vermont; as Senate Joint Resolution No. 7. Congressman Louis Ludlow, Indiana, House Joint Resolution No. 2; Congressman Ambrose J. Kennedy, Maryland, House Resolution No. 25; Congressman U. S. Guyer, Kansas, House Joint Resolution No. 27. It is now before the Judiciary Committee of each House.

Purpose.—To establish a principle which will guide legislatures and civil and judicial officers in safeguarding men and women alike from infringement on guaranties in our Constitution.

Need for the amendment.—Despite the protests of women, legislatures have enacted restrictive laws and have turned a deaf ear to the pleas of women.

Our courts have increased the anxiety of women by many rulings which have denied women the constitutional protection accorded to men and have permitted the police power of the State to over-ride other guaranties in order to sustain restrictive laws for women.

Last year further restrictions were proposed in over 20 legislatures. Women are obliged to meet these attacks year after year. The strain of fighting and maintaining a standing army for this purpose is weighing heavily upon women.

This revolution, waged by women, should be of great concern to Congress. Women of this country are fighting for the same principles which are being defended by our whole Nation, and which are of deep concern to our country—in short, democracy.

The need to recognize women's place in our democracy is of supreme importance to this country if our position in the international field is to receive due respect.

Public conscience.—The exercise of the police power of the State to take women out of the competitive field of labor and therefore out of the realm of constitutional guaranties is fast becoming obnoxious to the people. The public conscience is awake to the loss of dignity to the Nation by the use of indirect methods in limiting women's work.

The sound approach to the problems concerning women's work is through improving the conditions of labor and not through the regulation of women workers.

It is natural that the public conscience should be aroused when Congress is not taking due notice of this state of affairs. Large groups of women are complaining that restrictive labor legislation is unjust and subversive to the public interest because the denial of constitutional rights is inconsistent with the democratic principles on which this Government is founded.

Public conscience holds the right to work as a sacred right which should be safeguarded at every angle. Discrimination against one sex endangers the security of all workers. One great labor leader has expressed it most aptly: "Labor is those who work."

Public conscience is fully awakened to the need of maintaining fair labor standards for all workers, and realizes it is wrong to limit the right of women to work—a right which they have had from time immemorial—on any basis that is not equal for men and women. All workers, without regard to sex, should have the same guaranties and share in our democracy.

The public no longer believes the health and morals of women can be conserved by restrictive legislation and is ready to demand for women the right to contract for their wages and hours of work on the same basis as men. The public believes that fair labor standards for women can be maintained and that to better women's condition by use of police power to restrict their labor is unwholesome, unjust, and unfair.

Federal policy toward equal rights.—The Federal Constitution, except for the suffrage amendment, contains no reference to sex. It was intended that all citizens should enjoy the rights and protection it offered. This interpretation has already been accepted by the people and the principle of equality sustained by our country in—

1. The suffrage amendment.

2. The refusal of the United States to sign The Hague nationality treaty because it was unequal for men and women.

3. The ratification of the equal nationality treaty and the enactment of attendant legislation.

4. The enactment of the Fair Labor Standards Act.

Dangers from without.—Ever since the United States became a member of the International Labor Organization there has been alarm lest Old World standards for women should be foisted upon American women. This fear has not been without reason. Four labor conventions restricting women's labor have been adopted by the International Labor Organization and they have become a nightmare to women of this country lest they may become a part of our organic law and thus bar the way to women's freedom.

This fear was intensified about a year ago when a draft of another proposed treaty contained a proposal which would prevent indigenous women from making contracts for their services and, in particular, would exclude the "indigenous" married woman from practically all employment, away from her usual place of residence, except as a domestic servant. If enacted, this would have imposed upon the women of our territories a status far below what our country has set as a standard for its women. Women of all nations, including American women, protested against the enactment of this clause.

If Congress would submit the proposed equal-rights amendment to the States it would establish a policy for our Government which would remove all fear that the right to labor was threatened by laws promulgated by foreign governments.

World-wide demand for equal rights.—Women from all over the world united in a plea to the League of Nations at its session in 1937 to take action on their demand for the League to enact an equal-rights treaty. This demand was so overwhelming that the League of Nations created a committee to study the status of women throughout the world.

In the Year Book 1938 of the International Labor Organization, chapter IV, page 143, it is reported: "From the legislative point of view there is a growing tendency to discard special legislation for women in favor of methods of fixing minimum wages applicable to both sexes." This article shows decided gains in other countries toward equal pay for equal work.

After the late war some nations which established democracies went very far in removing inequalities in their laws and advanced the position of women by giving them suffrage, high public offices, and legislative seats and sent women as delegates to the League of Nations. Several countries adopted the principle of equality for men and women in their fundamental law.

In all countries where any form of restrictive legislation exists, women everywhere are opposing it, which is evidence that it is harmful. War conditions have suspended many such restrictions.

In the Scandinavian countries the fight against so-called protective laws has been practically won.

DISCRIMINATION IN THE UNITED STATES

In conformity with the request of the committee on the status of women of the League of Nations, the Women's Bureau of the United States Labor Department has prepared and published the results of researches in American law affecting the status of women in this country. These reports show hundreds of laws still on our statute books which discriminate between men and women or place women at a disadvantage concerning their property, their children, and their marital status.

It is hoped that in the near future the Women's Bureau will publish a report which will accent the fact that restrictive labor laws have denied women constitutional rights. This is of very deep concern to thoughtful men and women. Such laws strike at the very root of our democracy and are creating considerable alarm throughout the country. Women's groups, schools, and universities are eagerly seeking information on this subject.

Restrictive labor laws.—They have been enacted on the theory—

1. Women, as potential mothers, should not be allowed to work at night because such work affects their health and morals.

2. Women, as potential mothers, should not be allowed to choose their wages and hours of work during the day because they are not mentally equipped to bargain for fair labor standards and their moral and physical well-being is threatened because of low wages and long hours.

It is submitted that such laws do not protect the health and morals of women; that night-work laws are arbitrary and unreasonable, and minimum

wage laws for women alone are uneconomic and add little to the health, morals, or well-being of women. Such gains are trifling compared to the danger they engender to the spiritual well being of women and of the world as well. Dignity and constitutional guaranties are precious possessions and too valuable to all of mankind to destroy in this ruthless manner.

At first, labor encouraged the enactment of minimum wage laws for women as an experimental step toward securing fair labor standards for all workers, but women feel that labor is now ready to ask for better labor conditions for workers without singling women out as an appeal for sympathy.

Effect of restrictive labor laws—night work laws.—There are 13 States, besides the District of Columbia and Puerto Rico, which have such laws. They have thrown hundreds of women out of employment and prevent today the employment of thousands of women in legitimate occupations.

There is no uniformity in State legislation on the subject, either as to hours or occupations. This widespread difference of opinion as to what hours are harmful to women and what occupations should be closed to women at night, weakens the whole theory that night work is specially harmful to women. The theory is further shattered because several States permit night work if women are paid at the rate of time and a half, or in emergencies. Then, too, there is no provision when daylight saving is in effect.

In the States of California, Kansas, North Dakota, Oregon, and Wisconsin there are no statutes which govern night work for women. The Industrial Commission or Labor Department, as the case may be in such States, has undertaken to construe the statutes under which they operate to give them power to deny women the right to work at night. The dangers of this practice are very great. The police power of the State should not be exercised except upon express direction of a legislative body and no person or board should be permitted to use discretionary powers to make orders and to prosecute violations of them.

The injustice of such laws to women is found in the fact that the work denied them is often the only opportunity offered and the need is so great that both employer and employee contrive to evade the law.

These laws contain other objectionable features and it is inconceivable that they could exist in our system of jurisprudence.

They do not forbid women to work at night. Such a proposal would arouse the meanest of mankind and would be impossible to pass. The prevention of night work for women is accomplished by prohibiting employers from hiring women. This indirect method declares women out of the protection of the law and has over-ridden their right to due process of law and the equal protection of the law.

Courts have upheld such laws as a valid exercise of the police power of the State when applied to women. Jobs have been created to enforce these laws and women have not only been prevented from working, but they have been subjected to surveillance which is intolerable to women. Recently in New Jersey an employer was haled into court because he allowed a woman to come half an hour earlier on a busy day, and another employer was haled into court because a woman was allowed to work overtime during the holiday season. Women resent inspectors coming into shops and questioning them concerning their hours of work and using the replies as a basis for prosecuting their employers.

This objectionable feature of these laws is increased by the prosecution of them. In some States violations of the laws are a misdemeanor, but in most States a penalty is fixed for the violation which is recoverable in a civil suit. A misdemeanor is very harsh punishment. A civil suit brings the measure in disrepute because such a penalty always implies it is all the injury is worth.

In the prosecution of these cases the women employees are not made parties to the suit, but their names are usually mentioned in the proceedings. Under the strict rules of law they are accomplices, yet they are not prosecuted nor been allowed to defend their good names which have been smirched in the proceedings.

These laws are humiliating to women and to employers as well. They have been forced upon working women by social workers and some labor groups and have become deeply imbedded in our system because of the enforcement jobs they have created. Working women have been unable to get relief; they are hampered by lack of funds to carry on a fight in legislatures and they are discouraged because the forces which would retain those laws play upon the sympathies of leisure-class women and the warm hearts of men, who, thinking they are doing right, lend aid to prevent their repeal. Employers are unable to help because they would be charged with the exploitation of women.

Minimum-wage laws for women.—These laws likewise hamper women in the competitive field. Women have lost their jobs when employers refused to pay the minimum wage and men have taken their places at less pay. The Federal Government has taken the first step to remove the uneconomic situation which minimum-wage laws for women have created. The Government has recognized, and it was so stated by labor leaders, that wages should be based upon the nature of the work and not on sex, and that discrimination against one class affects the security of all classes.

The principle established by the Government in making the Fair Labor Standards Act apply to all workers irrespective of sex must lead all to believe that the State minimum-wage laws for women are not only uneconomic, but are highly discriminatory against women. All of the wrongs of the no-night-work law can be applied to these acts, too.

The equal-rights amendment would cause States which have such laws to bring them into harmony with the Federal law and have them apply to all workers.

Regulation of hours for women.—Nearly every State has a law limiting the number of hours in which women can be employed. They vary in their regulations from 8 to 12 hours a day, and from 44 to 60 hours per week.

These laws likewise are not convincing that they protect the health of women. Most of them are outmoded. The general trend is toward the 8-hour day, or less, for all workers, and with that trend the higher number of hours allowed to women are a disadvantage instead of a protection. While there is a higher limitation to women than that fixed for men, it will operate in different ways.

1. Employers will demand the full time from women.

2. If the limitation for women is fixed at 8 hours and an employer can employ a man for a longer period on the same kind of work, the discrimination against women may cause her nonemployment.

3. Any State legislation fixing the hours of one class of workers would be in conflict with the Federal wage hour—the Fair Labor Standards Act which gives all workers the right to work more than 8 hours with pay at the rate of time and a half, and, therefore, be an unfair discrimination against women.

Provisions for the prosecution of these laws contain the same objectionable features as the night-work law.

Rest periods, seats, and sanitary provisions.—These are measures which should apply to all workers. Common decency and humanity require them. They should not be applied to women alone and should be part of the general welfare and not classed as needed to protect women alone.

Right to property.—Many States have granted women the equal right to the control of their property. Most States have equalized the rights of dower and curtsy, the laws of descent and distribution and the right to make a will. The equal-rights amendment would cause States to bring their laws into harmony with this principle.

Husband and wife.—Marriage and divorce laws should be equal for men and women. The State assumes a prior right in the guardianship of minors.

Alimony.—The question has arisen, Does this amendment fix upon women the responsibility for support of their husbands? In many States, mothers as well as fathers, are liable for the support of their children. The law fixes this right primarily on the father, not only because marriage is considered a status, but also a contract. Courts also fix the responsibility on the mother when the father is disabled. The courts everywhere are slow to grant alimony to a woman who has no children and who is self-supporting. Public opinion is supporting this attitude. Some State courts are now requiring wives who are able, to contribute to the support of their disabled husbands, if the wife has means of her own. Public opinion is settling this matter, too.

Widows' pensions.—The moneys paid to widows who have been left with

small children are not paid to them as "widows," but paid to them for the care of their children, and are properly "children's pensions." Widows without children do not receive benefits.

Military service.—The accepted thought today is that the country can conscript its resources, both human and otherwise. An equal-rights amendment would not change this view or this right. During the late war women braved the perils of overseas service, and in earlier wars women were at the front in the sanitary service. All men are not at the front. There could be selective service for women as well as men, yet women could bear their share of responsibility.

Dangerous occupations.—Women's lives are full of hazards against which there can be no law or no protection. Statistics show that the greatest number of accidents occur in homes. The interests of society demand the elimination of the hazards rather than the elimination of the worker. There are hazards in all occupations.

Putting the amendment into effect.—There should be no confusion on this point. With regard to labor legislation it is now conceded that wages and hours of work should be equal for all workers, men and women alike.

The no-night-work law is in great disrepute in States where this law is in force. One newspaper in an editorial recently called it a "dishonest law." The repeal of this law would be welcomed by large numbers of people. In fact, those who would now retain it are, to a large extent, those who have an interest in keeping it on the statute books.

With regard to property rights, legislatures in many States have found no difficulty in equalizing them, and no litigations of any importance have arisen from such changes. Nearly every State has altered its laws in this respect on some point since suffrage days.

It has been asked, shall unequal laws be readjusted on the basis of those existing for women, or those existing for men? It is inconceivable that men would consent to the lower level.

Public approval.—Public approval of this measure is widespread. Hundreds of women's organizations, national, State, and local, have urged the passage of this amendment. Among them are organized women's labor groups. Men's organizations, too, are coming forward. Outstanding citizens all over the country have approved of it.

In some States both political parties have gone on record as favoring the removal of all discrimination against women, and whole State delegations in Congress have expressed themselves as friendly to the amendment.

In Congress less than 1 percent of those interviewed have voiced their determination to vote against it.

May 6, 1941.

IN RE PROPOSED EQUAL RIGHTS AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Hon. FRANCIS E. WALTER,
Chairman, House Subjudiciary Committee,
House of Representatives, Washington, D. C.

MY DEAR MR. WALTER: For many years I have studied the question of equal rights in our democracy for men and women. I have realized the fact that in the earlier period when women were first making their way into industry it was desirable that there should be special legislation for their protection. It has always seemed to me, however, that this was merely a temporary measure, and that the ideal in a democratic government such as ours would be to have absolutely equal rights for all citizens without any restrictions whatever. Now that the place of women in the professional, industrial, and economic world is so well established it is not wise, in my judgment, to continue this legislation. Now that women have the right of suffrage they can protect themselves against discrimination. I am convinced, therefore, that the time has now come when there should be an amendment to our Federal Constitution providing for equal rights for men and women throughout the length and breadth of our country. Undoubtedly in the minds of those who believe in democratic

methods of Government the presumption is strongly in favor of granting such equal rights. And there has never been a time when it was more necessary for this country to show its absolute faith in democracy. The totalitarian governments have revived the old restrictions against women and have added many new prohibitions. The privileges of women have been very greatly diminished in these autocracies. Certainly now is the time for this leading democracy of the world to testify to its faith in the doctrine of absolute equality so far as the rights of its citizens are concerned. The opponents of the measure claim that its enactment would cause confusion and litigation. It is true that the courts would have to construe this amendment, and, so far as the courts may do so, enforce its provisions. The same thing is true of all liberal and progressive legislation. Such an argument would prevent all progressive changes in our statutes and constitutions. The Supreme Court has recently held, as you know, in the *Darby Lumber case* that the States have power to enact laws discriminating in favor of men as well as of women. The establishment of this right in the States makes imperative the necessity for a constitutional amendment to prevent such discrimination. There are still very many grave and serious discriminations against women in the States. There is always the possibility of further injustice along this line. The only true and democratic policy is to provide that wherever the mandate of our Federal Constitution may run there shall be equal rights for all men and all women. I am sure that your subcommittee will give this the serious attention which it deserves.

I am sending copies of this letter to the Honorables Joseph R. Bryson, William R. Thom, John W. Gwynne, and Albert L. Vreeland, members of your committee.

I am, with great respect,
Faithfully yours.

GEO. GORDON BATTLE.

THE DENIAL OF JUSTICE TO WOMEN—A SUMMARY OF DISCRIMINATIONS

(This pamphlet is based on material prepared by the Legal Research Department of the National Woman's Party and was written in 1930 by the Chairman of the Lawyers Council, Burnita Shelton Matthews.)

One of the fundamental principles of our Government is liberty and justice for all. With regard to one-half of the people, however, that principle is given scant recognition: The laws of this country reveal a great deal that is unfair and unjust to women. Our laws are based on the common law of England, except in Louisiana where the laws are based on the civil law system which was brought over from France and Spain. Under these laws women had but few rights that men were bound to respect.

While legislation in the United States to better the position of women has slowly increased, the hold of old traditions is strong and women still are not accorded equal rights and opportunities with men.

THE RIGHTS OF FATHERS ARE SUPERIOR TO THOSE OF MOTHERS

The woman, even in the home—that place so often designated as her appropriate sphere—does not share equally in the husband's authority. The father is the sole natural guardian of minor chil-

dren in Alabama and Georgia.[1] Michigan, New York, and Massachusetts are among the States where the father alone is usually entitled to the services and earnings of a minor child.[2] In Iowa and Montana the right to recover damages for loss of a child's services and earnings in case of injury to the child belongs primarily to the father.[3]

The Louisiana Code provides that a child owes both parents obedience, honor, and respect, but in case of difference between the parents, the authority of the father prevails.[4] The following case shows how this Louisiana law works:

A minor, Elizabeth Beiller, married with the active assistance of her mother but without the consent of her father, a man of violent passions. The father disinherited the daughter and she contested his will. The Louisiana law does not permit a child to be disinherited except for cause, such as marrying while a minor "without the consent of his or her parents." In insisting upon the superiority of the father's authority over the mother's, the defense lawyer, quoting Grotius, said that if the commands of the father and mother clash, the father is to be obeyed "upon account of the excellence of his sex." Though Elizabeth Beiller had obtained her mother's consent, the court held that as she had disobeyed her father, who in case of disagreement between parents is the sole authority, she had, in effect, married without the consent of her parents and hence was lawfully deprived of her inheritance.[5]

WOMEN BEAR BRUNT OF BURDEN OF ILLEGITIMATE PARENTHOOD

Over the legitimate child the father is usually given paramount rights, but over the child born out of wedlock, who is regarded by society as an outcast, the law as a general rule, makes the mother the sole guardian, and contrary to the law of nature, decrees that the child has no father. Thus the male parent escapes practically all of the burdens incident to illegitimate parenthood. In Texas and Virginia, for instance, there are no laws requiring a father to contribute to the maintenance of an illegitimate child.[6] For more than 100 years it has been the law in Florida that $50 per year ($4.17 per month) is the father's maximum responsibility.[7] This $50 cannot be exacted for more than 10 years. In effect, this means that when the illegitimate child becomes 10 years of age, the full burden of its maintenance is thrust upon the mother, the

[1] Cases cited in vol. 7, Encyclopedic Digest of Alabama Reports, p. 914; Michie's Georgia Code of 1926, sec. 3032.

[2] *Freeman* v. *Shaw*, 173 Mich. 262 (1912); *Frey* v. *McLoughlin Bros., Inc.*, 187 App. Div. 824 (1919); Dembinski's Case, 231 Mass. 261 (1918).

[3] Iowa Code of 1924, sec. 10986; Revised Codes of Montana, 1921 ed., sec. 9075; *Martin* v. *Butte*, 34 Mont. 281 (1906).

[4] Revised Civil Code, arts. 215, 217.

[5] *Bosworth* v. *Beiller et al.*, 2 La. Annual Reports (Rob.), 293 (1847).

[6] *Beaver* v. *The State*, 96 Tex. Crim. Rep. 179 (1923); note the absence of bastardy provisions in the Virginia code.

[7] Florida Laws of 1828, p. 5; sec. 5878 Comp. Gen. Laws of Fla., compact ed., 1927

father's contribution being stopped, and the child labor law prohibiting work by so young a minor.[8] So, notwithstanding the change in the cost of living and Florida's great prosperity, the father's duty to his illegitimate but innocent infant has been the same for 100 years, the law remaining changeless in a changing world.

Regarding inheritance by those of illegitimate birth, the Common Law rule is that an illegitimate child is "nobody's child" and not an heir to anyone. The majority of the States have modified the Common Law and established the relation of parent and child between a mother and her illegitimate offspring so that it may inherit from her. On the other hand, the father, as a rule, still occupies the position of a stranger, an outsider, having no natural relation to the child, and under no circumstances short of an acknowledgment, adoption, or legitimation in the particular mode prescribed by statute will such a child be recognized as an heir of the father.[9] For example:

A California bachelor died, leaving $4,500 in a Nevada bank. He left no will and no kin except a young daughter of illegitimate birth. While he lived he provided for her "as a father should" and treated her as his child. When he died, she claimed the $4,500 but was turned away empty handed on account of her status as an illegitimate child under California law. Had she been of legitimate birth she would have inherited. Since the bachelor had no "lawful" kin, his property was finally given to the State of Nevada.[10] Thus, Nevada was enriched at the expense of a needy and unfortunate child.

MARRIED WOMEN'S DISABILITIES

In the eyes of the law an unmarried women is usually regarded as able to look out for herself. If she wants to run a millinery shop or a real estate business, for example, no official inquiry is conducted as to her capacity. But as though marriage on the part of a woman indicates lack of judgment, the law in some States as soon as a woman marries places her under a disability on the theory of protection to herself "from her imprudence or ignorance,"[11] and people are charged with knowledge of the "dangers of a married woman's paper."[12] Michigan and Nebraska are among the States where the power of a married woman to contract is less than that of other adult persons.[13] In Nevada, if a married woman desires to conduct a business, she has to go through a complicated court procedure and satisfy the judge as to her business capacity,[14]

[8] Florida General Laws, secs. 5941-5962.

[9] Schouler, Dom. Rel., 6th ed., sec. 712.

[10] In re Forney's Estate, 43 Nev. 227 (1919); letter dated March 14, 1930, from Harlan L. Heward, assistant district attorney, Reno, Nev.

[11] *Kohlman* v. *Cochrane*, 123 La. 219, 235 (1909).

[12] *First National Bank* v. *Rutter*, 104 Atl. 138 (1918).

[13] *Edwards* v. *McEnhill*, 51 Mich. 160 (1883); *Marsh* v. *Marsh*, 92 Nebr. 189 (1912).

[14] Nevada Revised Laws, secs. 2190-2194.

but the most ignorant man, married or single, may carry on a business and no investigation is conducted as to his qualifications.

Another example is the case of Mrs. Ferguson who was elected Governor of Texas. She petitioned the Court to remove her disabilities as a married woman so that her contracts and acts as Governor might not be called into question. The consent of her husband was required and obtained. The Court found that it would be to her advantage to be able to sue and contract freely, and then entered a decree reciting that the consent of her husband having been obtained, her disabilities were removed.[15]

When a married woman sues in the State of Washington, her husband, as a rule, must be joined with her.[16] The following cases show the hardship resulting from this rule:

Mrs. Leah Hynes, of King County, sued the Colman Dock Co. for damages for personal injuries suffered by herself through the alleged negligence of the company. Being "unable to procure the consent of her husband to join with her as one of the plaintiffs," judgment for that reason was given against her.[17]

In another case, Mrs. Bertha Wampler, of Tacoma, was injured in an automobile accident so badly that her foot had to be amputated. Thereafter her husband deserted her and their three children but reappeared and for $350 settled her claim. He pocketed the entire $350 using part of it to sue for divorce. When Mrs. Wampler brought her damage suit, the trial court held that there had been a complete settlement. However, the Supreme Court held otherwise, and allowed Mrs. Wampler to sue on the ground that by deserting and by repudiating his duties, the husband had released his authority, thus enabling her to sue. While Mrs. Wampler finally prevailed, it was only because of her husband's desertion, and the decision in her case affords no relief to women who are injured and living with their husbands. As to them, the decision of the husband to sue or not to sue is supreme and final.[18] He may sue alone for injury to the wife as she is not a necessary party to the suit.[19] Moreover, the husband, not the wife, is entitled to choose the lawyer to prosecute any action for damages for her injury.[20]

THE DOUBLE STANDARD OF MORALS

The double standard of morals is recognized in practically all States. In Maryland a man may divorce his wife for being unchaste before marriage, but a divorce is not available to a woman on that ground.[21] In Minnesota a husband whose wife is guilty of infidelity may collect damages from her paramour. On the other

[15] Decree in cause No. 15825, Dist. Ct., Bell County, Tex. (1924).
[16] Pierce's Code, sec. 8257.
[17] *Hynes* v. *Colman Dock Co.*, 108 Wash. 642 (1919).
[18] *Wampler* v. *Beinert*, 125 Wash. 494 (1923).
[19] *Hawkins* v. *Street Cable Ry. Co.*, 3 Wash. 592 (1892).
[20] *Hammond* v. *Jackson*, 89 Wash. 510 (1916).
[21] Bagby's Ann. Code of Md., 1924 ed., art. 16, sec. 38.

hand, no wife whose husband is guilty of infidelity may claim compensation from his paramour.[22]

Under the laws of Tennessee, a woman divorced for adultery and living with the adulterer, is rendered incapable of disposing of any of her lands, but no such incapacity is imposed upon a man guilty of similar conduct.[23]

In some States prostitution is regarded solely as an act of the woman, and it is said that only a woman can commit prostitution. Thus women are often punished while the men who employ them go free.[24] For instance: In New York City in 1921 a man was found in a room with two young women both nude—and he admitted having given each girl $25. Both of the girls as well as the woman in whose house the transaction occurred were convicted, but the city magistrate held that the man had committed no offense under the law.[25]

California has held that a city ordinance penalizing "any person" for soliciting for prostitution has application to women but not to men, the theory of the Court being that a woman only can be guilty of that act.[26]

THE COMMUNITY PROPERTY SYSTEM

Eight States—Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington—have a "community property law," under which the earnings and property acquired after marriage through the joint or individual efforts of husband and wife are usually pooled.[27] So far as earning and saving money is concerned, husband and wife under the "community" system are partners but when it comes to spending the money, he is the head and master of the community.[28] The husband's power to manage, control, and dispose of community personal property is almost as absolute as his right over his separate property. He may exercise practically all of the powers of exclusive ownership and the wife usually has no remedy except by divorce or his death. She may witness the passing away, through mismanagement or debauchery, of a family competence in which she has a kind of half interest—a right without a remedy.

For long California even maintained that the wife has no vested interest in community property but only a "mere expectancy," and this, even though her earning belong to the community. But it was too much for California when the Federal

[22] *Kroessin* v. *Keeler*, 60 Minn. 372 (1895).
[23] Thompson's Shannon's Code of Tennessee, 1917 ed., sec. 4227.
[24] Letter from the U. S. Interdepartmental Social Hygiene Board, dated April 3, 1922.
[25] *People* v. *Breitung*, city magistrates' court, city of New York, borough of Manhattan, 4th district (1921).
[26] In re Carey, 57 Cal. App. 297 (1922).
[27] McKay on Community Property, ch. 1.
[28] Arizona Revised Code of 1928, sec. 2172; California Civil Code, secs. 172-172a; Idaho Compiled Statutes, 1919 ed., sec. 4636; Revised Civil Code of Louisiana, 1920 ed., art. 2404 as amended act No. 96, laws 1926; Revised Laws of Nevada 1919, sec. 2160; New Mexico Laws 1927, ch. 84; Complete Texas Statutes 1928, art. 4619; Pierce's Code of Washington, 1921 ed., secs. 1433-1434.

Government regarded the community property as belonging solely to the husband and accordingly taxed the community income not one-half to each the husband and wife but all to the husband alone, thus necessitating a much higher tax.[29] So in 1927 California decreed that the interest of husband and wife "are present, existing and equal interests," and as a result the Federal Government is allowing the husband and wife each to report one-half of the income from community property acquired since the passage of the 1927 law. But as the husband's control over the community property has been preserved to a greater or less extent in all community property States, the Federal Government now seeks a determination in Court whereby to tax to the husband in each of these States the entire community property income on the ground that it is under his sole management and control.[30]

In three of the community property States—Louisiana, Nevada, and Texas—the general rule is that the husband may even deed away community real estate without the wife's consent.[31] For instance: United States Senator George S. Nixon of Nevada and his wife owned community property, including the "Nixon Opera House" at Winnemucca. He gave the opera house to the people of that town, but his wife did not join in the deed and later sued to have it set aside. The Court upheld the husband's authority to convey by his sole deed this community property belonging to husband and wife.[32]

Although California passed a law in 1917 requiring the signature of the wife to a sale of community real estate,[33] the Courts hold that the 1917 enactment does not prevent a husband from now conveying without his wife's consent such real estate as was acquired before 1917, or after 1917 if paid for with community money previously earned.

In one California case the husband and wife purchased certain land in Monterey County about a month after the 1917 law became effective. Later a house was built upon the land and the couple occupied it as a home. The land was paid for with community funds, that is money earned by the husband or wife, or both, prior to 1917. Unknown to the wife, the husband sold the property to a person who knew the house was being occupied as the family home, the consideration being the purchaser's promissory note maturing in one year. The wife instituted proceedings to have the deed declared void but the Court in 1923 upheld the husband's sole conveyance of the home.[34]

[29] *U. S.* v. *Robbins*, 269 U. S. 315 (1926).
[30] California Statutes 1927, p. 484; Internal Revenue Bulletin, vol. 8, No. 9, p. 2, Mar. 4, 1929.
[31] Revised Civil Code of Louisiana, 1920 ed., art. 2404, as amended, act No. 96, laws 1926; Louisiana Laws 1921, extra session act No. 35; Revised Laws of Nevada, 1919, sec. 2160; Complete Texas Statutes, 1928, art. 4619.
[32] *Nixon* v. *Brown*, 46 Nev. 439 (1923).
[33] California Statutes, 1917, p. 829.
[34] *Roberts* v. *Wehmeyer*, 191 Calif. 601 (1923).

In New Mexico when the husband dies he may leave his one-half of the community property to whomever he pleases, but on the other hand, unless a wife outlives her husband, it is a general rule that she cannot leave a dollar of her half to anyone, not even to her own children.[35] The same unjust rule prevails in Nevada, and in California as to property acquired before 1923 or after 1923 if paid for with community money previously earned.[36]

THE HUSBAND OWNS HIS WIFE'S SERVICES

In 40 States the services of the wife to a greater or less extent belong to her husband. Therefore, the first right of property which a free person enjoys, that is, the full ownership of his or her labor, is still denied the married woman.[37]

Georgia and Vermont uphold the right of a husband to collect his wife's wages.[38] Although the majority of the States permit a married woman to collect wages for work performed outside the home, the fact is that the household work and other home service devolve upon her and this labor or service is not hers, but is legally the property of her husband. Consequently when prosperity comes her labor does not entitle her to share as a partner in the gains nor is she entitled to any part of the family income besides her necessary support. The following recent case from Montana indicates very clearly that marriage is not a partnership between equals, where each partner owns his own labor, nor a partnership where the partners jointly own the property acquired by their mutual efforts.

Herman Bischoff opened a place called the Chocolate Shop in Butte. The case does not disclose how the opening was financed. Mr. Bischoff did the baking. His wife, Elizabeth, looked after the selling end of the business. After 1 year the business was sold for $670. With the $670 a similar business called the Waldorf Market was opened. Again the husband did the baking and the wife the selling. Later this business was sold for $3,400. Then a business known as Bischoff's Bakery was purchased at a cost of $18,000. This business was paid for with the $3,400 received from the sale of the Waldorf Market, with $14,000 borrowed from the Yegen Bank on a promissory note signed by both Mr. and Mrs. Bischoff, and with $600 received by Mr. Bischoff on an insurance policy. The wife always "managed the store and attended to the sales of the merchandise" and "put in long hours" over a period of years. Neither husband nor wife withdrew anything from the business as wages but each had access to the cash register and took money

[35] New Mexico Statutes, codification of 1915, secs. 1840-1841.
[36] Nevada Revised Laws, 1912 ed., secs. 2164-2165; *McKay* v. *Lauriston*, 269 Pacific 519 (1928).
[37] Schouler's Dom. Rel., 6th Ed., Secs. 47, 543, 678.
[38] *Ga. R. Co.* v. *Tice* (124 Ga. 549 (1905)); *Monahan* v. *Monahan* (77 Vt. 133 (1904)).

for personal use whenever it was wanted and no account of it was kept. Differences arose between the husband and wife. Each petitioned for a divorce for cruelty. The divorce was granted to the husband but the Supreme Court pointed out that the testimony "reveals beyond question that each of these parties had much to endure and did endure much at the hands of the other." Mrs. Bischoff asked for an accounting on the theory of a partnership but the court denied that she was her husband's partner and nothing was allowed her. She could not recover anything even as alimony since the Montana law allows no alimony in cases where the divorce is given to the husband. Thus after years and years of toil in which the wife labored side by side with her husband, sharing the work equally with him, she was turned away without a penny while he kept all of the profits of their joint industry. The Court said:

> The circumstances in this case have impelled us to make a serious effort to discover a legal method by which the plaintiff (wife) could be given some financial relief, but we have found no way in which it can be done * * *.[39]

From an economic point of view, one of the effects of marriage is that the wife practically leases herself out for her board and keep.

HUSBAND COLLECTS DAMAGES FOR LOSS OF WIFE'S SERVICES

In many States "the right of a husband to receive the services of his wife is considered a valuable property right, and for its loss in consequence of the negligent act of a third person the husband is entitled to pecuniary compensation."[40] Among the States where suits are maintainable by the husband for damages for the loss of the wife's services due to injuries inflicted upon her, are Colorado, Delaware, Illinois, Michigan, Mississippi, Missouri, Nebraska, New York, Rhode Island, and Tennessee.[41] People who are inclined to consider a wife's services as of no material value would be surprised at the great value the jury finds such services to be worth when the husband is suing for their loss.

On the other hand, the wife has no such property right in the labor of her husband, and when he is injured, the injury not resulting in death, the general rule is that she can claim nothing for loss of his services or support.[42]

WOMEN DENIED POLITICAL EQUALITY WITH MEN

Despite the adoption of the woman-suffrage amendment to the

[39] *Bischoff* v. *Bischoff* (70 Mont. 503 (1924)).
[40] *Larisa* v. *Tiffany* (42 R. I. 148 (1919)).
[41] *Colo. Mort. & Inv. Co.* v. *Giacomini* (55 Colo. 538 (1913)); *Townsend* v. *Wilmington Ry. Co.* (78 Atlantic 635 (1907)); *Chicago & Milwaukee Electric Co.* v. *Krempel* (116 Ill. App. 253 (1904)); *Burns* v. *Township of Van Buren* (218 Mich. 44 (1922)); *Brahan* v. *Meridian L. Ry. Co.* (121 Miss. 269 (1919)); *Womack* v. *City of St. Joseph* (201 Mo. 467 (1906)); *Riley* v. *Lidtke* (49 Neb. 139 (1896)); *Blaschinska* v. *Howard Mission* (130 N. Y. 497 (1892)); *Larisa* v. *Tiffany* (42 R. I. 148 (1919)); *City of Chattanooga* v. *Carter* (132 Tenn. 609 (1915)).
[42] Schouler's Dom. Relations, 6th ed., sec. 868.

National Constitution, the political rights of women are not equal to those of men. For example:

Women are sometimes excluded from high public offices. The Oklahoma constitution bars women from such posts as Governor, Lieutenant Governor, Secretary of State, State Auditor, Attorney General, and State Treasurer.[43] Women usually outnumber men in the teaching profession, yet no woman may hold the office of superintendent of public instruction in Oklahoma.

In Wisconsin no woman may serve as clerk to a legislative committee or in any other capacity as an employee of the State legislature.[44]

WOMEN DISCRIMINATED AGAINST WITH REGARD TO EMPLOYMENT

A person is sometimes appointed by the court to take charge of and distribute the estate of a decedent, compensation being allowable to such person. In a number of States—as, for example, Idaho, Illinois, North Dakota, South Dakota, and Utah—a man must be preferred to a woman for appointment when both are of the same degree of kin to the decedent.[45]

WOMEN EXCLUDED FROM JURY SERVICE

Jury service is an important part of the administration of justice, yet women are disqualified as jurors in more than 20 States. These are Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Maryland, Massachusetts, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wyoming.[46]

The United States Supreme Court has held that a State cannot bar colored men from jury service because the disbarment would brand them as an inferior class of citizens and deprive them of the equal protection of the law which is guaranteed by the National Constitution, not merely to Negroes, but to persons, and women are persons. Nevertheless, the Court in this case, by a peculiar process of masculine reasoning, said that certain restrictions might legally be put upon jury service, such as limiting it to males.[47]

[43] Oklahoma Const., art. 6, sec. 3.
[44] Wisconsin Laws of 1917, ch. 634, sec. 14; Ops. Wis. Atty. Gen., vol. 12, p. 13.
[45] Idaho Comp. Stats., 1919 ed., sec. 7487-8; Smith-Hurd, Ill. Rev. Stats., 1929 ed., ch. 3, sec. 18; N. Dak. Comp. Laws 1913, sec. 8657, as amended, laws 1927, ch. 221; S. Dak. Rev. Code, 1919, sec. 3250; Utah Comp. Laws, 1917, sec. 7581.
[46] Alabama Code, 1923 ed., secs. 8600-8603; Ariz. Rev. Stats., 1913 ed., secs. 3515, 3516; Colo. Const., art. 2, sec. 23; Fla. Comp. Gen'l Laws, 1927 ed., sec. 4443; Ga. Const., art. 6, sec. 18, par. 2; *State* v. *Kelley* (39 Idaho 668 (1924)); Md. Bagby's Ann. Code, 1924 ed., art. 51, sec. 6; In re Opinion of the Justices, 237 Mass. 591 (1921); Miss Hemmingway's Ann. Code, 1927 ed., sec. 2330; Mo. Const., art. 2, sec. 28; Mont. Rev. Codes, 1921 ed., sec. 1917, ch. 93, sec. 1; N. C. Const., art. 1, sec. 13; Okla. Const., art. 2, secs. 18-19; *State* v. 8883; Nebr. Comp. Stats., 1922 ed., sec. 9071; N. H. Laws 1921, ch. 144; N. M. Laws *Mittle* (120 S. C. 526 (1922)); S. Dak. Rev. Code, 1919 ed., sec. 5283; Tenn. Thompson's Shannon's Code, 1918 ed., sec. 5813; *Harper* v. *State* (90 Tex. Crim. 252 (1921)); Vt. Gen'l Laws, 1917 ed., ch. 89, sec. 1761; Va. Code, secs. 5984, 4927; W. Va. Const., art. 3, sec. 14; Wyo. Comp. Stats., 1920 ed., sec. 1204.
[47] *Strauder* v. *W. Va.* (100 U. S. 303 (1879)).

SPECIAL RESTRICTIONS PREVAIL FOR WOMEN WORKERS

Night work is open to men but closed to women in certain employments in 16 States—California, Connecticut, Delaware, Indiana, Kansas, Massachusetts, Nebraska, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Washington, and Wisconsin.[48] Perhaps the strictest regulations in the United States prevail in Wisconsin. For 15 consecutive hours out of every 24 women are barred from work as flagmen, motormen, and conductors in Milwaukee, the prohibited hours being from 5 p. m. to 8 a. m. In other Wisconsin towns the prohibited hours of this work are from 5 p. m. to 6 a. m. Two States, Massachusetts and Wisconsin, prohibit night work between 6 p. m. and 6 a. m., the prohibition in Massachusetts applying to textile mills, and in Wisconsin to factories and laundries.

That such laws handicap women is shown in the following New York case: When the night-work law went into effect, Anna Schmidt, whose husband had been drafted into the Army, was supporting herself and her two children by working as a waitress in a Buffalo restaurant from 6 o'clock in the evening until midnight. She desired these hours because she could then be best spared from the care of her young children and could realize the most from the liberal tips of patrons after theater hours. Her employer, Joseph Radice, was convicted and fined $20 for the offense of allowing her to work until midnight. The case was taken to the Supreme Court of the United States, where the right of New York to bar women from earning their livelihood by night work was upheld.[49]

Women workers are displaced by men as a result of minimum-wage laws setting a standard below which their wages may not fall, but not regulating men's wages.

In a District of Columbia case, where a minimum-wage law was held unconstitutional, the Court frankly said of a woman elevator operator:

> The hotel manager was not compelled to employ her at a fixed wage, and her position went to a man, who was willing to perform the service at a lower wage than that fixed by the Board. * * *

The law to promote the good morals and general welfare of the community cast her adrift.[50]

[48] Cal. Industrial Welfare Com. orders Nos. 7a, 8a, 11a, and 15a, of 1923; Conn. Acts of 1925, chs. 158 and 208; Acts of 1927, ch. 144; Del. Laws 1917, ch. 230; Indiana Burns' Ann. Stats., Rev. of 1926, sec. 9411; Kansas Public Service Com. orders Nos. 1, 2, and 3 of 1927; Mass. G. L. 1921, ch. 149, sec. 59; Nebr. Comp. Stats. of 1922, sec. 7659; N. J. Laws 1923, ch. 144; N. Y. Labor Law, secs. 172, 181-185; N. Dak. Minimum Wage Dept. orders Nos. 1, 3, and 4 of 1922; Ohio Throckmorton's Ann. Code, 1929 ed., sec. 1008-1; Oregon Industrial Welfare Com. orders Nos. 37, 38, 41, and 45 of 1919; Pennsylvania Laws of 1913, p. 1024; S. C. Code of Laws of 1922, vol. 2, ch. 7, sec. 35, p. 137; Wash. Industrial Welfare Committee order No. 23 of 1921; Wisc. Industrial Commission order No. 1 of 1917 and No. 4 of 1918; Principles of Labor Legislation by Commons and Andrews, 1927 ed., p. 293.

[49] *Radice* v. *N. Y.*, 264 U. S. 292 (1924). The briefs give the detailed facts of the case.

[50] *Lyons* v. *Adkins*, 284 Fed. 613 (1922), affirmed, 261 U. S. 525 (1923).

Massachusetts has a minimum-wage law for women which is recommendatory, not compulsory, publicity being prescribed for a failure to pay the wage set.[51] This type of minimum-wage law also places women at a disadvantage. For instance, Harvard University recently discharged 20 scrubwomen and gave their jobs to men rather than comply with a ruling of the Massachusetts Wage Board and raise the women's wages from 35 to 37 cents an hour. One of the women had been employed by Harvard University for 33 years, and one for 13 years. President Lowell, in reply to an inquiry about one of the women, wrote:

> I have inquired into the discharge of Mrs. Emma Trafton from the Widener Library, and I find that the Minimum Wage Board has been complaining of our employing women for these purposes at less than 37 cents an hour, and hence the university has felt constrained to replace them with men.[52]

Another method by which the industrial opportunities of women have been restricted is the limiting of the occupation which women may enter. For instance, a law passed in Ohio in 1919 and still in force bars women from 16 or more occupations.[53]

TOWARD EQUAL RIGHTS

The program of the National Woman's Party is to obtain for women equal rights with men in the law, in custom, and in every field of human endeavor.

[51] Mass. Gen. Laws, 1921 ed., ch. 151.
[52] Washington (D.C.) Daily News, Tuesday, Jan. 28, 1930.
[53] Ohio Throckmorton's Ann. Code, 1929 ed., sec. 1008-1.

NORTH JERSEY COMMITTEE ON DISCRIMINATION

September 19, 1942

Honorable Lloyd L. Schroeder, Chairman
Joint Legislative Committee
State Capitol, Trenton, New Jersey

Dear Sir:

We are enclosing herewith a statement which covers our position in connection with the proposed revision of the New Jersey Constitution.

We trust that you will have your committee accept the statement and file it on our behalf.

The North Jersey Committee on Discrimination is a committee to eliminate discrimination in employment and civic relationships, because of race, color, creed and national origin. Confirmation from individual organization representatives will be forthcoming.

Respectfully,

E. J. ADAMS,

Acting Secretary.

The North Jersey Committee on Discrimination hereby respectfully urges that the legislature, in submitting a revised Constitution to the people of the State of New Jersey, will include the following changes:

Article 1, Paragraph 4, should be changed to include therein, "that no religious test should be required as a qualification for any public or private employment."

The following Article should be added to the Bill of Rights:

No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed, or religion be subject to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency of the state or by any subdivision thereof, or by any other persons, firms, corporations, or institutions.

Article 6, Section 1, Paragraph 2 should be amended by adding after the word, "fitness" the following:
"regardless of race, color, creed, or religion."

We believe that in a world which at the present time is fighting for democracy and equality for all people, it is the bounden duty of the legislature and the voters of the State of New Jersey to revise the charter so as to safeguard the principles of democracy and equality. The interests of the nation require that, while we are fighting to eliminate intolerance abroad, adequate legislation be enacted to preserve at home the principles for which we are fighting. We feel that the Constitution of the State of New Jersey should protect all persons against discrimination of any kind, and that the only way to eliminate discrimination is to have a provision in the Constitution which will implement and protect the rights guaranteed under the Bill of Rights.

We respectfully urge that you include this in the minutes of your hearings and that when the final draft is prepared the changes which we have requested be included.

E. J. ADAMS, *Secretary*,
55 Spruce Street,
Newark, N. J.

To: The Legislative Committee conducting hearings on constitutional revision.
Re: Article I (Rights and Privileges) of the Proposed Constitution.
From: William L. Becker, State Organizer of the Socialist Party of New Jersey.

July 12, 1942

The "Bill of Rights" section of the 1844 Constitution is by far its best section. The addition suggested by the Commission on Revision is a valuable improvement and should encourage the development of a *responsible* citizenry. We present as the most important modification necessary at this time an additional paragraph (number 22), to read:

> "Those rights and privileges shall rest in all people, regardless of race, creed or color."

The importance of this guarantee today, when America's thirteen million negroes are rightfully questioning the governmental units which have denied them ordinary democratic rights, cannot be over-emphasized. New Jersey has many sources of discrimination and prejudice to abolish. A positive statement in our basic "Bill of Rights" will help.

Actually, of course, it is not merely what we write in Article I that will bring democracy to New Jersey. We must follow up this statement of ideals with a machinery and a spirit that will make these ideals a living reality. New Jersey will be judged chiefly by how we practice democracy rather than by what we say about it.

One further point should be made. Most people in New Jersey never have occasion to read the Constitution even once. It is not generally part of high school training. Somewhere, through this present discussion of revision plans should be worked out for the education of all our people to what their "Rights and Privileges" are under our Constitution. It would be very important, as well as interesting, to have Article I taught in the high schools of Hudson County, especially if progressive educational methods were employed. It would be real education to see Jersey City's students distributing leaflets which they had written, conducting student courts, etc., all on the basis of Article I.

PUBLIC HEARING

July 8, 1942

Afternoon Session

on

Proposed Revision of the New Jersey Constitution

Article II. "State Government"

The Joint Legislative Committee re-convened in the Assembly Chamber at Trenton on Wednesday, July 8, 1942, at two o'clock P. M., pursuant to announcement previously made.

The Chairman opened the Hearing and the Hearing proceeded as follows:

MR. SCHROEDER: Are there any others in the Assembly Chamber who desire to talk on the modification of Article I? If not, we will proceed to Article II, and will now hear from the proponents.

MR. PAUL: There are only two present this afternoon, Mr. Chairman, and I will call on Mr. Robert McManus, Editor of the New Jersey Spokesman.

MR. MCMANUS: I would like to call attention first of all to the fact that no citizen of New Jersey has so far appeared before this committee to take the position that the Constitution of 1844 should continue to exist without change. Dr. George Gallup, conductor of the famous Gallup Poll, has frequently asserted recently that the people are thinking well ahead of their representatives. As a resident of a rural county, as well as a member of the State Grange and the New Jersey Farm Bureau Federation, I believe this to be unquestionably true in regard to the statement recently issued by Messrs. David H. Agans and H. Earl Probst, the Trenton representatives of the Grange and the Farm Bureau, concerning the proposed Constitution, and specifically Article III.

Without, to my knowledge, polling the membership of either organization or, to my knowledge, taking any steps whatever to ascertain the views of members, these representatives made public what they called their "understanding" of the views of organized agriculturalists and "those of rural dwellers generally." It was their "understanding", they said, that the rural dwellers of the State would be opposed to this proposed Constitution, among other reasons, because of the provision of Paragraph 2 of Article II, which states:

"All powers of government which are not by this Con-

stitution vested in the Executive or Judicial branches, nor in conflict with rights reserved by the people, nor specifically prescribed to the Legislative branch, shall be embraced within the legislative power and may be exercised in such manner as may be provided by law."

"This is the high road to totalitarianism," assert Messrs. Agans and Probst. In our opinion, this statement is the high road to absurdity and we wonder whether those who made it know what totalitarianism is. Totalitarianism destroys freedom of religion, press, speech and assembly; it destroys trial by jury and establishes the absolute ascendancy of the State. Every one of these rights is affirmed in the statement of Rights and Privileges laid down in Article I of the proposed new Constitution, and the Legislature is absolutely powerless to touch them. In addition, there are 20 other restrictions placed on the Legislature in Article III of this new Constitution, guaranteeing the rights of labor to organize and bargain collectively and limiting the privileges now open to Legislators under the Constitution of 1844, to enrich themselves at the people's expense.

As to the statement that Messrs. Agans and Probst represent the views of rural dwellers generally on the matter before this committee, we offer the following editorial from the Hunterdon County Democrat. The Hunterdon County Democrat is recognized as the leading rural newspaper of New Jersey, and a year ago was selected as the leading rural weekly of the United States. I would like to read from that Editorial:
"Thursday, June 18, 1942. "Do Farmers Oppose a New Constitution?"

"The Democrat is inclined to the notion that the spokesmen for the State Grange and the Farm Bureau did a bad turn for organized agriculture last week when they sent a letter to the members of the Legislature condemning the report of the Commission on Revision of the State Constitution . . .

The Grange and Farm Bureau spokesmen apparently have opened their ears wide to those few legalistic technicians who contend that the people of New Jersey, numbering about 4,000,000, must always be bound by the judgment of the people 100 years ago, who constituted a tenth of that number and made a Constitution which fitted their needs but which has been outgrown in the meantime and is extremely expensive and hard to amend.

If a Constitutional convention is held in accordance with the present Constitution, where will the rural counties come out? They will be outnumbered, outvoted and in the

end will probably have their worst fears realized, for any convention in which the delegates are represented on the basis of population will no doubt vote to cut out the legislative representation of the rural counties. The rural people of New Jersey will do better to accept the revision that is offered them now than to take their chances on a constitutional convention. Judging from their letter, it would appear that the farm leaders have not carefully weighed these matters.

The statement that the delegation to the Legislature of all authority not specifically delegated by the Constitution to the Executive and Judicial Departments is the highroad to totalitarianism' indicates that the draftsmen of the letter were pressed for a bugaboo with which to scare off agricultural support for revision. If the delegation of powers not otherwise delegated to the elected representatives of the people constitutes totalitarianism, then America ought to withdraw from the World War at once, because we have had a totalitarian government since 1789 when the Federal Constitution was adopted. This statement is apparently designed to confuse the public, because the lawmakers are too well informed to find this kind of argument convincing.

The point about adopting a new Constitution while the boys are away at war is another red-herring. It is the same as has been put forward by Mayor Hague. The State of New Jersey will make a mistake if it does not use the present opportunity to get its house in order, in preparation for the reconstruction period which will follow the war. If the agricultural elements would join forces with all others that are interested in good government and get the people out to vote on the revised Constitution, the matter can be decided by a representative vote—in fact by the largest vote ever cast in New Jersey history.

Agriculture will make a grave mistake if it adopts a reactionary course with regard to the new Constitution. It may be able by use of legislative trading to keep its appropriations and get by a few more years. Eventually the urban elements will rise up and demand a constitutional convention and go all-out for representation 'on the basis of population instead of on the basis of acres.' Agriculture will then find itself in a place where it will wish its leadership in 1942 had been wiser, more far-sighted and had accepted the revision that was proposed or had taken other than an obstructionist attitude."

We would like to offer our approval of Article II.

MR. SCHROEDER: We will now hear from Mr. Russell Watson, representing the New Jersey State Chamber of Commerce.

MR. WATSON: Mr. Chairman, Members of the Committee:

The State Chamber of Commerce favors Article II as it is written, and may we make this brief comment?

Paragraph 1 contains no change.

Paragraph 2 in effect writes in a residuary clause in favor of the Legislature. Under the present Constitution the powers of government are divided among the executive, judicial and legislative branches.

Article II contains a catch-all clause which provides that all powers of government which are not by this Constitution vested in the Executive or Judicial branches, nor in conflict with rights reserved by the people, nor specifically prescribed to the legislative branch, shall be embraced within the legislative power and may be exercised in such manner as may be provided by law. In other words, any ungranted power of government is reposed in the legislative branch. I mention that because it is at variance with the view expressed here this morning, and which will be discussed more exhaustively when the committee arrives at the consideration of Article IV. The view expressed here this morning that the tone or tenor of this whole document tends to executive dominance and legislative insignificance. Here is an example to the contrary. The residuary grant of power is with the Legislature as it should be.

The third paragraph is arguable. It establishes rules for the conduct of administrative agencies and bodies. First, that "the exercise of any power or discharge of any responsibilities of a legislative or executive character by administrative agencies shall be limited to the effectuation of declared general standards or principles set forth by law"—That is first. Second, "to the extent that private rights are affected or privileges conferred or withheld, shall conform to established and published practices and procedures which, so far as practicable, shall be of uniform character." Now, as we understand it and as we advocate it, this paragraph is a declaration of the law established by the decisions of federal courts and of the New Jersey courts relating to the delegation of legislative power. Now, no one knows better than those of us who are lawyers how difficult it is to state a rule of general law in six words, and it may be that this paragraph can be improved; it may be that it should be amended in this respect or that, but if it is what it purports to be, and we understand it to be a setting of standards for the conduct of its business by administrative bodies and agencies so that the Legislature may delegate to such bodies within the limits of declared general standards and principles set forth in the law of delegation, and a requirement that private rights affected thereby shall conform to established and published practices and procedures, then we favor it.

In that connection, may I add this: When I said this morning that the State Chamber of Commerce favors this document, I did not mean to say that if we had the writing of it we would have crossed every "t" and dotted every "i" just as they are crossed and dotted here. Those of us who favor the cause of constitutional revision must make sure that by insistence upon the dotting of "i's" and the crossing of "t's," we do not divide our opinions and diminish the effectiveness of our advocacy of the cause. So we may say that if this, what seems to us to be a clear and lucid declaration of existing law, can be modified or improved, then we favor the modification or the improvement. We favor the principle of this.

Now, as to the underlying merit of it, this paragraph may be opposed on the ground that administrative agencies or administrative bodies are running wild, particularly in the field of the administration of federal law, and that may be. Doubtless, all of us are aware of instances in which we agree with that, but it seems to us that the day of the administrative body is here and that the clock cannot be set back. Society has grown so complex; business has become so complicated—the business of government itself has become so complicated that it is practically impossible for the Legislature to supervise all of the affairs of society and business, and necessarily the Legislature must delegate to legislative bodies and agencies the administration of the laws which it makes. Our own Public Utility Commission is an example of it. The Legislature could not by itself do the work which is delegated to the Public Utility Commission, so we say that so long as the Legislature sets standards within which the administrative body must exercise its powers; so long as it prescribes procedures which guarantee to all persons affected by the action of the administrative body equal treatment; then we say that we are in accord. Therefore, we favor paragraph 3 of Article II.

MR. SCHROEDER: The next speaker is Mr. John Bebout, Professor of Government of the University of Newark.

MR. BEBOUT: Mr. Chairman, Members of the Committee: I am speaking in favor of Article II, particularly of Paragraph 3 of Article II, that Mr. Watson has just been discussing. I believe it is significant and a valuable addition to the Constitution. The fact that administrative agencies have developed since the last Constitution was adopted and that in a sense they have run wild, as Mr. Watson has said, has made it appropriate in a Constitution being drafted today to do something to prescribe an orderly procedure, particularly for the declaration of general rules under which the people will be expected to operate, promulgated by such agency, and I regard this paragraph 3 of Article II, together with para-

graph 9 of Section 3 of Article IV, which really supplements it, providing as it does that no rule or regulation made by any executive or administrative agency of the State government except such as relates to the organization or internal management of an executive or administrative agency of the State government shall be effective until it is filed with the Secretary of State, and then provides for publication of such rules, as nothing but an addition to the Bill of Rights, which might be phrased in somewhat this fashion: that the people have a right to be informed of the laws under which they are expected to operate, even though those laws be in the form of administrative regulations rather than in the form of statutes. There is certainly no objection that can be made to this because it is not backward looking; it doesn't confirm any evil practice, and it is designed to prevent abuses by these lower administrative agencies.

MR. SCHROEDER: Are there any other speakers who are proponents of Article II?

We will now hear Mr. R. Robinson Chance, representing the Manufacturers Association of New Jersey.

MR. CHANCE: Mr. Chairman and Members of the Committee: It has been most interesting indeed for me to listen to some of the speakers who have said that paragraph 3 of Article II is a splendid thing and should be incorporated in the Constitution for the reason that it is the same as the law is now. Well, if it were true that that is the same as the law is now, then there would be no necessity for putting it in a Constitution. I propose to show a little later that it is not the same as the law is now but gives freer rein to departmental despotism. That thing which tries to subordinate the Legislature, evade the courts, and rule according to its own caprice is something which we do not want in New Jersey any more than we have to have it. Just in passing, it is interesting to note that in the old Constitution, Article II about suffrage, was the thing that came next. Our Commission has put Article II over to Article VIII. I don't know whether they thought Article VIII was the place where suffrage belonged and that they ought to have departmental regulations running things or not, but anyhow II as we have the Article now is a substitute for Article III of the Constitution.

We maintain that the present provision is sufficient. It says the powers of the government shall be divided into three distinct departments—the Legislative, the Executive and the Judicial; and no person or persons belonging to, or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except as herein expressly provided.

The new clause says:

> "The functions, powers and responsibilities of the government of this State shall be divided among three distinct branches—the Legislative, Executive and Judicial. No person belonging to or constituting one of these branches shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution."

Now, the changes that are to be observed are that in the first sentence they have added, along with powers, the words "functions and responsibilities," and instead of referring to distinct departments they have referred to branches. The term "branches," I suppose, seeming to imply centralization rather than separate departments, and the exercising by the so-called executive department of functions which are not executive. Now, about these new words "functions and responsibilities," it seems to me they add nothing in substance, and adding nothing in substance there is no reason to submit them to referendum. There are no functions and responsibilities except as incident to powers. If a public officer has no power, he is not supposed to function under the power of someone else and he has no responsibility in regard to it; if he has the power, both the function and the responsibility as well as the powers are his. So I say no superiority is seen in the first sentence of the proposal over that in the Constitution. This first sentence which adds these two other words to it means the same thing, except that judicial interpretation has defined the present clause. If the new one is supposed to mean the same, there is no reason to throw doubt over the applicability of the present judicial interpretations by putting in new words.

Now, the second and third paragraphs of this Article are something entirely new. You cannot find anything at all like them in the present Constitution. It just has nothing of the sort. As a preface to their consideration, I want to bring to your consideration something I read in this report as to the theory of government of the Commission. The Commission says:

> "Our present theory of American State Government, that state constitutions . . . do not grant but merely limit sovereign powers is given formal expression by the new clause."

Now, whose theory this is they do not disclose. They say, "Our present theory." Certainly I say it is not the theory of the Constitution, as I shall show you in a moment. The theory of the Constitution is that the people are sovereign and that the government has only such powers as you find granted either directly or by implication from the Constitution. It does not mean that the Legislature or the government has all powers except those that are limited away from it. You have to go from the other end and get them granted by the Constitution from the sovereign, else there

are no powers and indeed no departments set up, if you do not have a constitution setting them up. So we deny that the Legislature has all powers except those which are taken away. It only has those which have been given it. It is not correct to say that the State has all powers except what is limited away or left over for the individual citizen. I have read this in several places. One place I read it was in a book entitled "America Goes Socialistic." One thing I want to ask: If the State Constitution does not give power to the State Government, where does the State Government get it from? The Divine Right of Kings' doctrine was repudiated in this country a long time ago, and we have not agreed with Hitler's idea that the State was supreme and that all power is inherent in the State. We know of no way in which State Government gets any sovereign power except as it comes from the sovereign people by a grant in their Constitution. So we approach this thing from a different theory than that manifested in the quotation I have given you.

I call your attention to the fact that in Article I, paragraph 20, of the Proposal, we read: "this enumeration of rights and privileges shall not be construed to impair or deny others retained by the people." It is true that the Commission did not delete this provision from the Constitution but it put in this contradictory thing that says "all powers of the government" except as you find them wiped out and placed somewhere else.

There are other provisions, such as:

> "All men are by nature free and independent and have certain natural and unalienable rights among which are those of enjoying and defending life and liberty, acquiring and possessing life and property and of pursuing and obtaining safety and happiness."

Now, if they are inalienable, how did they get into the State Legislature or any other department of government? We think that the expression of powers of government which are not prescribed, etc., as set forth in Article II, Paragraph 2, has a different meaning from that which has been expressed by one of those who has preceded me. We think that is one way of saying that the Legislature has inherent sovereignty. It means that the Legislature may do anything unless something to the contrary may be found in the Constitution giving power to somebody else or specifically proscribing it to the Legislature. Whether this is an attempt to take the substance out of the Bill of Rights by means of conflicting provisions, we do not know. If that is not its purpose, what is its purpose? Heretofore we had supposed it indispensable that governmental powers could only be exercised in New Jersey by virtue of an express grant by the sovereign people, or by reasonable implication from such express grant. That is our position and we say that if paragraph 2 means that the sovereignty is in the people except as you have delegated it out, then there is no need to put that in the Constitution and the old Constitution without that No. 2 is sufficient. So that, seeing that that does not accomplish any useful purpose, we see no reason to submit the second paragraph of Article II, which does nothing, to referendum. If it does anything, it does something undesirable.

Now, coming to this third paragraph where it reads:

> "The exercise of any powers or discharge of any responsibilities of a legislative or executive character by administrative agencies shall be limited to the effectuation of declared general standards or principles set forth by law and, to the extent that private rights are affected or privileges conferred or withheld which conform to established and published practices and procedure shall, so far as practicable, be of uniform character."

First of all, this paragraph indicates that somebody is going to exercise legislative powers besides the Legislature. It starts out as though it were a restriction on action by administrative agencies. If that is what it does, then that is the law now, and if it is the law now, there is no use putting it in the Constitution. But if that is not the law and it is what I now say it is, then it is vicious and should not go in the Constitution for that reason. It starts out as though it were a restriction on administrative agencies but under the law now, the principle is well settled that for delegation of legislative power there must be set up by the Legislature a definite standard, a sort of skeleton, within which these administrative agencies are supposed to put in the flesh and blood or the detail. Now, it cannot be a general standard. This clause would not require an act of the Legislature to give a definite standard. Here is what it is: A declared general standard or principle and would allow a general or indefinite standard or principle to be set forth in the law to be used by the administrative agency as the basis of law making by promulgating rules and regulations.

We have no liking for so-called skeleton legislation. We feel that it is better to have the laws made by the Legislature. Even if skeleton legislation is to be permitted, it is not believed that the Proposal which refers to general standards or principles is as effectual a protection against delegation of legislative responsibility (or power) as the existing law.

As to publication, it will be small consolation to the individual whose rights are to be affected, to be informed that the particular administrative rule or regulation had been published if he had no proper opportunity to be heard concerning its establishment. It is

going to be small consolation for a man confronted with an act of administrative activity, rule or regulation, to be hauled up into whatever place they are going to haul him, and have them say the framers of our new constitution gave you lots of protection. It is all filed in the Secretary of State's Office and it is all published but you didn't have an opportunity to have a word in the framing of it. You couldn't tell anybody you didn't want it, but it is published and you are protected. We don't think that is protection.

I will show how you can get protection if you want it against departmental despotism. Our State Supreme Court has indicated that legislation which is vague and indefinite is invalid, and we think that a statute which declares a mere general standard or principle, as distinguished from a specific one, such as this proposal would allow, would be of doubtful validity under the due process clause of the Federal Constitution. Incidentally, this provision about exercise of legislative powers by administrative agencies has a narrowing effect upon the first paragraph of the next Article, as you will see, because it says that the legislative power shall be vested in a Senate and General Assembly, where this thing implies somebody else is going to do a lot of the legislation.

I shall conclude my remarks in regard to this second section by saying that if guarantee against legislative action by others than the Legislature had been desired, it could have been provided by a paragraph in some such words as these:

> "No rule or regulation of a legislative character affecting private rights or privileges shall be of any effect until a resolution approving the same is presented to the Legislature by the Governor, and passed by each House, subject to the same limitations and with the same procedure required for the passage of a bill."

In other words, the Legislature would then be the law maker instead of some proceeding carried on in the back room of some department.

To sum up Article II, I claim paragraph 1 is no improvement over the Constitution as it is; that paragraph 2 expresses a false and improper principle as to the powers of the State Government; namely, that it has inherent sovereignty, whereas the people are sovereign, and the State Legislature gets the powers granted by the Constitution made by the people. If that is not what it means, it means nothing and paragraph 3 is useless if intended to express what is now the clearly recognized scope of the principle against delegated legislative authority and is vicious if it is intended to escape the restrictions on administrative action which have become well recognized as a result of judicial interpretation. So that is the reason we say there is nothing good in the second article that is not already in the present Constitution, and we suggest we do not think that should be submitted to referendum.

MR. SCHROEDER: Mr. Chance, will you submit to a question?

MR. CHANCE: Yes, sir.

MR. CAVICCHIA: I am very much interested in your argument that the theory is that State government is based upon grant of power and not limitation of power. As a matter of fact, aren't you enunciating the federal theory? Don't we distinguish state governments from the federal government in this, that in the federal constitution there is an enunciation of powers, whereas in the State Constitution the people's sovereign power is necessarily delegated in three ways or to three branches of government, and that there is a constitutional limitation of powers upon them rather than an enumeration of powers?

MR. CHANCE: Well, I don't see that you have differed from my doctrine so much because what you have said is that there have been delegation of powers and limitation, so when you say there have been a delegation and limitation, you are recognizing my proposition that the sovereignty is inherent in the people. The same statement is made in the Bill of Rights, both the old and as proposed now, only that the sovereignty is inherent in the people. The Legislature gets it, so far as the Constitution has transferred it to them; in other words, the Legislature is the people's agent, not the people's master, not the people's sovereign. Does that answer your question?

MR. CAVICCHIA: Well, not entirely.

MR. CHANCE: Well, all right.

MR. CAVICCHIA: I think we differ.

MR. CHANCE: Well, cross-examine me some more.

MR. CAVICCHIA: I don't intend to cross-examine you. I am merely trying to get the theory before the hearing. How else could the State Government function except by a delegation of power?

MR. CHANCE: I claim it could not but I claim that the expression which I have quoted from the Commission says that the State does not get these things. Here it says, "Our present theory of American state government, that state constitutions, unlike the Federal document, do not grant but merely limit sovereign powers, is given formal expression by the new clause." I say that is not the theory of our Constitution and cannot be reconciled with the provision that says all sovereignty is inherent in the people. You start out with "the people are boss—the people are sovereign," and they set up the Constitution and they say there shall be this legislative, this executive and this judicial branch—and this legislative branch shall have these powers we delegate to them, and then they shall have no others because they only get what has been delegated. Here is

where I think the obscurity has arisen in this connection. Much of the discussion along the lines about how this Constitution does not grant, but limits powers, arises from the fact that the comment has occurred that there has been some attempt to distinguish the Federal Government from the State Government. They state the Federal Government is the only one delegating powers, and as distinguished from that the State can do anything except that which is restricted, but when they say this, they overlook one sentence in the present Constitution; that is, the sentence which says the legislative power is vested in a Senate and General Assembly, and not because of any inherent sovereignty, not because the Constitution has not granted the power can the Legislature do things except such as are forbidden, but for the express reason that the people, when they said the legislative power shall be vested in a Senate and General Assembly, then and there they did make a grant of power, and that grant, we think, would extend to all the fields of legislation, not inherently, but because it had been granted. In order to restrict that, then they put in these other restrictions, which some of the professors I have not caught up with yet say are the restrictions on the inherent sovereignty, which I say does not exist.

MR. CAVICCHIA: I agree with you that the people are sovereign.

MR. CHANCE: Then how does the Legislature get any rights if they don't get them by grant of the people?

MR. CAVICCHIA: How would the people act except by any one of the three branches?

MR. CHANCE: Well, the theory—the way Hitler thinks it acts and the way the Divine Right of Kings thinks it acts, and the way this clause indicates our present theories of government—that state constitutions do not grant but merely limit sovereign powers—would be that in some mysterious unknown way this supreme state could set up somehow—somehow picked out of the air—this power, for these sovereign powers can do anything except if the Constitution stops them. I say that is not so. It is a false statement. The State gets no powers except what the people give it through the Constitution.

If I have not made myself plain, I will be glad to talk to you in more detail.

MR. CAVICCHIA: I differ with you on the theory of government.

MR. CHANCE: I am sorry I can't convince you. Maybe we can get together some other time and argue it out.

MR. SCHROEDER: Are there any other questions?

MR. MCMANUS: May I ask a question? In reference to the statement made by the representative of the State Grange and Farm Bureau, the members of these organizations to my knowledge had not been polled in reference to the Constitution. I wonder;—the Chamber of Commerce has polled its members, and I wonder if Mr. Chance would inform us whether or not the members of the Manufacturers Association have been polled?

MR. CHANCE: I can't answer that. All I can answer is that I have been instructed, as I indicated at the first part of my remarks this morning, and the gentleman was here and heard me—I am here by direction.

MR. MCMANUS: But the sovereign power of the Manufacturers has not been fully exercised.

MR. CHANCE: You are getting off on the wrong foot. The Manufacturers Association has no sovereignty.

MR. SCHROEDER: We don't want to get into a debate here. As far as questions are concerned, if the questions are stated properly and briefly, the gentleman may answer them but we don't want to get into any argument. Has the gentleman any other questions to propound?

Are there any other opponents of Article II?

If not, we will proceed with those who favor modification of Article II.

The next speaker will be Mr. H. Earl Probst, representing the New Jersey Farm Bureau and State Grange.

MR. PROBST: The introduction of the new Article II "State Government" is intended to serve a useful purpose, and adequately revised should do so. It is quite incomplete, however, and in at least one respect tends in the wrong direction. First, it omits to include "purposes" of government. It refers to "powers, functions and responsibilities." But charters of limited purpose corporations must, by words or by necessary implication, set out also its purposes. The Federal Constitution employs words. State constitutions generally are so framed that their purposes are implied. But because they are not usually expressed some assume that the states are unlimited, that they are indeed sovereign, that their people are subject. This assumption of power is negatived by several facts, among them being the republican or representative form; the word "republican" meaning "representative," and by implication, fiduciary, the opposite of principal or sovereign. Furthermore, the Commission in speaking of "powers" referred to "rights, reserved by the people," but it then, without definitely expressing "purposes," proceeds to confer upon the Legislature "all powers of government" not vested in executive or judicial branches nor in conflict with the reserved rights of the people, and proscribed to the Legislature. This we think very dangerous. To us it spells eventual totalitarianism. We suggest some language which, first, would limit the purposes of the state to the administration of justice, and to the protection of inherent rights, including life, liberty, and

property of the sovereign self-governing citizens, and perhaps friendly aliens; and second, would limit the "powers" of government to those specific ones necessary to accomplish the purposes, and such incidental ones as may be necessary efficiently to perform the specific ones— a considerable task but not an impossible one.

The first section of Article II, specifically dividing government into legislative, executive and judicial departments, seems to be in language generally used, and seems only to supply an omission. We hope some time, however, to see in our Constitution provisions actually keeping these three branches completely distinct, not as now only partially so. Why should executives have any legislative or judicial powers, or legislators have executive or judicial powers? And why should legislatures be permitted to vest jurists with either legislative or executive powers, as sometimes is done? Surely the genius of our people is capable of this complete segregation.

One more suggestion regarding Article II, but probably the most important one yet proposed to be incorporated in a state constitution. It is a provision to clarify the true relationship between the people and the state. Perhaps it may be done in language to the general effect that, "Both the state and its government shall be strictly republican in form, representative of the sovereign citizens, for whom they are organized, and that the functions of the government's personnel shall be fiduciary only, that no representative, officer, or other employe shall acquire any personal right or personal power thereby, except fair compensation for services rendered."

Regarding Article III, relating to the Legislature, we are in general, if not in quite complete, approval. We have long contended and our organizations have formally approved of biennial sessions, and of increased compensation for members, and shorter and more active sessions. Whether in the case of biennial sessions, the scope of subjects to be considered at special sessions shall be limited to the terms of the executive call we think well may be questioned, recognizing, however, that this is not an unusual practice, although by no means universal.

The section relating to collective bargaining of course expresses only an inherent right and should be applicable to all varieties of associations engaged in negotiation. But we think the word "bargaining" should be construed in the nature of such rights. Whether the proposed legislative council could be made an effective agency may be in question, but certainly we can at least see no harm in its adoption.

MR. SCHROEDER: The next speaker will be Mr. Kirk Brown of Montclair.

MR. BROWN: Article II, Paragraph 2 on page 35 of the Report of the Commission on Revision of the New Jersey Constitution (p. 933) states all residuary powers are embraced within the legislative power and in explanation thereof on page 16 (p. 915) says "Our present theory of American state government, that state constitutions—do not grant but merely limit sovereign power is given formal expression by this clause." This theory as thus expounded and as fixed in Article II goes to the very roots of constitutional law and warrants the most careful consideration, whatever its merits.

If the constitution does not grant sovereign power whence does the legislative power derive its sovereignty or does it inhere? The explanation in the report is fallacious and does not fit the conditions stated in the Article which, in effect, are that the legislative power is all inclusive except as limitations are put upon it in the Constitution and does not deny the power of the people to change these conditions whenever they see fit as stated in Article I. There cannot be two sources of sovereignty, that of the legislative power must be delegated to it.

But this grant of all residuary powers vests the legislative with all the panoply of sovereignty. Whether the people are left with more than the mere shadow of sovereignty depends upon the facility with which they may exercise it. An examination of the mode of amending set up in the Report shows such practical difficulties as to warrant the belief that unless this is changed we may never see as many amendments as the four which were ratified in the last ninety-eight years.

If the people wish to rectify an abuse of power they must appear as suppliants before those who have abused it, asking for permission to take away some of their power and until the all-powerful Legislature surrenders by approving of an amendment the people are powerless to express their will.

As few as eight votes in the Senate can prevent approval, nor is it necessary to cast negative votes, it can be done by refraining from voting or by absence because of the requirement that approval requires a two-thirds-of-the-*membership* vote.

In forty-eight years proposed changes were under consideration one hundred and fifty-six times but were approved by the two chambers only fourteen times. With the legislative sessions reduced to ninety days and held every other year the practical difficulty of securing the attention of the Legislature to a proposed amendment and bringing it to a vote will be greatly increased.

By delay in publication beyond the critical date of four months before election an amendment would at best have to carry over till the following year or in the opinion of some, it would expire.

These impediments to amending leave nothing of the people's sovereignty but the power to elect their representatives which because of our party and parliamentary systems is at best only a long time remedy. Thus "gently in the manner but firmly in the act"

are the people made impotent to enforce their will which is one of the outstanding reasons for revising the present instrument.

Never in the history of New Jersey has this theory enounced by the Commission been established other than by historical implication and the decisions of courts. Never have the people had the opportunity to vote for or against it separately and distinctly. They should have the opportunity to do this and do it in the light of the mode of amending, as it may be made a part of the new Constitution, for that is inseparable from this provision of Article II, Paragraph 2. One is a delegation of sovereignty predicated on the validity of the other.

Of necessity, a complete revision must be presented to the people for ratification as a whole and not as piecemeal amendments to the old Constitution, and, of necessity too, their acceptance of it must be with reliance on their representatives to see that it contains no radical provisions such as the one under consideration for the people must vote without a full cognizance of its details, but little aided by the required perfunctory publicity. The people's representatives must in good faith inform the people of this proposal that they delegate their rights though it may endanger the acceptance of the full Constitution because there is no other method by which to disapprove of this or any other of its contents.

For these reasons I suggest the elimination of Article II, Paragraph 2 from the Report and the presentation of it to the people as an amendment to the Constitution at a later time. If this be done the ratification of the entire instrument will not be endangered, it will be possible for the people to exercise discrimination, their representatives will have acted in good faith and the principle involved, if ratified, will have an unassailable basis of authority.

I want to add to that, not as part of the brief—After listening to this debate I am compelled to believe that the Legislature, the constitution not being a constitution delegating powers, either has all the powers or none and, if this paragraph is submitted for ratification separately, there would then have to be a very considerable extension of it in the shape of delegating powers.

I make that addition, however, apparently contrary to the argument contained in my brief, because I am seeking the truth. As to Paragraph 3, of Article II, I wrote this before listening to Mr. Watson and Mr. Bebout, and it is simply this: stated in simple language, such as an administrative agency could understand, what does this mean?

MR. SCHROEDER: The next speaker will be Mr. Morris Isserman, representing the State CIO and the American Labor League.

MR. ISSERMAN: We favor Sections I and II of Article II. We have some doubts as to what was intended by Section III and I have been

attempting to place my interpretation on Section III, and our objection to Section III is to the effect that it will tend to put into a *hard cast rule* operation of some of the administrative agencies; in other words, some of the provisions of Section III are now included in the case law made by decisions of our courts. This goes probably a step further and may prevent or not allow the usual elasticity in the handling of administrative law that should be required in administrative bodies and, for that reason, we feel that this Article should be submitted with the elimination of Section III or that Section III should be clarified so that there is no question as to what the framers of that provision meant.

I might say to you that, as I listened to the argument presented here on this Article, I believe this is further proof that we need more discussion pro and con, and the only way we can get that kind of discussion is in a constitutional convention, because I would like, and I am quite sure others in this room would like to have the opportunity to properly rebut statements and allegations made, but I confine myself merely to our positive position rather than take the opportunity to rebut. I hope that this Committee will at some later date, or even today, give us some time perhaps to spend in rebuttal. That will come closest to a constitutional convention.

MR. SCHROEDER: The next speaker will be Mr. Walter J. Bilder, Attorney of Newark.

MR. BILDER: Mr. Chairman and Members of the Committee: I had not intended to speak with reference to Article II, but with reference to Article III, but your Chairman has very kindly accorded me permission to say a few words.

With reference to Section I of Article II, I am looking at page 16, (p. 915) and I may be misled by the summary in any respect in which it differs from the proposed constitutional revision. I look at page 16, of the Commission's Report (p. 915) and I read these words: "All powers of government, except as expressly limited by the Constitution, shall be embraced within the legislative power." It is with reference to that, that much of what was said by Mr. Chance and others here concerns itself, and it seems to me, if I may say so without being invidious, that the argument has proceeded under a cloud.

As I understand this language and the intention of the Commission which wrote it, we start with the provision that the people are sovereign and that all political power resides in them. That is not a new concept because it is in the 1844 Constitution and, of course, it antedates that. It proceeds from that provision to the next, namely; that the people of necessity can only exercise their sovereignty through the agency of government. Government is a group of men to whom, for a particular time, is delegated the

sovereignty of the people. That is not the yielding up of sovereignty once and forever so that, as one of the gentlemen said, the people must come on bended knee to get something. It is an agency with which we lawyers are very familiar. The fact is, the government is the agent of the people and must of necessity exercise the sovereignty which belongs to the people because four million citizens of New Jersey cannot conduct the government of New Jersey for two reasons, first, it is physically impossible, and, second, they have their livings to make. So it is the government that is the vehicle through which the people's sovereignty is of necessity exercised.

Now, if you will read then the first sentence of explanation on page 16, (p. 915) we see very clearly what it is that these commissioners, who framed this, have in mind. They mean to say when the people who are sovereign delegate that sovereignty, as of necessity they must, they do not delegate the sovereignty but the function of exercising it, they delegate the irrevocable function of exercising it to the government. They have given to that government the power to do everything which they could do if four million people sat down here day in and day out and, having done that, they shall foreclose any individual John Smith from coming forward and saying to the government: "Mr. Government, you can't do that to me" because the government answers him with these words: "Where does it say we can't do it? You show me; where is it written now, because 'we' is the people. Mr. Smith, where does it say in here that we, the people, cannot do this to you?" That is what this means. How does that differ from the Federal Government setup? Plainly in this respect that when John Smith says to Congress "You can't do that to me" and he goes to the United States Supreme Court, the Supreme Court does not turn to John Smith and say: "You show us where they can't", it turns to Congress and says: "You show us where you can."

I say this whole argument is proceeding in a mist and I hope very humbly that I make some contribution toward dissipating the mist.

I want to sit down at this point and please ask those who differ from my view to read carefully the sentence on page 16, (p. 915) which is the language of the Commission: "The Legislature is definitely freed of any implication that, like the Congress, it cannot serve the people unless the power it wishes to exercise is spelled out in the Constitution." If they will read that and forget about theory of government, it seems there won't be any difference among us.

MR. SCHROEDER: Are there any other individuals who wish to speak in favor of the modification of Article II?

MR. WATSON: Before you leave Article II, may I speak very briefly supplementing my original statement on Article II, Paragraph 2?

MR. SCHROEDER: Yes.

MR. WATSON: I would like to add, to what Mr. Bilder just said, this—I will be careful not to make it a debate. I would like to add this to what Mr. Bilder said regarding the statement on page 16, (p. 915) our present theory of American state government, that the State Constitution, unlike the Federal document, does not grant but merely limits sovereign powers, was given prominent expression by the new law. That statement has been attacked. We submit that is the correct statement of the law of the State of New Jersey.

If you turn to Article II, Section II, it reads: "All powers of government" and the rule in New Jersey is that all powers of the legislature, all legislative governmental powers reside in the legislature unless it is reserved to the people, meaning thereby by the Bill of Rights.

Now, as Mr. Bilder said, obviously four million people can't carry on the business of state by meeting in town meetings but the legislature exercises governmental sovereign rights.

It is said there is conflict between Article I, Section I: "All men are by nature free and independent, and have certain natural and unalienable rights" and Article II, Section II. They are perfectly consistent. "All powers of government which are not by this constitution vested in the Executive or Judicial branches" mark this "nor in conflict with rights reserved by the people"—if an act of the Legislature were in conflict with Article I, Paragraph 1, and took away "unalienable rights" it would not be right, it would be in conflict with the rights reserved by the people. The two sections are perfectly consistent and we submit that the disputed statement on page 16, (p. 915) is an accurate statement of the law of the State of New Jersey.

MR. CHANCE: May I say the only reason the Legislature has the powers he said they have is because the people put in the present Constitution Article IV, Section I, which says: "The legislative power shall be vested in a Senate and General Assembly." and not because they picked it out of the air somewhere.

MR. SCHROEDER: Are there any other individuals who desire to speak? If not, the public hearing will be adjourned until next Wednesday, July 15, at 10:30 A. M. At that time we will confine the public hearing to Article III, Legislative, and no other Article will be heard on that particular day.

MR. MCMANUS: May I ask the Committee to give consideration to Mr. Isserman's suggestion that debate be permitted at the hearing?

MR. SCHROEDER: The Committee will consider that.

(Adjournment.)

PUBLIC HEARING

July 15, 1942

Morning Session

on

Proposed Revision of the New Jersey Constitution

Article III. "Legislature"

The Joint Legislative Committee appointed pursuant to Senate Concurrent Resolution No. 19, passed June 15, 1942, convened in the Assembly Chamber in the State House at Trenton on Wednesday, July 8, 1942 at ten-thirty o'clock A. M., for the purpose of holding a Public Hearing in connection with the Proposed Revision of the New Jersey Constitution (1942) pursuant to announcement previously made.

The following members of the Joint Committee were present:
Hon. Lloyd L. Schroeder, (presiding),
Hon. H. Rivington Pyne,
Hon. Edward J. O'Mara,
Hon. John M. Summerill Jr.,
Hon. Dominic A. Cavicchia,
Hon. Vincent S. Haneman,
Hon. Mildred A. Preen.

The Chairman opened the Hearing and the Hearing proceeded as follows:

MR. SCHROEDER: The hearing will be opened.

May I say at the outset for the benefit of those who did not attend the last hearing, that we will hear today arguments on Article III of the Proposed Revision of the New Jersey State Constitution.

We will hear first the proponents, second the opponents, and then those who favor modification of Article III.

The first speaker today is Commissioner Spencer Miller Jr., representing the New Jersey Committee on Constitutional Convention. Commissioner Miller.

MR. SPENCER MILLER JR.: Mr. Chairman, and Members of the Joint Legislative Committee:

James Bryce in his great treatise on the American Commonwealth said that the strength of our system of government consisted in this—that under our Federal system of sovereign states we had forty-eight state laboratories in which to test out governmental policies and laws before their universal adoption.

That has, in fact, been both the accepted philosophy of American Government and the method by which we have evolved many of our legislative standards, as well as our fundamental law, and it has been a sound and democratic procedure to test political philosophy in the light of practical experience.

In a real sense, the movement for revision of the Constitution of the State of New Jersey rests on the solid ground of practical experience. For years now citizens representing all sections and all groups within this State have become conscious of the defects of our frame of government and have insisted that an orderly revision was necessary to bring about more responsible and efficient government. Beginning with Governor Parker in 1873, no less than eight Governors elected by the whole people have insisted on the basic revisions of the Constitution, in addition to which, the two major political parties have in their last platform made solemn covenants with the people of this State to translate this popular demand into practical and procedural terms.

In speaking to you, then, this morning in behalf of the New Jersey Committee on the Constitutional Convention on the third Article of the Proposed Constitution, may I make bold to assert that no lover of democratic government can fail to be alarmed at the wide-spread lack of confidence in the American Legislature. This want of confidence reaches to our own State Legislature. Now the heart of any system of representative government is the Legislature. If that heart is not sound, the whole system is unsound. Disrespect for the Legislature and the legislative processes is necessarily disrespect for our whole system of representative government.

Fortunately many of the causes for the contemporary disparagement of the New Jersey Legislature are neither hard to discover nor difficult to remedy—if we are willing to take a moderate cure. The evils in our present system we know from our own experience. The appropriate cures for some of those evils are obvious, and experience in other states has tested a number of them.

There is a growing school of thought, which will undoubtedly find worthy expression here today, that the one fundamental cure for legislative ills is the substitution of a small one-house legislature, proportioned strictly to population, for our present two-house system, representing both people and acres. I have no quarrel with this proposal if a substantial majority of the people of all parts of the State see fit to embrace it. As a student of Government, however, I should like to suggest that present evils do not necessarily all flow from a single basic constitutional defect. Many of them certainly may be attributed to a combination of constitutional details, which together tend to make it difficult or impossi-

ble for the Legislature to perform its basic functions with due efficiency and responsibility. The Revision Commission obviously proceeded on this theory and prescribed a considerable number of specific changes. Many of these changes appear comparatively unimportant in themselves, but taken together they add up to a very considerable and salutary reform. A number of them strike directly at some of the most grievous abuses of which we are all aware. In combination we can confidently predict that they would vastly improve the whole mental and moral climate in which the New Jersey governments, state and local, perform.

There are doubtless other specific changes of the same sort which might well be added to the list, and which very probably will be suggested by others here today. I think for example of some curb, such as is contained in the New York Constitution, on the enactment of laws under the suspension of rules, as well as the possibility of some more fundamental safeguard of the right of the people as the initiative or a provision for a referendum on measures over which the two houses are unable to agree.

My purpose this morning in speaking in behalf of this Committee is to point out certain fundamental principles upon which most citizens of New Jersey agree, and to express the gratitude of all of us to the Revision Commission for the way in which they attempted to conform the provisions of their draft Constitution to those principles. In order to do this it will be necessary, as the Commission did in its own explanation of Article III, to point to a number of clauses in other Articles which bear on the Legislature.

The essential function of the Legislature is to represent the enduring interest of the people of the whole State in the formulation of public policy, as distinguished from the administration of such policy. No one can know better than you gentlemen and lady that the faithful and effective performance of this function is seriously impeded by constitutional arrangements which make it impossible for members of the Legislature to give sufficiently informed, deliberate and concentrated attention to it. Annual elections, inadequate compensation, lack of provision for continuous legislative leadership and expert assistance in the planning of a legislative program, cramping constitutional restriction of the power to secure needed information, and the terrific burden of essential executive functions, combined with inadequate protection from importunate local and special interests, create an adverse situation in which it is extraordinarily difficult to function effectively. The wonder at times is that you have succeeded so well under all these restrictions.

As you run down through the changes proposed by the Revision Commission, one sees how aptly they were devised to free

the Legislature from these hampering limitations. May I run through the list quickly:

First, the extensions of the term of legislators from one and three to two and four years, with elections in odd years, to permit the concentration of the voters on State issues, and enable candidates to secure a fair public hearing.

Second, the limited regular sessions every other year, in order to give time for planning new legislation and testing old legislation.

Third, increased compensation in order to permit legislators without undue personal sacrifice to give adequate attention to their legislative task.

Fourth, a Legislative Council to give continuous, united and official leadership to the whole Legislature and to engage needed technical assistance.

Fifth, limitations on legislative patronage, designed to permit legislators to give undivided attention to the formulation of public policy and the general welfare, and to free them to act as impartial critics and auditors of State administration. Those limitations include:

a. Prohibition against legislative appointment of all offices. The single and proper exception is to vest in the Legislature the historic power over public funds through the appointment of the State Treasurer and State Comptroller.

b. The requirement of Senatorial action by public vote on gubernatorial nominations within thirty days, designed to enable the Senate to act as a body, and to free individual Senators from embarrassing local pressures.

c. The prohibition against the appointment of legislators directly to public office, designed primarily to insure the independence of the Legislature by making it impossible for a Governor even to attempt to trade jobs for votes.

d. The limitation on the number of administrative departments in Article IV, and the constitutional provision for the merit system in Article VI, which should free the Legislature from the troublesome demands of local and special interests for the creation of unnecessary State agencies, and the enactment of patronage laws for the benefit of particular persons or interests.

Sixth, other provisions to free legislators from the threats and pressure of local and special interests include:

a. Prohibition against special or local laws affecting the emoluments, tenure, terms, or pension rights of public

officers or employees; or relating to taxation or tax exemption.

b. Prohibition against legislation impairing the right of Labor to organize and bargain collectively.

c. Registration and regulation of lobbyists in the public interest.

d. The requirement of a two-thirds vote to override the veto of the Governor on an appropriation measure (Article IV, Section II, Paragraph 4) or to pass a Supplementary Appropriation (Article VII, Paragraph 5). This is a very valuable protection to the Legislature as the guardian of the general interest. It gives the legislator protection against pressure to "log-roll" an improper item into an appropriation bill.

Seventh, provisions designed to confirm or protect certain legislative powers essential to effective action in the public interest:

a. Broadening of the power to pass zoning and excess condemnation laws (Article III, Section VII, Paragraphs 6 and 7).

b. Power to facilitate cooperation with the Federal Government by conforming State regulations to coordinate Federal regulation (Article III, Section VI, Paragraph 7). This sort of thing is necessary in order to enable the State to participate in a program which necessarily involves some setting of uniform standards by the Federal Government, but in which State administration is desirable.

c. The confirmation of the Legislature as the residuary legatee of all unspecified governmental power (Article II, Paragraph 2).

d. Confirmation and strengthening of the investigatory power of the Legislature. The whittling of this, one of the original powers of all English-speaking Legislatures, which has taken place in recent years has held great potential danger for the State. To give the Legislature the essentially executive power to appoint to public office, and then deny it adequate power to investigate the conduct of public officers has been a great mistake. A Legislature is by nature incapable of acting as a responsible chief administrator, but it can and should act for the people year in and year out as the critic of the conduct of administration.

These changes as proposed in Article III are none of them revolutionary in any fundamental sense. They are, however, in

the best American tradition of progress by evolution and learning by experience in our laboratories of democratic government.

MR. SCHROEDER: Mr. Paul, do you desire now to introduce those who are proponents?

MR. PAUL: I would like to call first on Mr. Arnold Koch, of Montclair, Chairman of the Montclair Committee of Citizens on Constitutional Convention.

MR. ARNOLD KOCH: Mr. Chairman, Ladies and Gentlemen: Instead of talking to you on behalf of the Montclair Division of the Committee on Constitutional Convention, I would rather talk to you as one who gets around; in other words, we have spoken to so many citizens of all classes that I think you will be interested to know what the ordinary citizen thinks about the old Constitution and the proposed new Constitution. So I will not speak to you on behalf of any group of farmers or manufacturers or on behalf of any undisclosed principal but rather on what I have learned as I went around my little town of Montclair.

First of all, I want to say, when my committee was created, I deliberately kept off the committee anyone who was too definitely allied with either of the two political parties. I didn't want to have our citizens believe that any political group was fostering this but we wanted to appeal to the citizens just on the basis of good government, and the only qualifications therefore for membership on my little committee were that the people were interested in good government and were willing to go out and work. In that connection we sent out at least one hundred invitations to all types of organizations in our town, asking them for permission for us to send speakers to them at their next meeting. We therefore spoke at every school, and there are fifteen schools in Montclair. We spoke at innumerable service group luncheons. Sometimes we got them free and sometimes we had to pay for our lunch. And we spoke at many ladies' organizations, and the commuters' organization. On our committee we not only had commuters, of which there are many in Montclair, but local businessmen, and I am personally very proud of the membership of my committee because it was very representative of our town. As I said, we spoke to the poor people and the rich—the holder of the A card and the holder of the X card,—and we found this certainly to be the reaction in every case—that if you sit down with these people and talk about the old Constitution and compare that with what is being done in other states than ours, they invariably feel, and so express themselves, that our Constitution is quite a costly experience and certainly in wartime we cannot afford it any longer. You cannot get away with it by saying—as someone said last week, "What are you talking about, old Constitution? This 1844 Constitution has been amended four different times," and

therefore the insinuation is that every time you amend a Constitution you entirely overhaul it and make it a reconditioned Constitution. That is all right if you are not bothered with questioning after your speeches, but if you expect to be asked questions you don't want to pull that gag, because the first thing the people will do is say, "Now, tell us about the amendment, to see whether or not that did revise our Constitution of 1844," and you will start with the most recent amendment in 1939 and you will tell them that that had to do only with horseracing, and they will ask about the 1897 amendment, and that had to do with horseracing. Now, horses are getting to be more popular in these days but still they have not a very definite function in State government as yet. Then the next amendment in 1927 approved a zoning ordinance that had mostly to do with local situations and had nothing to do with bringing our State's governmental procedure up to date. The only one that tried to scratch the surface was one way back in 1875, and none of us were there to help do a good job. So I say you will find these people, when you can get their audience and sit down with them calmly, are not going to be content until they know quite a bit about the Constitution and what is wrong with the old Constitution.

Now, even a lawyer can get down to the point. We get down to Article III. I am certainly in favor of the increased salary,—I don't see how anyone can oppose that in these days—and also the new term of office for Assemblymen and Senators, and also for biennial sessions. Now, as to those changes, someone said we must not experiment during these perilous times. None of these changes are brand new experiments. We look to at least a majority of the other states for their valuable experience in connection with those changes so you are not going on anything new or untried. Now you come to some real objections that may be raised by people later in the day, for whom I have the greatest respect and who are undoubtedly better students of public law and the Constitution than I am, and one is whether there should be only one house instead of two; in other words, whether we should eliminate the Senate. The other is whether, if we continue with the Senate, the representation is proper. Now, candidly, if we look at that really honestly, those two points are serious points and they are points on which the most well-meaning, most honorable people can seriously differ, and yet, because of the fact that we are in the war, I am going to urge the people that we do not enter into those controversies because those are real controversies which may prolong this for a long time, and I think that speed is so much more important than getting an absolutely perfect Constitution. If my tires are bum today—as they are—I am going to be satisfied with a recap or retread. I won't be high hat and say they aren't as

good as new tires; I am going to try to get along until the war is over and until the reconstruction period before I worry about getting brand new tires. If we have an inefficient Constitution, which most students will tell you we have, it is a luxury in peace-time to have such a thing; it is a peril to have it in wartime.

We read every now and then that people in Russia are executed because they were caught asleep at the switch—a locomotive engineer is executed because he was negligent. That is drastic but evidently they certainly realize the peril and extravagance of negligence during wartime when you are faced with a terrible foe. We don't suggest anything like bumping off people who are negligent. As lawyers, we like to have a little negligence now and then. But we must streamline our Constitution, and the only real criticism and the only honest criticism that totalitarian states can make against democracy is that at times it is cumbersome and inefficient. Here we have an opportunity of streamlining this so it will tide us over for maybe twenty years. Some people have the blissful idea if peace is declared next year or the year after, we are going to run to the gasoline station and fill up our tanks, and we will run to Sears-Roebuck and get four tires—maybe five or six—and the most blissful optimism is that we will have lots of money in our pockets to pay for the luxuries. I take the position that the real headaches are going to come after we have defeated the enemy; therefore, we should now at this time get a Constitution which on its present basis is vastly superior to that of 1844, and leave to 1962, or thereafter, the perfect Constitution, if there is such a thing. Now, I say I therefore urge that we do not spend too many months on this question of bicameral or unicameral government or on the question of representation. Coming from Essex County, it is selfishly to my advantage to urge that Essex have more Senators than Somerset or Monmouth. I am perfectly willing to forget that as long as we speed this up at this time, but I am only willing to make that compromise, provided we elevate the position of the Governor to that which he enjoys in other states.

Someone said the other day that this Constitution might better be called "The Governor's Constitution"—it gives more powers and everything. There again, let's not try to pull that on the people. Their first question is, after you get them excited about "The Governor's Constitution,"—"Tell me, what are they doing in New York; what are they doing in Pennsylvania, and in other States," and you have to come back with the answer that what we are trying to give to the Governor now is something which the vast majority of the Governors have had in other states for years and years. I am therefore urging that we take this legislative Article as it is, for the sake of speed and for the sake of victory.

MR. PAUL: Mr. Chairman, I would like to call next on Mrs. R.

Barth, Chairman, Legislative Committee of the Consumers' League of New Jersey.

MRS. BARTH: May I say on behalf of the Consumers' League that we agree heartily with the changes in Article III governing the Legislature of the State of New Jersey. It is extremely important, we feel, that the changes in this Article become part of the new Constitution. As someone who has spent a great deal of time down here Monday night after Monday night for a great many years, I think the change to one session of ninety days, every other year, will be a very great improvement. Also, I definitely feel that the men and women who come down here to do the job of making laws for our State are entitled to more money, and if we expect a better job they should get it.

We also feel that the limitation of power of appointment on the Legislature is a very definite improvement. With all due respect to the members of the Legislature, it has been abused on numerous occasions, and we feel this is definitely an improvement —so that in general we approve of Article III as set forth in the Commission's Report on Revision.

MR. PAUL: Mr. Chairman, I would like to call next on Mr. Russell Watson, representing the Chamber of Commerce of the State of New Jersey:

MR. WATSON: Mr. Chairman, and Members of the Committee: The State Chamber expresses the following views concerning Article III with confidence, because in doing so it supports the recommendations of the Commission on Revision of the New Jersey Constitution which comprises in its membership experienced and influential legislators of different political affiliations and distinguished citizens who are thoroughly conversant with the legislative process. They are expert and are well qualified to make beneficial recommendations by technical training, experience and high civic purpose. The Chamber in advocating Article III as proposed, relies upon the unanimous judgment of these experienced legislators and close observers of the legislative scene in whose good judgment and integrity it has absolute confidence.

Now, Article III may be boiled down into two categories. There are some provisions which would limit power and authority of the Legislature. There are other provisions which are designed to improve the efficiency of the Legislature. They merely affect the Legislature's procedure without in any way affecting its power or authority. Now, it has been said here at a previous hearing that the whole tenor of this document, or rather the tenor of this whole document, is toward executive dominance and legislative insignificance. I think those are the words. Let us examine these proposals of Article III briefly from that viewpoint and decide whether they do in any way tend toward legislature insignificance.

I shall not refer to executive dominance because that is a subject more properly to be argued perhaps under Article IV when the Committee arrives at that point. Now, preliminary to such an examination of Article III, let us have in mind that democratic government is under great strain today. Following this war it will be subjected to even greater strain. Many thoughtful citizens think that we are already at the threshhold of one-party government, with all that that would bring in its train. If democratic government is to survive, it will do so only because of its efficiency and integrity, and therefore anything which tends to promote the efficiency and integrity of the democratic system is desirable.

Now, let us look at these provisions from that standpoint, first paying attention to those which affect merely the procedure of the Legislature and are designed to improve its efficiency. First, we have the provision for biennial sessions, which, according to the Commission's Report, is the practice in all but two or three of the States of the Union, a biennial session limited to ninety days, with appropriate provision for the calling of special sessions confined to fifteen days and to the specific purpose of the call. The terms of Senators would be extended to four years and of Assemblymen to two years with elections in odd numbered years so that they should not be influenced by the issues of Presidential and Congressional elections.

These provisions proposed by the Commission certainly do not diminish the power or authority of the Legislature. Upon the contrary, they are designed to improve its procedure. They would not dictate legislative decisions—they would merely require that such decisions be made within a reasonable time. I personally know the members of this committee well enough to know that if they were in my place they would agree that in the past, legislative decisions have often been unduly delayed by protracted discussions, by the infrequency of committee meetings, by inability to come to decisions, sometimes by sheer procrastination and waste of time of the Legislature and of its members, and most of the committee and members of the Legislature would themselves be thankful if there were some different procedure. Now, it is common knowledge that most human beings do their best work under pressure, and if, when the Legislature convened, it knew it had ninety days within which to do the job, the job would be done. Therefore, these provisions would merely require more frequent meetings and the conclusion of the Legislature's business within ninety days, to the advantage of the public.

Now, special sessions are provided for. Particularly in these times, there may be emergencies and there may be unforeseen major business which may require the calling of a special session. The machinery is available.

It is unnecessary to dwell upon the extender of terms. The wisdom of them is self-evident.

Now, let's go to these recommendations which are in a different category because they would limit the power and authority of the Legislature in certain respects. The first is a provision that legislators shall not be eligible for state office during their term or for one year thereafter. In advocating this provision, let me say very specifically that there are many officers in the State service, judicial and administrative, who were elected or appointed directly from the Legislature and who are competent, able, faithful public servants. This is not, however, a question of personalities. What this provision tends to do—or may I say accurately, what this provision tends to do in our view is to remove the contingency that the official acts of legislators might be influenced by their desires or hopes for appointment to judgeships or administrative positions, and that undoubtedly the removal of such temptation would be in the public interest. Now, speaking again of the integrity of the democratic system—if it is to survive, a provision of this kind is distinctly in that category.

Now, the next provision which limits the power and authority of the Legislature is that one which would prohibit the Legislature from appointing any executive, administrative or judicial officer except the State Treasurer and the State Comptroller. The nomination of such officers is clearly an executive function. Just as clearly, the confirmation of such nominations is a Senate function. Let us look in a practical way at recent legislative history. There have been times it ought to be admitted when the Legislature has taken unto itself the power of appointing administrative officers, and it has been incapable of doing so within a reasonable period of time by reason of the conflicting political interests of its membership. We have a practical demonstration of the inability of the Legislature, for political reasons, to function adequately as an appointing power. We say that the power of appointment is and should be an executive function. Now, this does not diminish the power or authority of the Legislature in practical effect because the Senate under this Constitution would have the power of confirmation—ample power with which to prevent the appointment of unfit persons. And another section of the Constitution is so worded that the power of confirmation would reside in the Senate in all cases in which the Legislature so enacted. For these reasons the State Chamber advocates this change.

Now, the third provision which goes to the power and authority of the Legislature is that one which requires the Senate to act on all nominations within thirty days in public. Here again, the time limit would require prompt transaction of this important phase of public business. It would not in any way restrict the Senate's

decision—it would merely require that it be made with reasonable promptness, and certainly the prompt transaction of public business is in the public interest.

Now, the consideration of nominations in public would serve both the members of the Senate and the public. In practice, the executive sessions of the Senate for consideration of nominations are not private sessions. What goes on there leaks out—sometimes, oftentimes in garbled form, and we read about it in the newspapers the next day. Federal nominations are considered in public by the Senate. It seems to us that this provision also is in the public interest and should be adopted.

Now those are the only provisions—these three are the only ones which in any way affect the power or authority of the Legislature. It seems to us they will enhance its efficiency, make for its integrity, and therefore should be adopted.

Now, there are some others. There is the restriction prohibiting lobbying in legislative chambers and the regulation of it through a system of compulsory registration. We regard this as meritorious. Lobbying, properly regulated, contributes to the functioning of the legislative process. It would, however, be in the public interest if the identities of the proponents and opponents of legislation and the financial disbursements that are made in connection therewith were matters of public record.

Now, especially, the Chamber advocates the provision which would establish a legislative council. Here is another provision which would improve efficiency of the Legislature but which would in no way diminish its power or authority. It is practically impossible for all of the members of the Legislature to be expertly conversant with the great variety of legislative subjects which they must consider, many of which are technical and complex. It is well known that much of such legislation is drafted and promoted by special interests which are specially concerned and that the full meaning and effect thereof are not fully comprehended by all of the legislators who vote thereon, and this is because the Legislature lacks the facilities with which to do its own research and to do its own bill drafting. An approach toward it has been made in our friends the Commission on Statutes, who do excellent work in coordinating legislation with the Revised Statutes, but the functions of such a legislative council are really necessary. Legislators must rely upon the representation oftentimes of the sponsors of such legislation—and I say this advisedly, oftentimes it is of dubious quality with respect both to draftsmanship and contents, and specific instances can be cited, recent ones, too. Committee meetings have been irregular and infrequent. That is inherent in the one meeting a week system, and cannot be avoided. The establishment of a legislative council consisting of the Gov-

ernor, or in his absence, the Attorney General, the President of the Senate, the Speaker, and the Majority and Minority Leaders of both Houses, adequately staffed for the preparation of legislative programs, accurate and thorough research and the drafting of legislation would at once improve the quality of bills and, by reason of their source, would inspire the confidence of the legislators in their purpose and integrity. This council of six legislative members, consisting of the duly elected officers of the Legislature itself, would be at all times subject to the direction and control of the Legislature, and certainly then, as now, the Legislature would be the seat of legislative power. Here again there is no diminution whatever of legislative power or authority. Another consideration in this connection is that the representation of the Governor upon the council would make for better cooperation and better understanding between the executive and legislative branches. Then there is the increase in salary to $1500 per year plus $500 for the President of the Senate and Speaker and with an additional $1500 for the members of the legislative council. The Chamber thinks that these proposed increases in compensation are, if anything, less than reasonable. It appears in the report members of the Ohio and Massachusetts Legislatures receive $2000 a year. Certainly, New Jersey is comparable with those States economically, in point of population, and in point of service rendered by the members of the Legislature.

The provisions modifying the zoning and condemnation clauses, intended to remove doubts concerning the present constitutionality of some such provisions, and the requirements prohibiting private laws changing the salary, term, tenure or pension rights of public officers or employees are eminently desirable, we think.

The argument was made at the first hearing that the tenor of the entire document is toward executive dominance and legislative insignificance. This statement is grossly inaccurate as applied either to the whole document or to Article III now under consideration.

The provisions regulating legislature procedure would not in any particular dictate, preclude or circumscribe legislative action. They would merely require that the Legislature make such decisions as it chooses within a reasonable time.

The proposed ineligibility of legislators for appointment to state office would not diminish the power of the Legislature to legislate. It would merely eliminate a perquisite of doubtful propriety.

The limitation of appointment or election of state officers by the Legislature to the State Treasurer and State Comptroller likewise would not limit legislative authority. The State Treasurer

and the State Comptroller are legislative agents and therefore should be elected by it. The Legislature would participate in other appointments and would have power to prevent appointments of unqualified persons through the wide power of confirmation of nominations vested in the Senate.

Likewise, public consideration of nominations would in no wise diminish the power of the Legislature to act on them of its own free will and accord.

The proposed legislative council would be a useful agent of the Legislature which would facilitate its work and would immeasurably improve the quality of its product.

Certainly the proposed moderate increase of compensation would not shorten the stature of the Legislature and the regulation of lobbying would be distinctly beneficial to it.

Far from rendering the Legislature insignificant, these provisions would aid the Legislature by insuring prompt and orderly procedure, by preserving its integrity and by providing it with better facilities. The Legislature would still be—and this is a point which was mooted at the last hearing—the Legislature would still be, as it should be, the repository of all powers of government not vested in the executive or judicial branches, not in conflict with the rights reserved by the people in the Bill of Rights or elsewhere, and not specifically prohibited to it. This is manifestly as broad and sweeping a grant of governmental power as language can convey.

Mr. Chairman, I would like to speak as a modifier on one of the provisions of Article III. May I reserve that privilege?

MR. SCHROEDER: Yes, Mr. Watson, you may.

MR. PAUL: I would like to call next on Mr. Mortimer Eisner of Newark, of the University of Newark Law School.

MR. EISNER: Mr. Chairman and ladies and gentlemen: As I was leaving this meeting the last time, the opposition to this revision voiced a statement which seems to me should be disposed of, and that is these people who are asking revision of this present Constitution do not do so because the present Constitution is old; that isn't the reason. The reasons have already been elaborated upon at length. The case for revision seems to me, and evidently to most of the people here, to be clear. I submit that what we ought to do is discuss this thing frankly and truthfully but that the opposition cannot expect to win against those who seek revision of the present Constitution by setting up straw men and knocking them down. Article III, which has been outlined at length and discussed by Mr. Miller and Mr. Watson, represents one thing only that I would like to say, and that is this: For the past many years there has been a tendency in the administration of this State Government to administer the State through the art of politics.

Now, I do not for one minute underestimate the importance of the essential value of politics in the political system here, but it seems to me that we have come to the point—and this Article III crystalizes this view—namely, we must in some way bring the State back so it is administered in the science of government, and I make that distinction only as a teacher of law who has seen a lot of students come and go and who have asked a lot of questions with respect to what the law is and what it means, and in particular I point out to you that section which provides for a legislative council with research and draftsmanship analysis and skillful help. It would seem to me that in the interest of good government for the future we need that legislative council as much as we need anything and we certainly need a great deal of this revision. So I say to you that what this revision does and what Article III particularly does is bring back into the science of government the best knowledge that we have, the best experience—the Constitution of the State—and it brings administration of the government into a form that is consistent with that science, and gives less emphasis—if I may—to the art of politics which, though colorful and dramatic if skillfully used, nevertheless has been the unfortunate method by which, for the past number of years, the State has been administered.

Subject to such revisions and modifications as a great majority in their wisdom see, I believe this Article III represents the best thought and best judgment on what the legislative functions should be, and I support it on that basis.

MR. PAUL: The next speaker is Mr. Robert McManus, of Hunterdon County, Editor of the New Jersey Spokesman.

MR. MCMANUS: Mr. Chairman, members of the Committee: I made the statement last week, which is somewhat incorrect, that the members of the Chamber of Commerce had been polled on this proposed new Constitution. I have since been informed that what happened was that the members were sent copies of the Constitution, so they did not actually receive a ballot nor were they asked to register their opinion. However, I understand they did respond emphatically and overwhelmingly in favor of the new Constitution. Also, there were other actions taken to consult the membership. Several meetings were held and speeches were made by Senator Hendrickson, Mr. Erdman, and other persons conversant with the subject. So I would like to correct the record to that extent.

For more than two years Spokesman magazine has attempted to show by word and picture, by editorial and special article, what has been happening to the legislative process in New Jersey. We have called attention again and again to the ridiculously small salaries of legislators and asserted that $500 a year did not begin to compensate them for the work they do. We have shown their lack of facilities for accomplishing their many difficult tasks, and

pointed to the fact that they did not even have the power to investigate the election of a Governor despite grave evidence of irregularity in that election. We have printed pictures of the Legislature in session, with the floor overrun with lobbyists. We have demonstrated how the processes of free representative government have been strangled in the secrecy of the caucus chamber, and told how the legitimate business of the Legislature has been thrown into chaos by endless quarrels over the making of appointments, which should never have become a legislative function.

We have cited the many instances in which our almost powerless figurehead Governors have had to buy votes from members of the House and Senate with the promise of jobs on the State payroll. We have stated that in New Jersey the legislative function, the heart of democratic government, had become so disorganized, so diseased, that it seemed to argue that democracy was a decaying institution.

At this crucial moment in American history, there is a far too widely held belief that our democracy is graft-ridden and incompetent by its very nature, but we should love it anyway. We have formed the habit of blaming weakness of human nature on democracy. As far as we, Spokesman Magazine, are concerned, we would like to bring a punch right up from the floor against any such belief. If our democracy is graft-ridden and incompetent, it is not the fault of democracy itself; it is the fault of the people who administer it. It can be made more honest, it can be made more efficient, and still remain democracy if we have the will to do it. Article III is a long step in this direction. For all of these reasons, we emphatically approve it.

MR. PAUL: Mr. Winthrop A. Mandell, president of the Independent Club of East Orange.

MR. MANDELL: Mr. Chairman, members of the Legislative Committee, ladies and gentlemen: I have a letter here from our Westfield Club, which I would like to read, that is decidedly on the proponents' side. Mr. Chairman, I would like to be given an opportunity to speak on modification also, if I might.

> "Your committee has under consideration the report of the Commission whose report constituted a proposed new Constitution for the State of New Jersey. The Independent Club of Westfield has gone over this constitution quite carefully and we wish to express to you a very strong support of the Commission's recommendations as submitted. The reasons for this support may be summarized as follows:
>
> 1. The need for a modern Constitution gaited to the problems of present day State Government which is apparent to all thinking people.

2. Piecemeal revision under the existing Constitution is virtually impossible.

The Commission represents a bi-partisan recommendation and the membership of the Commission was of very high caliber and integrity. This leads us to believe that their report as a whole is as good or better than could be obtained by other procedure.

4. The proposed new Constitution does remedy the major problems and does create a workable functioning system. To say that it could not be improved is beside the point. It is vastly superior to what we now have, it represents a coherent approach to the fundamental problems and if attacked piece by piece the result has a strong chance of being hodge podge.

5. The proposed Constitution has provision for revision by a relatively simple procedure and this should be kept in the foreground in all of these discussions. Thus by accepting the Constitution as proposed we can make a vast improvement in State Government immediately and improve it as we go along. If we try to weed out every defect, this generation will be dead before we have any improvement.

For the above reasons we are strongly in favor of action now on the Constitution as proposed by the Commission and revision later under the simplified procedure after some experience has not only shown the need for revision but indicated the proper course such revision should take.

Very truly yours,

(Signed) Frank S. G. Williams

President of Independent Club of Westfield."

MR. PAUL: I would like to call next on Mr. Walter Beyer, Chairman of the Committee of Atlantic County on Constitutional Revision.

MR. BEYER: Mr. Chairman and ladies and gentlemen: I want to endorse this Constitution generally and particularly Article III. I think the Constitutional Commission has done an excellent job. It has produced a document that has removed many of the inefficiencies of our present government and still has done it in such a way that it has not raised a great deal of petty objection. There is no need for me to review again the advantages of Article III in the proposed Constitution. You have heard some excellent arguments from Mr. Miller and Mr. Watson, and I can say I endorse them. However, I do want to point to one or two things in that Article because I believe they should be stressed. I think the legislative council is an excellent idea and I think that with a legislative council we will get better legislation and we will get legislation that will be to the advantage of all the people and not just to certain groups that may pester the Legislature as they do now. I also think that removing the legislators from eligibility for appointive office during their terms is excellent. I think that that is a very desirable feature to be put in our revised Constitution. I have heard a lot of talk, particularly in South Jersey, that this is not the time to change our Constitution because of the times we are going through, but when we realize our Constitution of 1776 was born in revolution and the revision of 1844 was the result of the hard times we were going through, I think that only in times of distress and conflict such as we are experiencing now do the people realize the need for better government and that they look to their Constitution for that better government. The revision gives us better government. There is one thing that I want to stress at this time—it is rather selfish, I would say—I believe that the times are such that we are going to get a new Constitution whether you approve the revision or not. We will get it either by convention or we will get it in the manner proposed by the Commission. Coming from South Jersey and being a Republican, I appreciate that South Jersey has and enjoys an unusual representation in the Senate. We have heard other speakers refer to that point. I appeal to the representatives from South Jersey to consider seriously this method of adoption and adopting this revision or recommending this revision because this revision has not disturbed the representation of the South Jersey counties. If this revision is not submitted to the people, the people will demand a convention and if we have a convention I do not think that South Jersey will enjoy the representation it does now, and purely from a selfish point of view I think the South Jersey members of the Legislature should consider that point seriously. Now, I don't think that they should come through with a document that alters the important points on good government and still retains the representative feature, because then people will not approve of it. I have talked to a lot of people in South Jersey, particularly in Atlantic County, and I can say that all with whom I talked were heartily in favor off this revision. There are many features in the revision, as I stated, that will bring better government, and I think that Article III is a section in the proposed Constitution that will preserve our democratic processes. Unfortunately in this State, and I say this advisedly, the Legislature has a disproportionate place in our government. I think that this revision will put the Legislature in the position where it belongs with relation to the executive and judicial branches of government, and I, representing the committee that I do from Atlantic County as well as personally, heartily recommend that Article III be approved.

MR. PAUL: Miss Evelyn Seufert of Englewood, Co-Chairman of the Bergen County League on Constitutional Convention.

MISS SEUFERT: Mr. Chairman, members of the Committee, ladies and gentlemen: The Bergen County Unit of the New Jersey Committee on the Constitutional Convention is on the whole in favor of Article III as it has been revised by the Commission. We particularly approve of many of the changes and improvements which Mr. Miller has already pointed out and which other speakers this morning have enlarged upon. There would be no use in taking up your time now in going through those same points again. There are, however, perhaps two or three facts which might be emphasized in connection with these changes, some of the changes in Article III, which I would like to bring to your attention, speaking very practically. After all the theory is over, when we get down to actually changing our Constitution of course it has to be done entirely from a practical point of view. In connection with the restriction on the legislators, making them ineligible to accept appointive positions in the State Government during their terms of office as legislators or one year thereafter, much has been said this morning about that, commending the change, commending this restriction. There is perhaps one more fact which we might consider as to why this change is being recommended. After all, the voters elect their representatives for one purpose and the purpose is to represent them in the Legislature, not in the administrative department or judiciary, but they have selected the legislators to make the laws for them in each one of their counties. Now, if a legislator takes his position in the Legislature, starts out as a legislator, and then becomes an administrator or a judge or a vice-chancellor, he is not doing the job he was sent to Trenton to do; he is breaking his faith with his constituents. He was sent there to represent them in the Legislature. They have other ways of selecting administrators and judges. I think that is a point which we should consider when we weigh the value of this proposed change. To show you how extensive—of course, the legislators know well how extensive—the practice is of legislators going into the Legislature for a short term and then going on to, we might say, more remunerative and certainly longer term positions, in our present administrative setup alone, and I am excluding the courts, there are almost half of the composition of the Senate now holding administrative positions, and these administrators are of the immediate session or term of the Senate or the very recent past Senates. In other words, there are today ten former Senators, perhaps more—this is a very rough checkup—who now hold administrative positions, who have served in this past session of the Senate or immediate past ones, and who gave up their positions as Legislators to take these other offices. That is ten out of twenty-one, almost half, and that, I submit, is a vicious system. We are not getting the representation that we asked for when we voted for these representatives.

Another practical point in connection with another change and that is the change suggested for the legislative council—we have heard the value of that council expressed—another angle is this, ladies and gentlemen: For the past twenty years we have had a very peculiar situation, political situation, in New Jersey, where the great majority of the chief executives have been of one political party and the majority of the Legislatures of another political party. To speak frankly, of course the Governor is, in the great majority of cases, a Democrat, and the Legislature is Republican. Now, that of course does not especially make for harmony in Trenton. Where you have the executive department of one party and the legislature of another, there is naturally a conflict of interests. The legislative council would tend greatly to bridge that gap between the executive and legislative departments as it now exists, because the Governor becomes a member of the legislative council and the Governor must sit down with the leaders of the House and the leaders of the Senate and work out legislation, formulate plans, for each session of the Legislature. That very act of sitting down and working out legislation with the Legislature and talking things over, as you know, helps greatly, too, to do away with the conflict that may exist between the two departments. So that is another reason why we feel the legislative council, consisting of the Governor and leaders of both houses and minority leaders, would be a vast improvement in our system of legislation in this State.

MR. PAUL: Mr. Chairman, I think that concludes the number of proponents. However, before we conclude I want to state that there were a number of people at the last meeting who said they are on the whole in favor of this particular section but had one or two things to suggest. I proposed they be called on later as modificationists.

MR. SCHROEDER: Are there any other proponents of Article III? If not, we will proceed to hear the opponents of Article III. The first speaker will be Mr. R. Robinson Chance of Summit, New Jersey, representing the Manufacturers' Association of New Jersey.

MR. CHANCE: Mr. Chairman and members of the Committee:

I shall make a few introductory comments with regard to certain ideas that have been developed this morning. One of those was with respect to setting up straw men and knocking them down. As to whom this reference was addressed, of course we must use our own judgment. Personally, I disclaim that any straw men are being set up by me. The straw men that I go after are the straw men set up by the Commission and which should be set on

fire or knocked over or have something done to them. I noted with interest also that one of the speakers cited Bryce on the American Commonwealth. There are some nice things in there. I was afraid to cite that because that was written before I was born and I was afraid they would say I was getting back in the realm of the Constitution so I didn't pick out any selections from that, but I did see in there that way back in the early days there were three States that had the one-chamber legislature and that they cast them aside and don't have them any more. The only place that I know of that has one is Nebraska. Later we shall talk about the executive function and what the executive function covers, when we come to Article IV, where it belongs. I also noted with rather much interest that one gentleman insinuated that the amendments that you have cover zoning and horseracing and that they are not substantial things of great concern in the affairs of a commonwealth. Well, the point that I would make with respect to that is that if these two things which are not deemed of great moment in the affairs of a commonwealth can be put into a Constitution by amendment, certainly other things can be put in by amendment, and if anybody has any desire for an amendment they can bring it up under the method which we have in the Constitution at the present time. If they can get zoning and horseracing over and there are any real problems, why can't they get them over under the present Constitution? The fact that nobody has pressed with sufficient zeal and sufficient earnestness to get any of these constitutional amendments in this time makes me think that perhaps this widespread demand is not so widespread after all, or it would have manifested itself in such a way that we would have had some amendments before this. One of the gentlemen says that this does not restrict the Legislature, does not tend to executive domination, but it leaves them with free hands. I shall discuss it more in detail a little later, but in passing I say free hands to operate, yes—shut you up for all of two years except for ninety days and let the administrative agency make rules and regulations that have the force of law in the meantime. That is freeing your hands, that isn't restricting the Legislature one bit!

Now, in this listing we are listed as in opposition and as to much of the article we are in opposition, but I am pleased to be able to say that there are two provisions in this article with which the Manufacturers Association of New Jersey is in hearty accord. One of them is the proposal for biennial elections of the Legislature, and the other is the proposal to fix the compensation of the Legislature at a figure more commensurate with the time consumed and services rendered than that now paid.

We thoroughly concur with the view that an annual allowance of at least $1500 for each member of our Legislature is entirely

proper. We also agree that the recommended additional compensation equal to one-third of their allowance as members should be given to the President of the Senate and the Speaker of the House of Assembly. Morever, the annual payments, we feel, to members of the Legislature should be at least those amounts whether the sessions and elections be held as now or biennially.

Now, in my discussion I have intermingled the questions of biennial elections and increase in compensation to legislators. We do not wish this fact to raise any implication that we believe that the propositions should be submitted to the people together. The propositions are separate; they should be separately submitted; they should be submitted in the manner provided by the present Constitution, and each should be treated by the Legislature and by the people as separate and independent propositions.

It is emphasized that nothing that we have said, and nothing that we shall say in the future, should be taken as implying that any method of amending the present Constitution should be attempted other than the method provided in the present Constitution. We shall have more to say about this when we come to consider Article IX of the Proposal, which deals with amendments. It is sufficient to say now, that we do not believe that the Amendment Article of the present Constitution should be either ignored or bypassed.

There are certain other provisions in Article III which, if they were submitted in the way prescribed by the Constitution and were not inseparably tied up for submission with that and other Articles, we would not oppose. It seems that the best way to make our position clear is to consider Article III at length.

As the previous hearing came to a close the discussion concerned what a Constitution is and whether the State Constitution grants or merely limits sovereign powers. In this connection we would like to add such enlightenment as comes from two opinions in courts of this State.

In *State* v. *Parkhurst*, 9 N. J. L. 427, Chief Justice Kirkpatrick rendered a minority opinion which as is said at page 434 appears to have been sanctioned by the Court of Appeals, which reversed the lower court.

At page 443, the Chief Justice said:

> "What is a Constitution? According to the common acceptation of the word in these United States, it may be said to be an agreement of the people, in their individual capacities, reduced to writing, establishing and fixing certain principles for the government of themselves.
>
> Among these principles, one of the most important in all our Constitutions, is to prescribe and limit the objects of legislative power. The people are sovereign, they are

supreme in power. The Legislature acts by delegated and circumscribed authority; circumscribed as to its objects, circumscribed as to its extent over those objects."

In *State, Winans et al., Pros. v. Crane, Collector of Cranford Township,* 36 N. J. L. 394, Justice Bedle, speaking for the Supreme Court, at page 403, said:

"* * * The Legislature cannot pass an act to take the land of one man and give it to another. That prohibition is not in the constitution, yet it lies deep in the fundamental nature of our government, which is intended, among other things, to secure the natural and inalienable rights of property. There are certain great principles of justice that the people have not parted with to their legislatures, and which cannot be violated without disregarding and defying the essential nature of our government and system of laws.

The maxim under consideration has always been regarded in English Jurisprudence, as elementary and fundamental in judicial action, (Coke Lit., sec. 212, Broom 109.) and, I think, can no more be materially invaded by the legislature, than it could pass an act that a judge might decide according to lot, or for a party who should give him the most money. The Chief Justice, in *Schroeder* v. *Ehlers,* says, 'that a person cannot be a judge in his own case, has ever been regarded as one of the fundamental maxims of the law of nature;' also, that the injustice of allowing it, is intuitive in the human mind. In my judgment, the legislature is impotent to break down this great barrier to tyranny and fraud."

We think these judicial declarations are self-explanatory but I would add that there is nothing in the Constitution proscribing to the legislature the things which Justice Bedle said it had no power to do.

Coming to the first paragraph of Article III of the Proposal, it is found to read precisely the same as the provision of Article IV, Section I, Paragraph 1, of the present Constitution. The words in both instances are:

"The legislative power shall be vested in a Senate and a General Assembly."

It does not follow that these words mean the same in both cases. This is so because in the Constitution there is no other clause which indicates that persons in any other department than the legislative shall exercise legislative powers, while, in the Proposal, Article II, as already noted, implies that administrative agencies, as well as the Legislature, shall exercise legislative functions. That such is the intention is further made apparent by the explanation on page 16, of the Commission's Report (p. 915). It is there said:

"In order to serve the people effectively administrative agencies which combine all three types of power have become a permanent part of the machinery of government."

While this is true as to municipal governments for the purpose of municipal home rule, we do not think it should be conceded as to state government. The spectacle of an administrative agency being law maker, prosecutor and judge is altogether too familiar.

We are brought face to face with the question of whether the first Paragraph of Article III, Section I, of the Proposal should be supplemented by some provision which would limit the exercise of legislative power in other hands than the Legislature.

I again commend to your attention the clause which I mentioned on Wednesday last which would require approval by the Legislature of any rules and regulations of a legislative character proposed by administrative agencies affecting private rights and privileges before the same become effective.

That the intention of the Proposal is that the legislature will leave most of the law making to administrative agencies is also manifested by Article III, Section I, Paragraph 3. For in that clause it is seen that provision is made to limit the sessions of the Legislature to ninety calendar days in two years. Assuming that they do not work on Sundays, the ninety-day period would leave seventy-eight working days in the regular session. If holidays intervene they might further reduce the period. If this time should prove too short, the Legislature by this Proposal would be powerless to extend it. It is stated definitely and in unequivocal terms that the two houses shall adjourn sine die not exceeding ninety calendar days after meeting, except as provided in the Executive Article of this Constitution. And it may be noted in passing that the Executive Article exception mentioned is that in case the Governor shall have sent to the Legislature an executive order allocating or reallocating the powers of administrative departments, the Legislature may have as much as thirty extra days to disapprove. Under Clause 4 of Article I, Section I, special sessions are to be called by the Governor upon petition of two-thirds of the members of each House, and the Governor may call the Legislature together in special session if in his opinion the public interest requires it, but the provision as to special sessions is hobbled and restricted by the requirements that the call for a special session shall specify the matter or matters to be considered and no other matter shall be considered at such session. A slip in the call might frustrate the session, and substantial amendment in the matter submitted would be prohibited as outside the call. Further-

more, the provision with respect to special sessions limits them to 15 days, which might not be long enough.

Now, you who have had legislative experience will realize how preposterous it is to expect the Legislature to work against the time limit mentioned. First of all comes the problem of organization at the opening of the session. There is necessarily some time taken up in that. Furthermore, all bills must be read three times in each House and when voted on at each passage the yeas and nays must be taken and entered in the journal, page 39 (p. 937). The session of the present Legislature merely meets to legislate for one year (not for two as the Proposal for biennial sessions contemplates). About 250 laws are generally enacted. In a ninety-day session, taking time out for Sundays, that would mean approximately three bills a day for each working day. Also, there are a lot of other bills that are not passed which are introduced and take up some time in their consideration. There may be some delays because of lack of available copies of the bills introduced and other time-consuming elements which of necessity arise (as you members of the Legislature know from experience far better than anyone could learn from hearsay). Indeed it is supposed that it is not treason for a legislator to expect reasonable time for consultation with his constituents as to the advisability and desirability of legislation proposed from time to time or to have a committee meeting and public hearing. Having all these things in mind, it is believed that this time limitation on the Legislature is preposterous and is clear indication that the Proposal contemplates that the Legislature should unite in asking the people to vote on whether there should be a Constitution that reduces the Legislature to insignificance—a place where they would have to sit and take the things handed them by somebody—O.K.—make a rubber stamp or Charlie McCarthy out of the Legislature. We don't favor that.

The Proposal that the sessions be held biennially we have already indicated as being acceptable to our views but we feel this ninety-day limitation is absurd and would be sure to do more harm than good. I know that there are time limitations on Legislatures throughout the country but I think it will be hard to get authorities who speak about this thing to say they have accomplished any good by their time limitation in other states.

Now, it is note that on page 17 of the Report (p. 917), it is said:

> "This plan, including the 90 day limit on the duration of the session, will concentrate legislative attention on important proposals, compel a short businesslike and continuous session, and curtail the mass of unnecessary laws. It will encourage more men of ability, whose time is limited, to seek seats in the Legislature."

It would have been interesting if the Report had specified some of the supposed mass of unnecessary laws that it is thought the Legislature has been giving attention to. It seems obvious from the reference to continuous sessions that it will not be expected that the Legislature will take time out for committee hearings. The question is, where will these important proposals come from?

It is assumed that the Proposal contemplates that the so-called important Proposals on which the Legislature would be expected to concentrate attention would come from the legislative council that is to be set up under the later provision, and I will consider that a little later when I come to the provision that sets up the legislative council.

In the meantime, the provision about called special sessions made by Article III, Section I, Clause 4, and other provisions prior to that, relating to legislative council, will be noted. Now, the special session clause provides that the special sessions shall be called by the Governor upon the petition of two-thirds of the members of each house and may be called by the Governor at such other times as in his opinion the public interest may require. Well, first of all comes the question why should it be two-thirds instead of a majority? We hear a lot about majority rule being one of the elements of democracy, and if there is a majority in the Legislature that wants to pass some law, why shouldn't they have the right to call a special session to pass on that law rather than hamper and restrict the Legislature so the majority could not pass the law they wanted to but had to get a two-third majority to do it. Another question arises and that is as to what would happen if the Governor received a petition of two-thirds of the members of each House but failed to call the special session. It is believed that there would be no way he could be made to do it. The executive department is a coordinate branch of the government and it is not believed that the judiciary would feel that it should attempt to compel the Governor to call a special session. Accordingly, if it had been desired to provide for the calling of a special session on the petition of two-thirds of the members of each House, a majority or any other number, some provision should be made, whereby in the case of inaction by the Governor upon the receipt of such petition, some officer of the Legislature might call the special session.

We think also that the limitation of a special session to 15 days is almost as objectionable as the 90 day limitation on the regular sessions.

Now, Article III, Paragraph 2, suggests no argument on our part. It only reconciles existing provisions with the proposal that sessions would be held biennially instead of annually and makes

the terms of Assemblymen and Senators two and four years, respectively.

Article III, Section III, headed Legislative Office, changes the annual compensation of the Legislator to $1500. In the report, the present compensation is indicated to be incommensurate with time and service rendered and less than certain neighboring states, mentioned on page 18 of the Report (p. 917), allow to their Legislators. Additional compensation of one-third of their allowance is provided to the President of the Senate and the Speaker of the House, and our agreement as to the propriety of this provision has already been indicated.

The first Paragraph also recognized that certain members of the Legislature shall receive extra pay for service on a legislative council. When I speak about the legislative council, you will see what I think about that.

Members of the Legislature not on the Legislative Council are forbidden any other allowance or emolument, directly or indirectly, for any purpose whatever. That is Section III, Paragraph 1. Now, it is supposed this would forbid receipt of fees for representing state agencies. Maybe it means the Legislature is to be a full-time job. I don't know what it means. I merely note the point of this provision without debate.

Now, a substantial revision is proposed by Paragraph 3 of this section where provision is made that no member of the Senate or Assembly shall be eligible to hold any appointive office under the authority of this State for one year after the time for which he or she was elected. I have been unable to find anything in the Report as to why this proposal is made. I suppose they thought that the Governor that was to be Governor throughout the ages, or from time to time, would be such a wholly and righteous institution that it would be terrible to suggest perhaps he might undertake to influence votes by using the appointive power. I don't know what the idea was in leaving it out, but anyhow I find nothing in the Report as to why this proposal was made. Its implications are more or less obvious. Maybe that is why they thought they would leave it out. The present Constitution, Article IV, Section V, Paragraph 1, renders members of the Legislature ineligible for nomination or appointment to offices which have been created or the emoluments of which have been increased during the time for which he was elected, but this proposal renders a legislator ineligible for any appointment under the State for a year beyond his term. Now, looked at from one point of view, it seems rather hard on a legislator, who gives his time and effort at meager pay, to say that for one year after he ceases to be a legislator he cannot obtain an appointive office. The other side of the argument of course is that under the suggested clause the

power of appointment cannot be so effectively used to influence members of the Legislature. Which of these conflicting points of view is the sound one? We think the former.

As to the other provisions of Section III, we have no desire to debate.

Now, Article III, Section IV, Paragraphs 1 to 5, do not seem to make provision as to legislative procedure any different from existing procedures.

Paragraphs 6 and 7 of that section are new. Paragraph 6 is, "the Senate shall vote in public on the question of confirmation of any nomination to office made by the Governor." We perceive no reason why this is not a proper provision. It would still leave discussion in executive session possible, and naturally there are some things which it is desired to say as to whether or not a man should have an appointment that one would prefer to say in private rather than say it in public. The voting in public would be a protection to the extent that the people could see how a fellow voted, and in the last analysis that is what counts. It doesn't make much difference what you say in the back room; it is how you vote. We don't see any particular objection to that.

Now, the Seventh Paragraph of the section has to do with lobbying. I think this Paragraph deserves particular attention. Whether this subject should be covered in a Constitution at all or left for regulation by legislative enactment is a matter upon which there is room for debate. In Federal legislative practice the matter has been left for legislation. We think that is the proper way.

We have all heard and read about the iniquities which are supposed to follow from what is rather loosely referred to as lobbying, but I want to quote an eminent writer on Government just briefly. I quote from "The New American Government and Its Work", fourth edition, by James T. Young, published by the MacMillan Company. I don't get any commission for saying that, but it is a good book and I commend it. At page 637, I read: "Owing to the improper methods formerly used by lobbyists, the public has condemned the entire tribe. This is based on a complete misunderstanding of the legislative agent's actual role in law making. True, he represents clients and seeks legislation favorable to their interests but this is true of all lawmaking, even the most idealistic. The legislative agent performs an invaluable service." And, at page 988: "The lobby was a term of contempt applied to those persons of shady reputation who haunted the corridors and vestibules of legislative halls to buttonhole the lawmaker and by some illicit influence sway his vote. Today it is esteemed by many as the most complete and best organized source of information on many public questions." Now, the term "lobbying" is a word of general signification and scope. To some it means one thing and to

others it means something else. Accordingly, any regulation of the subject seems to be a matter which calls for more certain and definite detailed provision than is generally regarded as appropriate for insertion in a constitution or organic law. Be that as it may, the seventh paragraph will be noted in more particularity.

The first provision is, "lobbying in the legislative chambers of either house shall be prohibited." In view of the fact that there is no standardized or definite legal significance to the term "lobbying," this provision leaves open to doubt just what conduct is supposed to be prohibited in the legislative chamber of either house. That "lobbying" is not a definite term is illustrated by the fact that the Commission at page 17 of its Report (p. 917) speaks of "free rein for all kinds of lobbying." "All kinds" means maybe there is more than one. I don't know what kind they are referring to but "all kinds" indicates there is something indefinite about it. So the first point that is suggested is that if there is to be such a provision in the Constitution, it should more definitely indicate what is prohibited, than just the mere use of the word "lobbying." One definition of "lobbying" is, "to address or solicit members of a legislative body in the lobby or elsewhere with the purpose of influencing their votes." If this is a correct definition, it is well to note that nothing is said by the Proposal as to whether legitimate or not or whether by direct personal conversation, by telephone, or by written petition. Further, it says nothing concerning whether the person "lobbying" is lobbying on his own behalf or on behalf of himself or other[illegible]ilarly situated or on behalf of others for a recompense or [illegible]himself.

The quoted [illegible]ovision prohibits lobbying "in the legislative chambers of either house." It does not prohibit lobbying elsewhere. But it would seem that if any corrupt practices were to be attempted they would be more likely to occur elsewhere. That being so, why should we confine any regulation to chambers of the House where there is less likely to be corruption than elsewhere, where there might be more likely to be some if we assume there is any.

The suggestion that the Legislature is to be in continuous session during the ninety days period implies that there would be considerable restriction of opportunities for constituents to express their views to members of the Legislature.

In contrast with this provision about lobbying is the other provision at the top of page 35 of the Proposal (p. 932) copied from the present Constitution, which reads as follows:

> "The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances."

It does seem that the best place to present a petition for redress of grievances is to the Legislature when it is in session. That is the time when opinions or petitions may be relevant. The exercise of the right named in the Bill of Rights as to presentation of grievances and making known opinions to the representatives of the people would be threatened by this general prohibition against lobbying.

The suggestion is that the legislators are to be run through a continuous session for ninety days when they may listen to a recommended program probably prepared by a non-elected staff of a legislative council but not to their constituents. All this will tend to produce impotence of the people to influence the course of their government.

There is no required way in which one's constituents may have advance knowledge of measures that may be introduced, and one may be unable to contact his representative when the representative is away from the legislative chamber. Under these circumstances he should be allowed to make known his opinion at the legislative chamber. It is believed that there is good lobbying and bad lobbying and any law dealing with the subject should discriminate between the two. This proposed Paragraph 7 does not make this discrimination.

The second provision of Paragraph 7 is as follows:

> "Persons or associations who engage to influence legislative action shall register with the Secretary of State, disclosing the names and interest of those for whom they may act, the compensation received or agreed, the measures which they may be engaged in promoting or opposing and all expenditures made or incurred in connection therewith. All such information shall constitute a public record. The Legislature shall impose suitable penalties for violation of these provisions."

The word "engaged" has many and indefinite meanings. It is broader than the word "contract." The balance of the clause seems to imply an employment for compensation in that it requires a statement of compensation received or agreed. It may be that the person or association involved might truly report to the Secretary of State that no compensation had been received or agreed, and yet that person might be engaged to influence legislative action and might still be required to register. There would be difficulty and some people would not know whether they were able to speak without registering or not. On the face of the provision the Legislature is given no power to construe the intent of the above quoted provisions. It says the Legislature is required to impose suitable penalties for violation of "these provisions" and not to define what

offenses would be deemed improper lobbying but simply to put penalties on for the things mentioned in here, and having also in mind that back further in the Constitution there is a provision this is self-executing, so that that gets to be the statute itself. That is the offense. Now you put the penalties on, it says.

It is to be repeated that nowhere in Paragraph 7 is there any indication limiting the provisions to those practices which might be denoted as corrupt. The whole paragraph tends to impede free communication between the people and their duly elected representatives, while the legislative representatives may listen to the Governor and the proposed legislative council.

The more this matter is considered the more one will incline to the view that the intricacies and ramifications are such as to make the matter one for legislative regulation rather than for inclusion in a Constitutional provision, certainly not such a Constitutional provision of the indefinite character conveyed by just the general word "lobbying."

The next provision of Article III is headed "Legislative Council." Before going into the details on this subject, it may be noted that there is a provision for the Attorney General to serve on this proposed council in the absence of the Governor. One of the speakers this morning spoke about what a good thing it would be to have the Governor and Legislature sit down together, but bear in mind that the Governor would not have to sit down together if he didn't want to; he could send his Attorney General over, under this clause. This clause about sending the Attorney General over is impossible to reconcile with the provisions in Article IV, Section I, Clause 6, to the effect that in the absence of the Governor from the State or his temporary inability to discharge the duties of his office, they shall devolve upon the head of the Department of Taxation and Finance. Possibly the two provisions would be construed to mean that the head of the Department of Taxation and Finance would exercise the powers and duties of the Governor in his absence in all cases, except with respect to the legislative council, and in that case the Attorney General should do it, but if that is the intention it does seem that it would be he better to reconcile the seeming conflict by express language rather than to leave it to interpretation and construction.

Coming now to the merits of this proposal, we are unable to arouse any enthusiasm for it. On a first reading, doing it superficially, one may get a favorable impression from the high sounding statements as to what the legislative council shall do. While the proposed presence on the council of the Governor or, in his absence, his Attorney General seems inconsistent with the separation of powers and distinct coordinate departments of the Government to which we have been accustomed, the proposed presence of

the President of the Senate and of the Speaker of the House of Assembly and the majority and minority leaders in each House may seem to provide sufficient check against undue influence by the executive in the proposed legislative council. I might say in passing that in Kansas, where the legislative council idea first took root in its modern form in 1933, the Governor is not included in the membership of the legislative council. A legislative council made up of members of the Legislature, not a combination thing like this proposal, is what they have. I think that is so in Michigan. I don't know of any State that has such a thing as a legislative council that has a Governor on it, but I don't speak with positiveness with regard to that; I don't know whether there is any or not; all I know is some organization, something about municipal research, some kind of organization set up a model Constitution and they put in some clause like this to have the Governor as part of the legislative council. I don't know whether or not any States have adopted it yet; I don't think so.

The more closely the provisions of Section V are considered, the more it is realized that it is implicit in this section that the real activities of this council would not be carried on by the elective officers on the council. They would be carried on by what might be considered the staff or permanent organization which Section V seems to contemplate. At page 18 (p. 918) the Report says that the council would investigate important legislative problems which require technical competence. Also, that during the session its program would form a guide for the most efficient use of legislative time, and after each session the council will follow up important new legislation to check upon its practical results in operation. At page 17, near the top (p. 916) the Report says that the council will act as a contact between the legislative and executive branches of the Government.

It seems to us that if the Governor wants to contact a member of the Legislature or vice versa the contact can be much better accomplished by direct effort than through the intermediation of someone else, or that if it should happen that the Governor and the Legislature were at such odds that personal contact was impossible, no amount of legislative council staff intervention would alleviate the situation. The research and consultative services and the technical studies and a formulation of the program would probably not fall to the members of the Legislature but to the permanent staff of the council.

In our view there is no point to setting up this subsidiary bureau of non-elected persons fronted by some ex officio officials who were elected. The tendency of the proposal would be to have a bureau of non-elected officials telling the Legislature what to do.

Mark you, this council is to have a program and draft bills in shape for the consideration of the session of the Legislature.

We do not think there is any problem of sufficient importance to call for legislative action that will not occur to the Governor or some member of the Legislature. If the measure seems to the Governor in public interest, he can communicate that fact under present practice. If it seems to a legislator to be in the public interest, he can bring it to his fellow legislators. If the matter will completely escape the attention of the Governor and not be brought to the attention of any member of the Legislature, it is not of sufficient importance to deserve action of a Legislature in a democracy. Members of the Legislature are elected to make the laws, to decide on the policy that should be enacted into law, and we prefer legislation drafted and programs formulated by elected officials. It is the people's Government. If they do not want any measure bad enough to stir up some of their elected representatives about the matter, we see no reason why the taxpayers' money should be paid to a lot of supposedly independent researchers and program makers who never carried a precinct to hunt around for a program of legislation that the people do not care anything about. Such a staff of legislative guardians would be a fertile field for backstage wire pullers and a breeding place for schemes to subordinate the Legislature to departmental despotism.

We see no need for a legislative council but if there is to be one, let it be made up of designated members of the Legislature who will hold hearings when matters coming to their attention seem of sufficient importance to deserve it, and who shall be paid commensurate to the time required in their work. The same money that would have to be appropriated for the upkeep of a non-elective staff of the proposed legislative council could be employed to better use by paying it to members of the Legislature. This needs no Constitutional amendment. Legislative act would suffice, if you wanted to have such a thing.

One thing about this it seems to me has been distinctly overlooked in the remarks which I have heard concerning it is the program-making feature of the legislative council. Some States have a reference bureau, legislative reference bureau, where is carried on the work of the supposed experts, solely of a clerical and technical nature, but that is no program making and that is a different thing, and that is the thing I think some of the advocates of this measure have confused it with. Now, just how is this legislative council going to work in this situation? Suppose it should happen that we have a Governor of one political persuasion and then we have, we will say, a President of the Senate of one party and Speaker of the House of Assembly that is of another. This is assuming that the legislative members themselves are going to

work. The minority leader and majority leader balance off against each other. That makes that even. We will say a Republican President of the Senate might be on one side. The Democratic Speaker of the House of Assembly might be on the other side. There you would have them balanced up. The only fellow who could break the tie, fix it up all right, straighten things out, would be the Governor or Attorney General. That would be one case where it worked out that way. There again, where is the majority or minority member going to get his voice as to what he should advocate or support when he gets on the bureau? Where is the Speaker and President of the Senate going to get? Are they going to abolish the party platform or are they going to have party caucuses just the same? If these fellows don't go in and vote the way the party wants them to, I guess they won't be President of the Senate or Speaker next time, so for all practical purposes this won't be of substantial benefit as far as we are concerned, and at any rate anything of the sort should not be stuck into the Constitution. Too many experiments should not go into the Constitution. If you want to do anything along that line, work it out by legislative act rather than by the Constitution.

MR. SUMMERILL (Presiding in the absence of Mr. Schroeder): We will reserve the right to give you the floor when you come back, and we will adjourn to two o'clock.

(Recess.)

PUBLIC HEARING

July 15, 1942

Afternoon Session

on

Proposed Revision of the New Jersey Constitution

Article III, "Legislature"

The Joint Legislative Committee re-convened in the Assembly Chamber at Trenton on Wednesday, July 15, 1942, at two o'clock P. M.; pursuant to announcement previously made.

Mr. Summerill, presiding in the absence of Mr. Schroeder, opened the Hearing and the Hearing proceeded as follows:

MR. SUMMERILL: Mr. Chance you may have the floor.

MR. CHANCE: Mr. Chairman: Just one or two other thoughts about the legislative council idea. If we assume that the legislative members of the council would really do some substantial part of the program-making, we would have an interesting spectacle if it so happened that in between the recesses, the members got together and got up this fine program that was going to be submitted to the next session of the Legislature, and that just before the next session your two years would come around and they had had an election and it turned out that the men who had been on the council, or some of them, had failed of reelection—it would be an interesting spectacle to a new member who just came down, elected by his people, to take some stand pursuant to some platform that he had run on, and then, when he spoke about it with his associates, they would say, "Oh, no, you mustn't do that. We had a program here that was prepared by a legislative council." And he would say, "Who is this legislative council?" "Oh, that is the lame ducks who did not get elected over again. They gave you a program; the people repudiated them; but that is the program. You people who got elected must not go along on what your platform said, or what the people want. Take the program the non-elected man gave you."

Then, there is another question about it. Who is going to get the technical experts and where are they coming from? We have heard that the appointive power is an executive power. Whether it is or not and how much, we shall talk about on the next occasion when we come to the executive and administrative heading. There is an Article about it but I mention it in passing because perhaps, if that is an executive function in the estimation of those who advocate the legislative council, they are advocating that this staff, the so-called experts and program-makers, would be selected not by the Legislature but by the Governor—an instance again of having the policy of the Legislature determined by somebody other than the Legislature. I maintain that the only way in which we can make a legislative council like they talk about here operate successfully would be to abolish the two-party system, because if you are going to have the two-party system, the Minority Leader, the Majority Leader, the Speaker of the House, and the President of the Senate will be just as much Democrats and Republicans when you have a legislative council as they are now, and they will be just as much bound by party caucuses on the outside of the legislative council as they are by caucuses held under the present system. So I maintain that this legislative council idea has nothing of substance in it except insofar as you might substitute instead of a legislative council, a legislative reference bureau, where you would have clerical and technical work, done only, when asked by the members of the Legislature; in other words, let them be your Charlie McCarthy instead of the Legislature being the Charlie McCarthy of the so-called experts and program makers.

By the way, the first time they ever set up one of those legislative councils there were no legislative reference bureaus—the kind of thing I was talking about.

Turning to Section VI, Paragraph 4, the present Constitutional provision against intermixing in one and the same act such things as have no proper relation to each other is carried on, but with the exception that any law recommended by the legislative council which has just been mentioned and the permanent law revision agency to be mentioned in a moment are not to be subject to this prohibition. In other words, no matter how intermixed matters are in the same act, the mixing is not to be objectionable if done by the legislative council or the law revising agency.

If improper influence may result from intermixing things which have no proper relation to each other, no good reason is seen why a legislative council should be allowed to intermix things that could not be intermixed when recommended and introduced by an individual legislator.

The next provision that will be noted is Paragraph 7 of Section VI. Here we have a provision which would allow the Legislature to "incorporate by reference with present and future effect any provision of Federal public law or any Federal administrative rule or regulation relating to the regulation of industry or commerce, or to taxation, or establishing technical standards of any kind." A remarkable thing about this provision is that it follows directly after Paragraph 5, which forbids the revival or amendment of a New Jersey statute by reference to its title, and Paragraph 6,

which says that no act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act. The New Jersey act has to be inserted in full, but Federal laws which are much more numerous and much harder to find can be incorporated by reference and, not only could law be incorporated under this provision, but any rule or regulation of the Federal Government could be made a part of the New Jersey law by reference. Leaving out any question of the propriety of the Legislature of New Jersey adopting by reference, with present or future effect, laws passed by some other law-making body, the same rule against the iniquity of legislation by reference, which forbids such procedure, in the case of New Jersey statutes, should apply where it is a Federal rule or regulation or Federal statute that is to be adopted.

We also have in mind that the theory of our National Government is an indestructible union of indestructible States and that each is supreme within its own field. We feel that the New Jersey Legislature should pass its own laws and that it is a dangerous approach toward centralization in the Federal Government of all legislative power, to permit Federal rules and regulations to be adopted by reference.

We have need for the preservation of the proper identity and authority of the States in the rapidly increasing trend toward greater centralization in the National Government.

The eighth paragraph of Section VI about continuous revision of the statutory law, to the end that all the law shall be completely revised every ten years, bring to mind the terrific cost of the last revision of the New Jersey statutory laws. The only other observation we desire to make with respect to this provision is that revision of all the statutory law would fall a lot short of revision of all the law in New Jersey if we are to have only ninety days of legislative session and a lot of administrative agencies making rules and regulations to have the force of law. In other words, the rules and regulations would have to be continuously revised if all the law is to be put together in one place, and if Federal laws, rules and regulations were to be incorporated, they too would have to be revised, and how could New Jersey revise them?

Article III, Section VII, deals with legislative powers. Paragraph 1 prohibits the election or appointment of any officers by the Legislature or either branch thereof except the State Treasurer and State Comptroller. The theory back of this proposed change is that the appointment of officers is an executive power and should be exercised by the executive. Whether the appointment should be made by the Governor or not depends upon the position to be filled, in the present Constitutional set-up. We are not so sure that the Governor should have the appointment of all the officers except the

State Treasurer and State Comptroller. However, if that is a sound doctrine, there is no need for inserting a provision in the legislative Article that the Legislature or either house thereof shall not elect or appoint. That matter could be covered in the executive and administrative Article by saying that all officers except the two mentioned are to be appointed by the Governor. Incidentally, there is a provision along that line, and further discussion as to the nature and scope of appointive power and who should have it, we will reserve for consideration when the revision of Article IV comes up.

Article III, Section VII, Paragraph 2, deals with labor and collective bargaining. It reads as follows:

> "The right of labor to organize and bargain collectively shall not be impaired." Page 39, bottom (p. 937).

It is believed that the submission of this proposition to a referendum at this time would do more harm than good. It would introduce argument and dissension in a field where events happening abroad make important, if not imperative, concentrated effort on the part of both employee and employer.

The difficulty in this connection is that while everybody seems to agree that labor should be allowed to organize and bargain collectively if there is anybody to bargain with, nobody seems to agree as to the scope of that right and what activities it connotes and impiles. Accordingly, to submit for argument and subsequent vote the question of whether this uncertain and undefined right should be frozen into its present form by a Constitutional provision against impairment, seems like a sure way to promote dissension.

The Report says of this Proposal:

> "The unalienable right of the workingman and woman to organize and bargain collectively is recognized."

In reality, however, the proposed paragraph goes further with recognition; it goes toward perpetuation by stating that the right shall not be impaired. It confines the right in its existing form and scope when so few agree as to what is the existing form and scope.

Some assert and some deny that the right to organize and bargain collectively carries the right to have a closed shop, to employ coercion and strikes to attain that and other objectives, to resort to sit-down strikes and even violence to attain the purposes of organization. Some say that a man's right to work does not exist unless he pays initiation fees and maintains membership in a labor organization and that assertion to the contrary is interference with labor's right to organize, while others as strenuously deny that

this is so. Some say that for an employer to tell his workmen the truth about a labor union and its activities is an unfair labor practice trespassing upon the right to organize and bargain collectively. Others deny this.

All of these differences and others would be thrown into the election if this clause were submitted to referendum. This is believed to be contrary to the best interests of all concerned at this time.

Apart from the uncertainty as to the scope of the right which this clause purports to freeze into permanent form, there is the further consideration that while the war continues the field of State control over this matter is likely to have a constantly narrowing scope. So far as the right to organize and bargain collectively is presently of much importance, it is in the field of larger industry and in war work. These are subject to Federal control and so it now makes no difference what the State Constitution says on the subject. As to such industry, the National Labor Relations Act, and such Federal regulations as may from time to time cover the situation, will control. Conditions are in a state of flux and there is no certainty that the Federal laws and regulations will continue to regard the scope of organization and collective bargaining to be precisely what it is now. An undesirable situation would result if Congress should change its definition or scope of the right, and New Jersey were left powerless to follow Congress insofar as employment within New Jersey jurisdiction were concerned because of a clause in the State Constitution preventing the State from making needed new laws or regulations on the subject.

As a matter of fact, this subject should be left for the Legislature to regulate in such manner as time and experience may prove to be practical and just, and in cognizance with the Bill of Rights. Moreover, we think it had better wait until the boys get back from the war. They will want to be heard from then as to the terms under which they may work, and the Legislature should not be so restricted by the Constitution that it could not even consider whether those who fought for their country should be required to pay a union initiation fee and continuing union dues in order to get a job or keep one. For these reasons, we do not think this particular clause should now be submitted to referendum.

The only other provisions about legislative powers stated in Article III, Section VII, which suggest to us the need for any comment are Paragraphs 6 and 7.

The sixth paragraph extends the present zoning provisions of the Constitution so as to allow counties as well as municipalities to have zoning ordinances, and it also adds "land uses" to the things that can be regulated by zoning ordinances. At present, buildings and structures are limited, regulated and restricted, whereas other

land uses than for buildings could be regulated. The sixth paragraph further purports to give the Legislature power to restrict the uses of property adjacent to public highways and other public buildings, and the last sentence of the paragraph inserts a new provision to the effect that such laws shall be deemed within the police power of the State.

At page 18 of the Report, (p. 918) it is indicated that beautification of highways and building parkways are included in the changes so as to remove any possible implication from present provisions in the Constitution that such power does not already exist. We think it would be more accurate to say that the provision was designed to escape from express adjudication rather than possible implication, because it has been held by our courts that aesthetic considerations are a matter of luxury and indulgence and only necessity can form the basis of the exercise of the police power.

The seventh paragraph provides that any agency authorized to acquire private property for public highways and various other public improvements may acquire not only the land necessary but abutting property or restrictions or easements thereon "to preserve and protect the public highway, etc." It would seem that the probable purpose of this provision was to provide for payment if it was impossible to sustain the sixth paragraph which would let the public take private property for nothing.

We feel that the present limitation on the police power should not be broken down so as to allow the restriction of the use by a man of his own property any more than it is now restricted. For this reason we do not favor the sixth paragraph.

As to the seventh paragraph it implies, according to the proponents of the Proposal, the expenditure of money for beautification. It seems to us that neither now nor for a long time to come should authority be given for the spending of money for such purpose. Whatever tax funds may be available should be used for paying for the war and not for beautification of the countryside. Furthermore, there is an element of unfairness in restricting the use of a man's property by restrictions or easements short of the fee such as this paragraph proposes.

So much for the textual provisions of Article III.

Applicable to all provisions is the question of whether this is the time to revise the Constitution.

The New Jersey State Bar Association adopted a resolution in which they express the view that now is not the time. Perhaps it would be a good way for me to bring before you some of our views to just read you the recital in that resolution adopted by the Bar Association, and here is what their one recital was—all of this is really desirable information but I won't take your time to read any more than just this one proposal—"Whereas there should not

be submitted to the people of this State any proposed Constitution at a time when our Country is at war and so many of the finest of our citizens are in the service of our Country, scattered to the far ends of the world, and by reason whereof will be unable to have knowledge of, consider, or vote upon the proposed changes, and the time of those not in the services is entirely taken up in pursuits which directly or indirectly assist our National Government in furthering the war effort . . . " We too think that, in view of the fact that there are such a large number of the voters away in the service of the armed forces of the United States and that many at home who are engaged in, and concerned with, the prosecution of the war effort, have not the time to consider revision of the New Jersey Constitution with the same attention they would give it in normal times. Moreover, the economic situation of New Jersey as well as the rest of the world is thrown out of normal adjustment. Nations and human relations are in flux. When peace comes the people will find themselves in a situation quite different from that which has heretofore existed.

In the face of these facts, we are not persuaded that now is the time for referendum on the revision of the Constitution. We have managed to get along with measurable success under the present Constitution. Many of the things proposed, if desirable, could be done by legislation. Nothing in the first three articles, except the questions of adequate compensation to the Legislature and biennial elections, seems to us of sufficient importance to call for any referendum now.

I thank you.

MR. MCMANUS: May I ask a question?

MR. SCHROEDER: Yes.

MR. MCMANUS: I was very much surprised last week to hear the State Chamber of Commerce, which as I understand represents the voice of business in New Jersey, to be very decidedly in the affirmative as far as supporting the general new proposals in this document, and I was surprised to see that one section of New Jersey business as represented by the Manufacturers Association was opposed to every comma and every period in the document.

MR. SCHROEDER: Is this a question or a speech?

MR. CHANCE: It sounds like a speech, rather than a question.

MR. MCMANUS: I would like to put the question I asked last week. I was trying to find out last week whether what we have been hearing is actually the voice of the manufacturers of New Jersey or whether it is the voice of the only man in New Jersey who likes the Constitution of 1844 as is—sort of a constitutional Rip Van Winkle—and I would like to find out if there has been any polling or any attempt to ascertain the view of the manufacturers of New Jersey by Mr. Chance.

MR. SCHROEDER: Do you care to answer that?

MR. CHANCE: Well, perhaps the best thing for me to do is to do like he did. He gave a question that is part speech, and I will give him an answer part speech, and my answer is the old saying the proof of the pudding is in the eating. We don't see a whole lot of manufacturers coming here and saying that I am not authorized to say these things for the Manufacturers Association, nor do we see a lot of manufacturers saying I don't speak the voice of industry in this regard, and when we hear a lot of people in the presence of this committee saying that I speak my own views and not those of industry, then we will have some basis to assume that I am not representing those who have sent me here.

MR. MCMANUS: The answer is "no", then.

MR. CAVICCHIA: Mr. Chairman, last week Mr. Chance and I differed somewhat on the question of grant of powers or limitation of powers. I understand, Mr. Chance, that today you have quoted a minority opinion in the Parkhurst case to prove your point.

MR. CHANCE: A minority opinion which, however, was accepted by the Court of Errors and Appeals and therefore became a majority view of the Court of Errors and Appeals.

MR. CAVICCHIA: Do I take it you still insist the State Constitution comprises a specification or grant of powers and not a limitation of powers?

MR. CHANCE: I claim it does both. First of all, it sets you up in business. You don't have any legislature if you don't have the provision in there which sets you up. That is your grant of legistive power. Then it has other clauses in there which, in order to define and limit the scope of the broader term, sort of trims it down a little.

MR. CAVICCHIA: You have modified your views of last week, is that right?

MR. CHANCE: I don't claim I have modified any view. Perhaps one time or another I haven't expressed myself clearly, but I am not conscious of any change of view.

MR. CAVICCHIA: Well, I will take the liberty of reading some decisions, because I was very much interested in our little discussion and I want to read for the benefit of yourself and those assembled here some decisions on this point. For instance, here is one: "The legislative power of a state extends to everything within the sphere of such power except as it is restricted by the Federal Constitution or that of the State."

MR. CHANCE: What is that?

MR. CAVICCHIA: *Pine Grove Township* vs. *Talcott,* 19 Wall. (U. S.) 666, 22 L. Ed., 227.

Another one: "The Legislature of a State does not look to the

State Constitution for power to act on a particular subject, but only to determine whether the sovereign legislative will has been in any manner restricted or limited by that instrument." *Platt* vs. *LeCocq,* 150 Federal Reports 391; *McCreary* vs. *Fields,* 148 Kentucky 730, 147 S. W. 901.

Again: "Questions of power do not depend on the degree to which it may be exercised"; *Brown* vs. *Maryland,* and so on.

"A state legislature possesses all legislative power except such as has been delegated to congress and prohibited by the Constitution of the United States, or is impliedly withheld from it by the State Constitution; and the only limitation on its power are those of the State and Federal Constitutions and the treaties and acts of Congress enacted and adopted under the latter"; *Townsend* vs. *State,* 147 Indiana 624, etc.

Another one: "The State does not act by its people in their collective capacity, but through such political agencies as are duly constituted and established. The legislative power is the supreme authority except as limited by the Constitution of the State, and the sovereignty of the people is exercised through their representatives in the Legislature, unless, by the fundamental law, power is elsewhere reposed."

I have some others but I thought they would establish the point I made last week.

MR. CHANCE: If I might be permitted to suggest, all of those cases had to do with a consideration of whether the United States Government had power in the particular instance, or whether the State Government had power, I think you will find, and so far as the United States Congress is concerned, of course the State Legislature can pass anything it wants to, assuming it has been granted the power, but the question as I gather it is where did the Legislature get the power to do those things—simply because you set up in your State Constitution the clause which says that the legislative power shall be vested in the Senate and General Assembly. Having done that, then they did the thing I quoted this morning—they delegated the general sovereignty to the Legislature. They don't have to give a bill of particulars and say you can pass this kind of law or you can pass that kind of law, such as they did when they passed the United States Constitution, but they just said you can pass all kinds of laws, you are the legislative branch, all legislative powers are vested in the Senate and General Assembly. Now, I said just a moment ago all kinds of laws—that means all kinds of laws that can be passed. You are still subject to the Bill of Rights and the things which cannot be passed are the unalienable things that no legislature has any power to pass, such as I mentioned this morning, and bear in mind that taking out of the present Constitution or taking out of the Proposal the

clause which says all legislative powers shall be vested in the Senate and General Assembly—how are you going to keep on doing business? The Legislature doesn't have any powers. If they don't have any powers except for that, how can you say they are not granted by that clause?

MR. CAVICCHIA: I am sorry; I don't follow you, Mr. Chance.

MR. CHANCE: The Report says that the Constitutions do not grant but merely limit sovereign powers, and I say when they set you up in business that is a grant of power and without that you have no power.

MR. CAVICCHIA: Let's go to something else, Mr. Chance. On the question of a ninety-day session, you said that that is a very short time for the Legislature to do its business.

MR. CHANCE: That is right.

MR. CAVICCHIA: Do you have any idea how many days the Legislature has been in session to date this year?

MR. CHANCE: No, I don't know. You mean actual sessions?

MR. CAVICCHIA: Yes.

MR. CHANCE: No, I don't know.

MR. CAVICCHIA: I should judge no more than twenty-five days as against ninety days which would be permitted if this provision were adopted.

MR. CHANCE: But perhaps this is the explanation for that: They have had twenty-five days of session but how many days on the outside have they been devoting to the matters which they were going to consider on those twenty-five days? It may be that when you add up all the hours that have been spent on the outside along with those which have been spent in actual session, it would go far above your twenty-five days. I am surprised there is not more than twenty-five actual days, session, but when you add those to the days they spent on the consideration of matters outside of the sessions, I think you will probably find it has amounted up to a lot of time.

MR. CAVICCHIA: Until very recent times, say until the last dozen years or so, what was the usual length of time the Legislature was in session in this State?

MR. CHANCE: I don't know the answer to that one either, but the same consideration I have mentioned with respect to this year's session would apply to them. They were having opportunities on the outside for their constituents to consult with them. They were considering matters at their offices as well as the legislative chamber, so that the actual number of days in session under present and past years is not a true gauge of the number of hours they have spent in consideration of legislative matters.

MR. CAVICCHIA: That doesn't follow either, because let me say this, from my study of the matter I have learned that the usual time for our Legislature to be in session, until recent years, was about three months, and then they adjourned sine die and didn't come back throughout the year unless at a special call of the Governor.

MR. CHANCE: Here is another thing about it, too: You are talking about one year, but this new program would be for two years, so that if you assume they would require the same twenty-five days now, or that they do according to your estimate now, for two years that would make at least fifty days for the same amount of actual sessions, plus whatever time they are now able to devote on the outside. They would then have to run in continuous session.

MR. CAVICCHIA: No, they would be subject to call by the Governor at the insistence of two-thirds of the members of the Legislature.

MR. CHANCE: For fifteen calendar days—take a couple of Saturdays and Sundays out, maybe.

MR. SCHROEDER: Any other questions?

MR. CAVICCHIA: Yes, I want to clear up a point. I am interested in getting this thing properly before the hearing, Mr. Chance. It is not to be understood necessarily that I am for everything in this proposed revision, but I like to have things presented in such manner as is fair. For instance, this morning you made a great point of the impossibility of forcing the Governor to call the session if the required number of legislators requested the session. You said, "How can you force him?" There is an obvious answer to that.

MR. CHANCE: What is it?

MR. CAVICCHIA: The power of impeachment.

MR. CHANCE: You couldn't even get them together to impeach him unless he called them or you waited until the end of two years.

MR. CAVICCHIA: Does it say that?

MR. CHANCE: It doesn't say it directly in those words, but it seems to me that is the implication. They have their ninety days and go home, and stay there until two years goes by and ninety days come again, unless they are called together by the Governor at his pleasure, and naturally he wouldn't call them together at his pleasure to impeach him, and the other instance is by the Governor at the instance of two-thirds of the members of the Legislature, and if he says, "I don't want them together, I am not going to do it," and nobody can make him do it, then I say you would have to wait until the next session, the end of two years, before you can start the impeachment proceedings. By that time the Governor may say, "I am a big shot now; I am going to run for United States Senator; I don't care anything about your job; I am going to resign."

MR. BROWN: Mr. Chairman, my attention has been called to Article VI, Section II of the report, which reads in part, "The presiding officer, respectively, of each house of the Legislature may call it into session for the purpose of impeachment proceedings."

MR. CAVICCHIA: That is the point I wanted to make, Mr. Chance.

MR. CHANCE: I am very glad to hear that is there. I don't see it but I take Mr. Brown's word for it. If he says it is there, it must be there.

MR. SCHROEDER: The next speaker will be Mr. Kirk Brown of Montclair.

MR. BROWN: Mr. Chairman and Members of the Committee:

Article III, Section VI, Paragraph 7 on page 39 of the Report of the Commission on Revision (p. 937), provides that any Federal law or administrative rule or regulation relating to the regulation of industry or commerce or to taxation or establishing technical standards can be incorporated by reference with present and future effect.

For ninety-eight years we have had a salutary constitutional prohibition of this kind of legislation to which the present Report adheres in the very next preceding paragraphs. In view of the general excellence of the admirable report made by the Commission and the high character and attainments of the gentlemen who compose it one wonders if this provision of Paragraph 7 is here by their considered and unanimous opinion or if some undisclosed compromise compelled its inclusion. What pressure group was at work here?

Under its shield any of the Federal administrative rules and regulations which change with kaleidoscopic rapidity can be made a part of the law of New Jersey. Any rule or regulation of the thousands that flow out of Washington can be camouflaged into the law though it could not stand the light of day in New Jersey. The mere rules of an executive agency not even created by an act of Congress and which derives its power only from the decrees of the President can be made the law of New Jersey. And all these only by a reference to a number, a date or a name without a line of disclosure. Washington can legislate for Trenton. An Ickes can cross the boundary and become a New Jersey pest. This may not be the purpose but can surely be the effect of this provision. It is under-cover stuff and if left in will certainly imperil ratification. It is too thoroughly bad for remedy. It should be taken out.

MR. SCHROEDER: The next speaker will be Mr. Joseph Solimine,

representing the Motor Vehicle Agents Association of New Jersey.

MR. SOLIMINE: Mr. Chairman, I don't intend to speak. All I do is seek the right to submit briefs against certain provisions of Articles III and IV.

MR. SCHROEDER: You may have that right. Are there any other opponents of Article III who desire to speak? If not, we will proceed with those who favor modification of Article III. We will now hear from Mr. Walter J. Bilder of South Orange.

MR. BILDER: Mr. Chairman, Ladies and Gentlemen of the Committee:

Most citizens of New Jersey labor under the impression that the government of this State is based upon the principles of democracy. That is to say, most citizens suppose, for example, that the action of the State Legislature, both in the enactment of laws and in the appointment of public officials, is a representative expression of the will of the majority of all the people in the State. How naively wrong this general impression is, is demonstrated by the fact that eleven of the twenty-one members of the State Senate are elected from counties which all together contain only 17% of the State's entire population. Since the Senate exercises a life-and-death power over all legislation and over the appointment of most of the State's major officials, it is evident that the representatives of 17% of the State's population are virtually in a position to dictate the terms on which the public affairs and business of the State can be carried on.

The despotic nature of this political arrangement is aggravated to an extreme degree by two additional circumstances, viz: (1) that those same eleven dominating counties, containing only 17% of the State's population, contain also only 12% (in value of the State's total tax ratables, and (2) that only 2% (in value) of the State's total annual economic activity is carried on within those counties. If there was ever a more irrational dispensation of political power in a system of free government of a commonwealth it is yet to be reported. It is notable that only two other states in the Union share with New Jersey the dubious distinction of having a legislative branch in which representation is based upon arbitrary land divisions and not population. Those states are North Carolina and Montana.

How this preposterous situation came about, is clearly and readily revealed by the governmental history of this State. The Senate is the direct lineal descendent of the colonial "Governor's Council" which furnished the precise pattern for the "Legislative Council" in the State Constitution of 1776. This Legislative Council, in turn, was reproduced essentially unchanged, but with the new name of "Senate", in the Constitution of 1844. The grandparent body, that is the colonial "Governor's Council" was always composed of men of great wealth and prominence. In continuance of this ruling tradition, the State Constitution of 1776 provided that a member of the Legislative Council had to be a "freeholder worth at least 1,000 pounds proclamation money." The same Constitution provided further that that body be composed of one member elected from each of the then-existing thirteen counties of the State.

That arrangement, established constitutionally in 1776, has remained frozen ever since. That is to say, distribution of political power made one hundred and sixty-six years ago among thirteen counties fairly equal in population and in economical resources and importance, and designed frankly to give special representation to the propertied class, furnishes the whole foundation and the sole explanation of the New Jersey Senate.

Thomas Huxley once said that old theories often live a long time after their brains have been knocked out. Everyone knows from history that the same thing is true of political institutions. A political institution will outlive the vital reason for its existence so long as it can yield valuable special benefits to those who have the power to preserve it. And no better example of this truth can be found than the New Jersey Senate. For in sober truth, New Jersey's senatorial arrangement places the representatives of a very small numerical and economic minority in full command of a narrow defile through which the main forces of State Government must pass; and through that defile, those forces of government may pass only by leave of those minority representatives and upon payment of the toll which they exact.

In the proposed new Constitution, the present senatorial system and its conditioning relationship to the executive and the judicial branches through the "advice and consent" mechanism, are incorporated virtually unchanged. By failing to excise that arrangement from the body of New Jersey's Government, the proposed new Constitution would not merely withhold a priceless public benefit, but would inflict a grievous public harm. For, the solemn re-enactment of the present senatorial arrangement, in a fundamental revisionary process, would not only give that arrangement a new lease-of-life, but, by its specious endorsement, would serve to make that lease-of-life a long-enduring one. And, so long as that irrational and pernicious system shall endure, thoroughly good government in this State will be unattainable.

All this may freely be conceded, and yet it may be argued that revision of the Senate is unattainable because the rural counties will not give up their dominant position in the Senate and be relegated to a proportionate influence in that body. This argument I would answer simply and directly by challenging the assertion that the disproportionate power which the rural counties now

have in the Senate is actually prized by the majority of the citizens of those counties. It is not the rural citizens but the rural political leaders who lay vehement claim to the predominant power in the Senate which the rural counties now possess. The attribution of that claim to the rural citizens is sheer ventriloquy. For, the possession of that excessive power is not actually beneficial to the rural citizens at all. The only benefit which all (as distinguished from a few) of the inhabitants of the rural counties get from their political relation to the State, is State financial aid to public institutions or facilities located in the rural counties. That aid takes the form of financial assistance in the matter of schools, roads, and welfare agencies. To the extent that such financial aid fulfills only the actual and proper needs of the rural counties in those respects, the state aid given to the rural counties does not derive from or depend upon the coercive hold which the political representatives of those counties have upon the State Government. The fruits which that coercive hold yields do not go to the people of the rural counties but to the political leaders in those counties or to the pressure-groups or special interests which those political leaders may occasionally serve. It is these special beneficiaries of the senatorial system who have reason (but not good reason) to claim for the rural county populations an inalienable right in perpetuity to their disproportionate representation in the Senate.

I am firm in the belief that if the rural citizens were fully informed and fairly appealed to in the matter, they would be public-spirited and far-sighted enough to relinquish their excess of power in the Senate, for the public good. Nevertheless, if it should prove impossible to win the rural citizens to a new and democratic dispensation, let no one imagine that the urban regions of the State will be resigned forever to a political fate decreed a century ago. Let no one imagine that 83% of the State's inhabitants will indefinitely endure the frustration of democratic processes by the paper tyranny of the remaining 17%. Let no one doubt that a way will be found by the overwhelming majority of citizens, to break this insufferable bond; yes, even to break it not merely figuratively but literally. For it is not fantastic to suggest that an unrelaxed obstinacy on the part of the rural sections, under critical conditions, might produce a movement which would lead finally to their enforced organic separation from the urban regions of the State. If such a profound political reorganization should come to pass, the rural citizens would then surely have a full measure of political supremacy; but how much or little it would profit them, is quite another matter.

While sitting in this room, I have chanced to look closely at the Great Seal of the State stationed high above the rostrum; and I have observed the figures of the three plows depicted on the shield. Those tell-tale figures prompt me to remark that the State

Seal proclaims both an illuminating truth and a manifest untruth. The truth is that when the present structure of the State's government was fashioned, the State was an agricultural economy in which the fertile soil was king. The untruth is that this State remains today an agricultural economy and is not largely an industrial commercial economy in which kingship is shared by the machine, the airplane, and the radio. The State Seal, however, is no more symbolic of a dead past and a present unreality than the anachronistic Senate, the political instrument of a land-aristocracy that vanished almost a century ago.

Mr. Chairman, I desire to submit a lengthier memorandum.

MR. SCHROEDER: You will deliver that to the Secretary, please.

MR. SUMMERILL: May I ask the gentleman a question?

MR. SCHROEDER: Will the gentleman submit to a question?

MR. BILDER: Yes, indeed.

MR. SUMMERILL: Your contention is that representation in the Senate is determined by acres then, and not by population.

MR. BILDER: My answer is to point to the Constitution itself, which says each county shall have one Senator.

MR. SUMMERILL: That is the same as in our Federal Government—the United States Senate.

MR. BILDER: That is true.

MR. SUMMERILL: Your objections go for the Federal Government as well as the State Senate?

MR. BILDER: Yes, sir, theoretically, and I would be willing to argue that at length, but when you come to read my memorandum you will see I have dealt with that, I have dealt with the point made in favor of the system that it is copied from the Federal constitution. That is erroneous. The present New Jersey State setup antedates the Federal constitution by eleven years. It goes back to the Colonial Governors Council, which is even many years older still, but certainly it stems directly from the 1776 Constitution of this State, which is eleven years older than the federal, so you can't say we copied from the Federal. And I also say the reason each State of the thirteen original States was given a Senator was not out of regard for political theory or democratic principles, but to make a deal between thirteen independent sovereignties virtually nations from the standpoint of political science, who wouldn't come in on any other basis. You will remember how it was dominated—the great compromise—and by those very words "great compromise" you see the entire destruction of any supposed analogy which would justify the retention of the system on that ground.

MR. SUMMERILL: But regardless of the history of our State, the

way it grew up, as to the representation in the Senate and United States they are both practically the same, isn't that right?

MR. BILDER: No, because the counties are State agencies; the States are not federal agencies. Every State is a sovereignty and the counties are not sovereignties. The county is by definition a division of the State for State agency purposes—one, for State electoral purposes as when we vote by counties for Assemblymen and Senator; and two, as a governmental instrumentality of the State. The courts are forever saying the county is a State agency or instrumentality for State agency purposes, and the counties didn't get together to form the State of New Jersey.

MR. SUMMERILL: But on roll call in the United States Senate and roll call in the Senate of New Jersey, the effect is the same as to passage of a bill.

MR. BILDER: Of course, if you say two things are just alike because they happen to work alike; it is like saying two machines are the same thing because they operate on the same mechanical principles.

MR. SCHROEDER: The next speaker will be Mr. John Bauer, representing the Committee on Constitutional Convention.

MR. BAUER: Mr. Chairman, Members of the Committee: I do not exactly represent the Committee on Constitutional Convention. I made a study and prepared a report for one of the leading members of that committee; namely, Mrs. Robbins, and I am presenting here a summary of a part of that report, which I should like to submit later. Now, for the purpose of my discussion, to get clear before you just what I am driving at, I should like to separate the provisions with respect to the legislative part of the Constitution between those features that have to do, first, with function or powers or purposes, and second, those that have to do with structure, ways, procedure. Now, with regard to the first—that is, the functions and powers and purposes—I would say that I am heartily in agreement with the Constitution as it is presented. I should go in some respects a little farther in setting out particular requirements. At the same time, I think for practical purposes I would probably omit a few of the matters, some of which have been referred to, because they do arouse particular controversy. But what I do like is that, with relatively few exceptions, the Legislature is made the policy making body of the people with regard to all matters that concern the public interest. That, in our democracy, is the function of legislation and it should not be impaired. It should stand clear. The Legislature has the responsibility to determine policy, to fix policy in the interests of the voters. That power, that function, I think has been clarified and set out more definitely, the responsibilities are made

more clear than in the old Constitution, and instead of this meaning a subservience of the Legislature, it means an enlargement of it. However, when we come to the second class of provisions, having to do with structure, with means, with procedure, I think the proposals fall far, far short of what we need for the Legislature of this State with respect to modern and future conditions, with which we shall have to deal. The period ahead of us, because of the war and because after the war they are going to increase tremendously—they have increased tremendously—the responsibilities of legislation—the Legislature will have to deal with new conditions and more complex conditions than ever before. References have been made to the federal government. You will have to deal more with Federal policies in the greater coordination of State policy with national policy. You will have to deal more with national agencies. You will have to deal more with municipalities and as between different industries and between different levels of social conditions and you will have to deal directly more with positive economic undertakings than ever before. Consequently, the responsibility is greater than ever that we shall have a Legislature that can function. The difficulty with the proposals, with the plan as it is presented, is that it shackles action.

Let me present to you, for the purpose of my further presentation, what I conceive in our democracy to be the criterion for a policy making body. The first criterion is that it must be really representative. The legislative members must really represent the generality of people. The members must have close, vital, direct contact with people. Any individual, any group, who has an idea he thinks is worth while, a proposal that should receive consideration, should have access to the representative and he should have reasonable assurance that his ideas and suggestions will really receive consideration. That is representation—close, vital connection between the electorate of the people and the representatives. Secondly, the second criterion is accountability. After the representative function has been exercised, after a vote has been taken, after a policy has been determined, each individual ought to have accountability, and the structure should be such that if I as a citizen, anyone as a citizen, don't like what my representative has done, I can get at him and charge him with responsibility. The third must be continuing activity interest, continuing concern with public matters. And fourth, there must be no substantial conflicts of private and public interests. The Legislature is dealing with public interest. There must be a minimum of conflict between private and public interests. Here in these four elements I think our past Constitution and proposed Constitution, with respect to the legislative function, missed by far providing that kind of structure and functioning that we need in order to

meet the new conditions. I will now refer to the Constitution—that is, I refer now to the new Constitution with respect to that—what are the difficulties? The difficulties are the defects. There are a number of them. I have mentioned, I will say, three major ones. In the first place, two bodies. I would say the continuance of two bodies to legislate with regard to the same subject matter of policy is a handicap, it is conflicting, it impairs action. Second, too many representatives—sixty, twenty-one—sixty in one body, twenty-one in the other body. How on earth can I as a citizen, whatever proposal I may have, however important I may deem it to be or however important a large group of people may deem it to be—how on earth can we get representation? I have had experience before the Legislature of the State of New Jersey in respect to just that. It was a hopeless thing to get the proposition that I and a large number of people thought vital—we couldn't get consideration. Our representation went by default, it was frustrated, and any body, any legislative body that consists of two houses of twenty-one and sixty members will result in frustration of representation to a very large extent, and it can't be otherwise.

Finally, the third point is with regard to the manner of electing our representatives. I have no particular quarrel with regard to the manner of electing representatives for the Senate. I agree very much with what Mr. Bilder said. I think the whole business of structure needs re-study and re-consideration in the light of present-day modern conditions, future requirements and functions, and a lot of it, as Mr. Bilder says, I think requires re-consideration in the light of the future, not in the light of what was good in 1776. Maybe the 1776 provision is good today, but let's look at it and see whether or not it is good today and revise it accordingly if it is not good. For the Senate, I haven't any great quarrel about the representation of the Senate. I live in Essex County, Montclair, New Jersey. I can find out pretty well what each Senator stands for and I can go to him, I can tell him what I think of him if I don't like the way he voted, but when it comes to the Assembly, ladies and gentlemen, I am lost—there are twelve of them. I have got a mass vote, and how can I know twelve of them unless I spend all my time—and I do happen to be fairly busy, pretty nearly everybody I know is fairly busy—and the result is it is just mass stuff and we don't know our representatives and we can't get representation and the whole idea of representative government for policy making is frustrated.

So, I come to the general history and state this: I think, with regard to the proposals, first of all representation is to a large extent frustrated for the reasons I have mentioned—two bodies and the way they offset each other and the multiple representation, as we have twelve from Essex County. The thing doesn't

work. Whatever justification there may have been originally has long disappeared. Ladies and gentlemen, it is a foolish thing, it is an anachronism that ought to be stricken off. There is no longer justification for going on with that sort of monstrosity in the way of representative structure.

The next is accountability. Suppose I don't like what the Legislature has done. What can I do about it? All I can do about it is to run around. There isn't any way where I can focus responsibility. The responsibility is diffused and the individual escapes responsibility, accountability, for what is done. In the third place there is under the structure, under the proposed structure and under the past structure, a lackadaisical attitude toward the public interest, a casual attitude. It is a part-time job for the ordinary, for the average member, and it is inevitably that way. It receives the attention, the consideration, that a part-time job, a casual job, under the kind of representation that we have got, under the lack of accountability, would naturally get. If I were a member of the Assembly or the Senate I would act just as they do. We have a State here of over four million people. The Legislature has to do with policy, ladies and gentlemen, policy making with respect to the four million people. It is an enormous business and welfare that is accounted for. It isn't any more a casual part-time sort of proposition; it is a proposition that requires the best ability you can get, with constant attention, continuous devotion to the public interest with which it is charged. What is the answer? I think the answer is a one-house legislature, a unicameral legislature. The ideal one is suggested by the legislative council, seven members say, nine members, seven or nine, eleven. I would like some such number. I think such a number could function, could perform real representation, would have real accountability. Re-adjust the State on the basis of representation. Maybe the basis could even be shifted so that some State-wide representatives, possibly some industrial and labor representatives—maybe that whole subject should receive real consideration in the light of present conditions. Now, I will compromise. I am not so terribly concerned about the county divisions. I don't see any very particular conflict of interests between one county as territory and another county as territory. I think it would not be too bad to continue having a one house body by counties, but I should suggest if that were done, to weigh the vote and weigh it so that practically there would be the same relative total representation as at the present time; that is, you can weigh each member's vote part on equal county basis and part on population basis—that is simple arithmetic—so that you could have a combination of the two, the old and new. You would have a body of twenty-one—larger than I would like, but a workable body.

As to length of service, four years' minimum—six years prob-

ably would be better—a full-time job and responsible job, at an adequate salary of, I should say—a full-time job, mind you—of $10,000 a year, minimum salary, minimum. As we speak again here about the Legislature being made unimportant, I would make the legislative job the most important job in the State next, say, perhaps to the Governor—I suppose the Governor's job would always transcend any other—but that there should not be an attraction of any other job, a judicial job or administrative job, that would take a legislator. I think your conditions should be such as to organization to preclude that. A representative from Essex County ought to be just such an important person that he wouldn't leave that job unless it were for the governorship or for the United States Senate or something of that sort. With that kind of an organization we could have the best men and we could keep the men and they could be continuous on the job. There would be real representation, there would be hearings, so that the voters could get access to him. There could be more committee meetings, and I would have practically no proscription about formal meetings. This thing about biennial meetings—I think the idea of biennial meeting is not a forward step; it is a backward step. When you are dealing with four million people and their interest, to have biennial meetings I think is ridiculous. On the other hand, I don't think we ought to require any particular time of meeting but every member should be responsible to keep in contact with developments so that he knows, he is informed, keeps informed, keeps studying the needs, and has contact with what is doing. There would be committees working on various parts of legislation and when any part of legislation is ready for action, they would have the facilities to come together or have periodical meetings once a month to check up. But to have biennial meetings under modern conditions to me is just something that disregards the continuous underlying public interest. The representatives ought to be in continuous contact with the administrative organization, see how the work of government is going. We make exception of powers, which I think is correct, but the legislative powers transcend all the others or run into all the others. The Legislature is responsible, after all, for administration. If you have set out a purpose and there is provided an administrative setup for it and it doesn't work, you are responsible to change that and your responsibility should be to follow up all the time, continuous study. I think even at that you would need perhaps technical assistants that you would employ, but each member should be a big enough man and in contact with responsibilities so that on his own account he knows what is doing and that he is representing the people and that he can be held accountable. Under present conditions—under proposed conditions—that is impossible. Representation and accountability aren't

there and the casualness of the whole job is just out of place in modern conditions. The architects of the new setup really, I think, agree with what I am saying, and they are compromising on a—they are more liberal in their compromising than I am. Consequently, what they have done here is set up a legislative council of seven. That can function except, again, a salary of $1500 precludes a continuous, really honest-to-goodness job, but a body of seven can function. Two bodies of sixty and twenty-one cannot function, or function very badly. Well, your program would be prepared by seven, and I think the remarks made by Mr. Chance with regard to the relation of the seven to the rest I think on the main are correct. The work would be done by the seven. The rest would be encumbrance, restriction, evasion, at best not useful. If they are no good, if the job has to be done by seven or by a small number, then why not recognize it and have the small number—twenty-one is a compromise—and then lift the position in such a way that the job will be continuously held and with the full responsibility for constant contact with public policy, constant inquiry, etc.

As to experience, it is perfectly true that only one State has gone to the single cameral basis. I say to you, and I think I say it on the basis of quite a lot of experience all over the Country, that in all states with a two cameral legislature there is the same waste, the same failure of representation action, the same floundering. In the legislative part, ladies and gentlemen, with our present proposed structure, we haven't got the means to meet the new situation. In the municipal field adjustments have been made so that the legislative bodies have been much more brought down to date. You can go over the Country and find a lot of cities which, say a generation ago, back in 1900, had the same complicated, diffused, large, two-bodied legislature. Most, or many, large cities have shifted to a single cameral basis. In every instance I think—I can say I am sure I am correct—there has been vast improvement in policy making. Of course, that doesn't bring in the layman, but it does put your policy making body into a position so that it can function. It will have, let me repeat, representation, accountability, continuity, real devotion, no conflicts of interests, efficiency. Those are the things we need.

Now, in closing, I will just say that I think probably everyone of the Revision Commission agrees in reality with what I have said. I suspect three-fourths of the people or more than that agree I am right fundamentally, but can you do this, can you do it, are we ready for it? I think we are ready for it if you lead, if you put out these ideas and point out the necessity. We face the situation of necessity. You can put that idea over with leadership, with explanation, with presentation, just as well as you can some of the other things. The executive parts of the Constitution have

been pretty well brought down to date and modernized. I don't see why the legislative part can't. I think the idea can be presented to the people and the people approve it. What I dislike more than anything else is to give up what everybody would recognize to be the best course for a poor second course on the grounds of practicality when really the best course probably would make the best practical appeal. At any rate, I should say that this whole thing ought to be studied thoroughly and all facts gotten out with regard to it and tested out. The voters finally should at least have a chance to vote alternatively whether to take either a bicameral or one body Legislature. I think it is a matter of such profound importance it ought not to be passed by just casually. It is a vital thing in our whole representative matter.

Thank you very much.

MR. SCHROEDER: We will now hear from Mrs. Edwin Bebout, representing the New Jersey League of Women Voters.

MRS. BEBOUT: Mr. Chairman and Members of the Committee: The New Jersey League of Women Voters submitted recommendations for changes in the Constitution of New Jersey to the Commission on Revision of the New Jersey Constitution. The League considers the changes made by the Commission a distinct improvement over the old legislative article and is very happy to see many of its own suggestions for change included in the proposed Article III as follows:

Section I, Paragraph 3: A biennial session limited to ninety days with the provision for special sessions and their limitation as set forth in Paragraph 4.

Section II, Paragraphs 1 and 2: Four year term and biennial elections for members of the Senate.

Paragraph 3: Two year term and biennial elections for members of the Assembly.

Section III, Paragraph 1: Increase in compensation.

Comment: The League suggested a maximum of $1250 annually but since the Commission has after thoughtful consideration placed it at $1500 annually, we endorse the recommendation.

Section V, Paragraph 1: The League recommended a Legislative Council and we endorse that provision. However, we question the wisdom of naming the membership of the Council rigidly in the Constitution. We suggest a provision that the Council shall be composed of not less than seven or more than fifteen members to include the Governor and other members to be chosen by and from the Legislature with the further provision that proportionate membership must be accorded to minority parties.

Paragraph 2: The League believes that one of the functions of the Council should be to provide an adequate reference and bill drafting service for all members of the Legislature.

We wonder if (a) in Paragraph 2 means that the Council itself would introduce bills sponsored by it. The League believes that it should.

The League recommends the following provisions not included in its own recommendations to the Commission:

Section III, Paragraph 3: Restriction on eligibility to appointive office in the State.

Section IV, Paragraph 6: The Senate shall vote in public on the question of confirmation of any nominations to office made by the Governor.

Paragraph 7: The League endorses the restrictions on lobbying provided there.

Section VII, Paragraphs 6 and 7: Grant of power to the Legislature to limit and restrict the use of certain types of property for preservation and protection of highway and other public improvements.

Objections and further recommendations:

Section II, Paragraph 3: The League is not in agreement with that portion of Paragraph 3 of Section II which provides for countywide election of members of the Assembly. The League recommended that members of the Assembly in counties having more than one member should be elected from single member districts.

It is practically impossible for the average voter to have the detailed knowledge and information necessary to choose wisely from among the large number of candidates presented in countywide elections when the number to be elected may be as high as twelve. This naturally results in voting for a block of candidates without regard to individual qualifications. We believe a change would not only increase the voter's sense of responsibility but would bring about a greater individual responsibility on the part of the Assemblyman.

An alternative to the district plan which might achieve the same result in voter and representative responsibility would be the election of Assemblymen by proportional representation.

Section VI, Paragraph 3: In place of the words "be read three times in each house," we recommend the provision no bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the Governor, or the acting Governor, shall have certified to the necessity of its immediate passage under his hand and the seal of the State.

Another recommendation considered of major importance by the League is the following on Referenda: Measures that have been approved by one house of the Legislature, but are blocked in the other may be submitted to the people at a general election for

a referendum vote, by the Governor or by one House of the Legislature or by both the Governor and one House. This provision would provide an appeal from the veto power of one House of the Legislature on legislation desired by large numbers of the people of the State.

The league also invited serious consideration of a unicameral Legislature with the following suggestion as to its composition: That it be composed of eighty-one members allotted to the counties on the present basis of representation in the Legislature with the further provision that any measure, in order to become law, must pass by a majority vote which must include at least one vote from each of a majority of the twenty-one counties.

Referenda: It is further suggested that it be provided that if a bill received a three-fifths' vote but not one from each of eleven counties, the Governor might submit such a measure to the people for a referendum vote at a general election.

MR. SCHROEDER: The next speaker will be Mr. Manuel Cantor, representing the Communist Party of New Jersey.

MR. CANTOR: Mr. Chairman, ladies and gentlemen: All political power is inherent in the people, declare the Constitutions, both old and new. Every speaker at the hearings last week expressed the greatest concern that this fundamental principle remain inviolate. Since the legislative Article provides the acid test of how the principle will be applied in practice, our task is to determine whether Article III provides the most democratic forms whereby the will of the people of New Jersey can be carried out.

Limited hearings of this nature do not permit of detailed comment on each provision. Only a Constitutional Convention would provide opportunity for proper study and debate.

There are a number of minor provisions in the Article proposed which constitute improvements and which we endorse. But we must express our firm conviction that the Article does not, in any substantial respect, make the legislative branch a more democratic or even a more efficient arm of the people. If anything, this draft weakens the control by the electorate over the State Legislature. It makes little effort to introduce modern legislative machinery. It would perpetuate the lop-sided basis for representation which Governor Edison so aptly described as the control of "acres over people." It would continue to permit a few Senators from counties representing a minority of population to stifle and subvert the majority will.

What is there of advantage in a bicameral Legislature? Historically the two Houses were a reflection of distinctions in class or in the ownership of property. Such tests have long been abandoned. The argument that two Houses provide a check on each other is not supported by the facts. Rather do they provide opportunity for delay and evasion. What a record could be compiled of valuable pieces of legislation passed in the New Jersey Assembly and killed or buried in the Senate!

We propose a unicameral Legislature. This form has numerous advantages. It represents the people more directly. Greater simplicity of organization speeds the legislative process and enables the electorate to follow deliberations with greater ease. It places upon the single House full responsibility for its actions. There can be no shuffle of bills up and down the State House corridor and in and out of two sets of committees until the measure bears no resemblance whatsoever to the original proposal. Is a unicameral legislation an innovation? Decidedly not. In Nebraska it was adopted in 1934. In all but one of the provinces of our sister-republic of Canada single-chambered legislatures have proved their advantages. Of all the governments of cities in the United States of more than 10,000 population, only 14 retain two houses, none of them among the 25 largest cities. In truth the "check" supposedly provided by an "upper" house usually means an "obstacle" to really democratic government.

We are absolutely opposed to meetings of the Legislature only once in two years. Even in normal times a possible lapse of 21 months between sessions is inadvisable. The members are not sufficiently accountable to the voters. Minimum current needs of the people cannot be met in the best fashion. In the present war and post-war world crisis it is unthinkable. The proposal would compel intensive action under the accumulated pressures of two years of waiting. When the Legislature finally met it would become a "jam session" not a deliberative body. Opponents of social legislation would be encouraged into dilatory tactics, secure in the knowledge that delay is equivalent to defeat for a two-year period. It is worth noting that the recent Constitutional Convention in the State of New York considered carefully the proposal for biennial sessions and turned it down.

It is in Section II, dealing with the composition of the Legislature that we have the crucial feature of the proposed revision. The proposals are entirely out of harmony with the conditions in our State as to distribution of population, industrial composition. They perpetuate control of government based on a century-old relationship of rural to urban group interests that no longer exists. They run counter to the wishes of the overwhelming majority of the people.

On this problem we make two alternative proposals:

1. The unicameral body to be composed of members equal to the total number of the present Assembly and Senate, with the same number from each County as today, election to be by proportional representation.

2. The unicameral body to be composed of members elected from legislative or election districts created and apportioned according to population, election to be by proportional representation. If our crusading friends in the Republican Party are really interested in the break-up of county machine politics, here are proposals to which they should rally with enthusiasm.

Section III, Paragraph 3, prohibiting dual office-holding would be a welcome improvement. But Paragraph 4 which follows appears ambiguous and inconsistent with its expressed intent.

We call attention to Section IV Paragraph 2 which declares "each House shall be the judge of the elections, returns and qualifications of its own members." To leave this provision as it is, raises the dangerous possibility that a majority group or party may prevent the seating of an elected minority or labor candidate and thus thwart the will of the voters. Examples of such a situation are on record. The same danger is present in Paragraph 3 which declares "each House . . . with the concurrence of two-thirds, may expel a member." A phrase of limitation as to the cause of expulsion should be added, to protect minority members.

Section IV, Paragraph 7, relating to lobbying in the legislative chambers, tends toward limitations of open and direct espousal of social measures by the people. It is likely to deprive numerous associations and persons of their civil rights including the right of petition. Strictly interpreted it would require the registration of every person who sends a letter or postcard to his Assemblyman, as well as the registration of the names of the members of trade unions, consumer organizations, fraternal order, clubs and other groups who took a position on any legislative matter. The kind of sinister, behind-the-scenes lobbying that really is harmful would not be stopped by this provision. We therefore recommend its deletion.

The proposal in Section V for a Legislative Council is welcome. But as drawn it would perpetuate monopoly by the present major parties. Experience has shown, particularly in New Jersey, that it is minority and labor parties that frequently present worthwhile social measures that the people need and want. Paragraph 1 should be redrafted to give representation on the Legislative Council to minority parties represented in the Legislature.

In Paragraph 3 of Section VI we suggest the phrase "on different days" be inserted after the clause "all bills and joint resolutions shall be read three times." Our New Jersey Legislature has not always been above attempting to rush through a measure before the people are fully aware of what is going on.

There is one glaring omission in the Legislative Article. The power must be reserved to the people by the Constitution to propose bills and laws and to enact or reject them at the polls independent of the Legislature. Any progressive, truly democratic State Constitution should contain adequate provision for accomplishing this through initiative and referendum. Only those who fear the people can object to implementing our present indirect representative form of government with these additional safeguards against inaction or abuse by the Legislature. Many courts of our land have declared the initiative and referendum to be a truly democratic instrument of modern government—the method constitutionally available to the people to act when the Legislature fails to act in their interest. We refer the Committee to a model provision contained in Vol III, page 1818 of the New York State Constitutional Convention Committee Report.

The Communist Party submits these opinions and suggestions with the confidence that the people of our State desire such revision of our Constitution as will bring the machinery of government really up to date. We believe it is along the lines of the foregoing proposals that the Legislature can establish its sincere and serious intention to provide modern, efficient and democratic government for the people of New Jersey.

MR. SCHROEDER: We will now hear from Mr. Russell Watson.

MR. WATSON: Mr. Chairman, it is not necessary to speak at this time about the matter to which I referred when I asked for time as one of the modificationists, but may I say for the record, with respect to the ninety days section, during 1941 the Senate and Assembly, each, held twenty-nine sessions; during 1940 the Senate and Assembly, each, held thirty-six sessions; and that the session of 1918, which stands in New Jersey's legislative history as one of the most constructive and productive sessions of all, passed two hundred ninety chapters, comprising many revisions of the law contained in about twelve hundred printed pages; the Legislature had adjourned and the last of the bills was approved on March fifth, an indication of what can be done in a session of much less than ninety days.

And I would like to speak also, if I may, very briefly, on this matter of equal county representation. The history of the New Jersey Senate is not related to the situation which presently exists. My good friend, Mr. Bilder, said it is a descendant of the legislative council which was the representative of the propertied class and of the landed aristocracy and that now it is the representative of a group of counties which comprise some thirteen or fifteen percent of the population and ratables of the State, showing there is no relation between history and the present situation. When, a few months ago, I had occasion to give somewhat extended study to this subject, I began it with some of the ideas which Mr. Bilder has expressed, which on their face seem theoretically sound, and ended that study with a different conclusion, that in view of the

somewhat unusual, at any rate special, constitution of New Jersey, its division between industrialized area and rural area, there were different interests, that the equal county representation in the Senate is justified—may I say that now I am speaking individually as a citizen of New Jersey and not as a representative of anybody—that equal county representation is justified. True it is that under certain circumstances the smaller counties, with their equal county representation, may obstruct desirable legislation. I have no doubt in the record such instances can be found, but equally true is the fact that if the Senate representation were proportionately based upon population, then the smaller counties could by the same token get what the larger counties wanted to give them and no more, and finally it is in practical effect, if not in historical effect, the exact counterpart of the Federal system. True it is that the States were, when the Federal Constitution was adopted, independent sovereignties. True it is these twenty-one counties are subdivisions of the State of New Jersey, but the fact is that in each case these subdivisions are entities of government, each with different interests, and there isn't a single argument which can be made against equal county representation in New Jersey which cannot be made with equal force against equal State representation in the Congress. What is true of one is true of another except perhaps in degree, and I submit, as one who has—and incidentally, coming from a county which would not be affected one way or another—we would come out about the way we are now under such a system—but as one who has given some thought to the situation, that the special circumstances of New Jersey not only justify and warrant equal county representation in the Senate as we have it and now know it, but is is argumentatively the correct system that can be supported upon the basis of solid argument. And then there is one other thing—I spoke of it before—are those of us who favor constitutional revision going to center our efforts upon what is politically possible and practical and try to get it, or are we going to try to reach out for the stars and come out with nothing? That is the serious question which we proponents of constitutional revision must weigh well and thoughtfully.

MR. SCHROEDER: The next speaker will be Mr. H. Earl Probst, representing the New Jersey Farm Bureau and Grange.

MR. PROBST: Mr. Chairman, we will forego the reading of our brief and file it with the secretary.

MR. SCHROEDER: We will now hear from Mr. Morris Isserman, representing the State C. I. O. and American Labor League.

MR. ISSERMAN: Mr. Chairman, Members of the Committee: In our opening statement last week we said that this provision fell far short of what we felt were the objectives which we had hoped the Revision Commission would have arrived at in preparing this

document, and it is especially to the representation feature in the legislative article to which we had reference. Governor Edison, in his inaugural address, made a speech which referred to representation, which I believe is the finest statement of its kind made in this State. It says we now have a representation of acres versus the people. As I sat here I made up some figures which in my opinion make a mockery and travesty of that part of the Bill of Rights which says that the inherent power is vested in the people. Let's see why I think it is so. Taking twelve counties with a total population of 798,000, they have 12 Senators and 16 Representatives. The County of Essex, with a population of 837,000, has one Senator and 12 Representatives. Well, now, someone will say isn't our Federal Government based on the same sort of system; isn't that a question of checks and balances? First, I would like to point out there is a difference between the federally constituted Congress and this Legislature for this reason, that the small States, the non-industrial States in the Union, in proportion do not carry as much power as the large States; that there aren't as many small States as we have small counties; and secondly, we do have some sort of balance of power in the House of Representatives. There the large industrial States, the States with the large populations, can and do represent, as nearly as possible, the majority of the people in this country. That is not so in this State Legislature because if you take the population of the 12 counties of 798,000 and add to that Bergen County with—no, I will take Bergen out—add Hudson County with 650,000 and Passaic County with 309,000, the representatives of the people representing 1,700,000 in the State's population have a majority in the lower House of 33 Representatives, and the balance of the State has only 27 Representatives, so that at any time, under any conditions, the will of the people can be frustrated, and from practical experience has been frustrated, by a combination of these small counties with one or two of the more populous counties. Those of you who have been in the Assembly and Senate have seen that happen time and again where Essex County and perhaps Essex and Hudson, maybe Mercer—it is unusual for you to expect Hudson and Essex to agree but they do occasionally—have been unable to put over a program, and the will of the people is best expressed in the election of the only official in this State by the popular vote of the people—that is the Governor—and what do we find? You find a Democratic Governor—and by the way, your argument that he may be elected from Hudson County doesn't hold water because you will find a Democratic Governor elected by the people, Governor Edison, who presented you a program at the beginning of the session—and what do we find? A combination of small counties constantly frustrating the will of the people. I don't know

what Mr. Bilder said here, whether it is true or not that the small counties are willing to give up this power, but I do say that adequate representation, a system of checks and balances, should not be merely a system of checks, and that is what we have here. This is not a rule in the Senate or in the Assembly of a majority checked, wherein the minorities have an opportunity to check that majority, but rather an ironclad rule wherein the minorities in this State are able to check and defeat the wishes of the people. Not only that, but it is aggravated by the fact that some time years and years ago there was a decision of our Supreme Court, which has never been challenged, that we must have election on the county-wide basis. Now, let's look at it. I have appeared in this House and time and again spoken to one or another of the representatives of the people and said, "I would like to have you vote for this measure, which is of interest to the people," and the answer I have gotten was, "If I vote for this bill, which our leader—" because after all, if he is of your own party he is the leader, and if he is the opposition, he is the boss—"because our leader says we can't vote for it and if I vote for that particular item I can't go back on the ticket"; and then they ask me a very cryptic question: "Can you assure me that I can be elected independently?". Gentlemen, from a matter of realistic, practical politics, we know it is impossible to elect one man running as an independent in any of the large counties. As a matter of fact, unless you can get recognized and recognition from the leader of your party or the boss, you find yourself out in the cold, and no matter how good a legislator you are, all you have to do is offend the leader of your party, as has happened in some situations, to find it has resulted against your coming back into office, so that we do not have adequate representation.

We believe that the least we ought to get out of this—and I say the least—is a provision in this Constitution which will set aside the Supreme Court decision, because it is our contention that the decision did not represent even in 1844 the wishes of the people. Now, if we can get that, then we can say to you we have arrived at a major objective. If we don't get that, even though we may go along with the revision, we say our major objective and our desire to have proper representation has been lost.

Let me for a moment now go to the particular sections of Article III. I am of the opinion that Section III, Paragraph 1, which now provides for a fixing or freezing of the services of a member of the Senate and Assembly, does not properly belong in a Constitution. As time goes on, it may be necessary for these legislators to sit longer and oftener and devote more time to the duties of State. At the present salary of $500, no man, no poor man, can

come to this Legislature and do full justice to it unless he is in some fashion subsidized, and that is perhaps one of the reasons there is so much criticism of our legislators for doing what some people might say is unethical and others might merely say is a method of getting additional salary to meet their living expenses.

Section III, Paragraph 3: I don't know whether the Committee on Revision put that particular section in in order to be sure that the Legislature wouldn't consider passing any revision or not. I have heard a lot of talk that this is important and I feel that that does not belong in a State Constitution. The mere fact that ten members of the Legislature or fifteen have obtained other jobs doesn't mean that they should not have obtained these other jobs. The mere fact that a man has served in the Legislature and because of his long experience knows the ins and outs of the Government and has been a good public servant doesn't mean we have to say from now on for one year you must retire and then we will give you another job. I know men that have been promoted from the Legislature, both from the Assembly and Senate, who in their administrative jobs are doing an excellent job, who earned their promotions because of proper industry and loyal service to the people, and I say if this provision stays in the Constitution it will do more to destroy the caliber and the standards of the House and the Senate than anything that I can think of, because good men who may want to serve the State will come here and say, "If I take this job I can't serve the State for one full year." And we are amply protected by Section IV. I do believe that Paragraph 4 ought to be enforced and ought to be enforced so that no Senator and no Assemblyman who takes any job—as a matter of fact, it ought to be modified so that no Senator or Assemblyman can hold any job in any subdivision of the State, in any municipality, as long as he is a member of the House or Senate. Once he resigns, that is a different story.

Section IV, Paragraph 4: We have an objection. We notice there, and I don't believe it ought to be part of the Constitution, that only those roll calls of yeas and nays should be enrolled at the desire of one-fifth of those present. If this a public body, representing the people, the people must at all times be able to find out how their legislators vote, and I say that that provision ought to be changed so that all roll calls are kept. They are public records and should be so kept.

Our objection to Section V, Paragraph 1, is not so much in the setup, although we agreed it ought to be a larger body, but the fact that there is no provision here that this Legislative Council shall meet and hold public hearings. The value of public hearings, the importance of having the people given the right to appear and petition the Legislature and the Legislative Council, which is in-

herent in the people as we have said time and again, should be embodied and provided for under Section V.

Section VII, Paragraph 2: The right of labor to organize and bargain collectively shall not be impaired. I have already said that ought to go in the Bill of Rights and we believe that this provision should be included here, not only the right of labor to organize and bargain collectively, but also the provision that they shall be permitted to engage in concerted activities for their mutual aid and protection, and I wish I had the time or opportunity to answer the arguments which Mr. Brown presented here today, and again I say the limitations of time and the failure or inability to get full discussion should make it apparent to all of you that we should have a constitutional convention. We believe that Section VII ought to be further amended. Not only do we find that the will of the people is frustrated because of the method of election of Assemblymen and Senators and by the constitutional interpretation as done on a county-wide basis, but we also find that through the manipulation of the election laws by the Legislature, no minority party or no minority group has the opportunity to amply express their views on election day. There ought to be a provision in here which will prohibit the Legislature from tampering or passing any law which will prevent such suppression by the people, and I mean this: Under our law, and I think it is probably peculiar to the State of New Jersey, a candidate for office may be nominated by one of two parties. He must determine on which ticket he wants to run, and he can't run on two tickets at one time. Now, suppose at some future time there is formed in this State one, two, or three more minority parties and a candidate for Governor is nominated by the Republican Party which the American Labor Party, let us say, is willing to endorse. All we can do is to vote for him election day under the Republican banner. We cannot, under the present election laws, and it is not a question of Constitution—it is a question of legislative enactment—we cannot at the present time vote for the Republican candidate on our own ticket and have those votes counted. In New York State a man may run under the banner of five, six, seven or eight parties, and the total vote cast for that candidate represents his vote as against the opposition candidate, and if he gets the total vote and majority vote on the six tickets, he is declared to be elected as the winner. That is one thing we feel ought to be in the Constitution so that the Legislature in the future will not be able to prevent a proper expression of the will of the people.

I have heard a lot of discussion on the question of the term or time which the Legislature should take to sit. We believe that biennial sessions are sufficient. In cases of emergency the Governor can always call the Legislature in session, and I am rather

surprised at Mr. Chance's remark that ninety days is not sufficient because if I can recall, if my memory serves me right, the Manufacturers Association and United States Chamber of Commerce and others have always prayed and said, "Why doesn't Congress go home and leave us alone? This is an unusual position for the Manufacturers Association to take, and I cannot see why a Legislature with a Legislative Council, getting on the job and doing the work efficiently, as they will be able to do for the State of New Jersey cannot complete their labors in ninety days. Some of us perhaps still think that ninety days is a bit too long and they can go home a bit sooner, but by the furtherest stretch of your imagination, and it has been proven by what Mr. Watson said that the 1918 Legislature did its job and finished it up in two months, I think our present day legislators can do the job efficiently and effectively in ninety days during a period of two years.

So, I say with these modifications, if you will make these changes, especially the changes in representation, we believe we will have then a modern constitution as far as the legislative branch is concerned, fitted properly in the modern concept of what true representation will mean.

MR. CAVICCHIA: Mr. Isserman, earlier in your remarks you referred to a case. You meant *State* v *Wrightson*, 56 New Jersey Law.

MR. ISSERMAN: I can't give you the citation, but that is the case.

MR. CAVICCHIA: Aren't you fearful that the districting of counties may lead to what was discussed in that case, a gerrymandering, and that actually you would get more politics in that sort of setup than you have today?

MR. ISSERMAN: You may get more politics but you will probably get better representation because right now in Essex County the politics—let me not take Essex County—it is too close to home—but in most of the larger counties the politics are played from the top. If we are realistic we know who goes on the ticket and we know what consideration is given for persons to go on the ticket. If you have Assembly districts, as you may have them or as you may make them, I would still be able to carry on a campaign in Essex County among 80,000 people much simpler than in a county among 834,000 when the other 11 or 12 men run on the same ticket. That is our difficulty. It won't be one man against one man, even if machine dominated or machine controlled, but what you are running is one man against twelve, and if I want to vote for John Jones I will vote for him and maybe cross Cavicchia off. The next man will cross Sanford off. The result is the ticket inevitably must win. That is the result of it; that is the reason we feel Assembly districts will help—even if they gerrymander—we anticipate that.

MR. CAVICCHIA: In your original figures, I didn't get your point. You added up Hudson, Essex—

MR. ISSERMAN: I have taken Hudson and Passaic and Warren, Sussex, Somerset, Salem, Ocean, Hunterdon, Gloucester, Cumberland, Cape May, Burlington, Atlantic, Morris; the total population in those 14 counties is 1,759,000, if your legislative manual is correct. The total population of the State is 4,100,000, so that leaves 2,400,000 people who have 27 representatives and 1,750,000 have 33.

MR. CAVICCHIA: What are you trying to bring out?

MR. ISSERMAN: That even in the lower House, which is contrary to what you will find in Congress, the combination of small counties having a minority in population controls. In the United States Congress, the House of Representatives truly represents by a total vote the population, the population and not the individual States. There is the distinction you have in the United States Congress, as compared with the New Jersey State Legislature.

MR. CAVICCHIA: I am sorry; I don't get the point.

MR. SCHROEDER: I think, Mr. Cavicchia, that the gentleman refers to the provision in our State Constitution that each county is entitled to one Assemblyman.

MR. ISSERMAN: Oh, yes; the reason that is so, by the way—I want to make the point—is that our present Constitution in 1844 restricted the membership of the Legislature to sixty. That provision—if that provision were not in the Constitution, you could enlarge this Assembly, the House of Assembly, in the same manner the House of Representatives has been enlarged to meet the growing population.

MR. CAVICCHIA: But it still works out in proportion.

MR. ISSERMAN: No, it does not, because in New York State, with a representation of 45, as against Montana, with a representation of 1, you will find that New York State has fairly adequate representation.

MR. CAVICCHIA: Mr. Isserman, because I worked out the apportionment for this latest House after the last Federal census and I went into the figures very thoroughly, I discovered that the time-honored method of apportionment was wrong mathematically and even unconstitutional under the case of *State* vs. *Wrightson*. My computation ended with this conclusion: that there could be strict proportion throughout except where by reason of fractions you were unable to dissect the individual and therefore would not adhere to true quotas of proportion, so that actually, speaking generally, there is true proportion.

MR. ISSERMAN: Not in New Jersey in the Assembly. It isn't for this reason: you have 16 Assemblymen in 12 counties. You have 12 in Essex. You have on a basis of population, if you were to figure it—I have given you a figure of 33 Assemblymen as rep

resenting 1,700,000 as against 27 representing 2,400,000. That will not happen in the United States Congress because it allows for a larger representation in the Congress. In other words, Montana gets one vote but New York today, because of its increased population, was allowed a greater number of votes and here you are always restricted. You can't have more than sixty, and sixteen belong to the small counties.

MR. CAVICCHIA: That is true, because you have constant maximum membership in comparison with variable population, but—

MR. ISSERMAN: That is correct.

MR. CAVICCHIA (continuing): —but you will come to as true a proportion as the limitation of minimum and maximum will permit.

MR. ISSERMAN: As your limitations of minimum and maximum allow, certainly, but the trouble is that by having your ceiling on this you make it impossible to give true representation, and in the lower House of Congress they have true representation.

MR. CAVICCHIA: What would you do, eliminate the maximum?

MR. ISSERMAN: If you eliminate the maximum, that will answer the purpose.

MR. WATSON: The answer to Mr. Isserman's argument is there are 4 counties which have 31 votes in the Assembly, a majority.

MR. ISSERMAN: I don't want to argue with Mr. Watson. If you want to juggle that figure, that is right, certainly. You can take Essex, Hudson, Bergen and Passaic, with a population of 2,200,000, and they have 31 votes but our objection is that—take Passaic and Hudson—you can't take Passaic and Bergen, but taking Passaic and Hudson and switching them with the 12 smaller counties, they have a majority.

MR. SUMMERILL: I have a question.

MR. SCHROEDER: Will the gentleman submit to a question?

MR. ISSERMAN: I will.

MR. SUMMERILL: Mr. Isserman, you referred to a member of one of the Houses whom you desired to vote for a certain proposition and he couldn't vote for that because his boss or head of his delegation wouldn't allow him. Was that a large or small county?

MR. HANEMAN: We would like that answered.

MR. ISSERMAN: If you want the answer, the answer is, categorically, it was a large county.

MR. HANEMAN: Thank you.

MR. ISSERMAN: It was a large county and that is the reason we want districting, because in a small county like Salem or Ocean there are no districts and therefore a man who wants to run independently can run independently in those small counties.

MR. SUMMERILL: Isn't it a fact that your small counties are more independent and less boss controlled than your larger counties?

MR. ISSERMAN: That depends whether you speak of Jersey City or Atlantic. Far be it from me to decide between the two.

MR. HANEMAN: Mr. Chairman, through you I would like to ask, now that the matter has been brought up, has the Atlantic delegation ever told you they couldn't vote for a measure because a boss or leader told them not to?

MR. ISSERMAN: The answer to that is I have never asked a member of the Atlantic delegation—

MR. HANEMAN: The answer to that is you did ask me.

MR. ISSERMAN: Well, I never got that kind of answer—let me put it that way.

MR. HANEMAN: Now that the record is clear—

MR. SCHROEDER: Are there any other questions of the Committee? Is Mr. Mandell in the room? Do you desire to speak at this time?

MR. MANDELL: I have a letter I would like to read, Mr. Chairman:

> "I would like to take this opportunity to congratulate the Hendrickson Committee on the splendid, intelligent job they did on the Revised Constitution. It certainly contains many steps in the right direction: an executive able to function more efficiently in carrying on the business of the state: a legislature unencumbered by confusing executive responsibilities and therefore able to give more efficient representation to the public interest: a workable reorganization of the courts and a method by which it can be amended not too cumbersomely to fit the changing needs as indicated by time and experience.
>
> I have however, an additional suggestion which I think is consistent with the improvements proposed by the Commission which would tend to improve the representativeness of the Legislature.
>
> I would like to suggest that the State of New Jersey adopt a plan which has been successful under the Constitution of the United States of America. I submit the idea of having two senators from each county in our State Government.
>
> Every reason which makes it sound for us to have two senators from each state in the United States Senate is an equally sound reason for us to have two senators from each county in our State Senate.
>
> It is generally conceded that in most cases two heads are better than one.
>
> The people would then have a choice as to whom they wished to bring their problems.
>
> If one senator was ill or unable to be present at an important hearing, his county would still be represented.
>
> It is evident that in our large counties it is most difficult for one man to personally obtain and know the reactions of a large enough percentage of the people in every part of the county. This is particularly true, now, under present war conditions. On the other hand, it is difficult for all the people in a county to know one senator.
>
> There are other than physical conditions which are even more important. From a standpoint of sound representation, it is unquestionably true that our American Government system of checks and balances is more efficient and gives better satisfaction to the People when representation consists of two or more. There is too much individuality, personal opinion, and finality in the words and acts of one person. If that one person is wrong, misinformed, or unfair, the citizens of a whole county may suffer. With a small body like our State Senate such a vote might well be the deciding vote to affect the citizens of the whole State. This is unfair and unsound—even dangerous to the welfare of the People.
>
> I submit that with two senators from every county each senator would be less subject to unscrupulous pressure often brought to bear for the creation of unnecessary committees, local or special privileges, boards, etc. There would be fewer incidents such as the holding up of necessary appointments for a whole year because one senator demanded a lucrative job. From the last information I had, that job has grown until the salaries and expense of that department aggregate over $100,000 a year. These examples of the arbitrary power of one man, because he can deliver one necessary vote, should be limited very definitely. Our State Government would function more efficiently with comparatively little ($31,500) more salary expense and a saving of many times that amount in unnecessary expenses. In addition, the People would receive better representation and be closer to their State Government.
>
> Very truly yours,
> WINTHROP A. MANDELL."

MR. SCHROEDER: Are there any others who wish to speak in favor of modification of Article III? May I have your name, please?

MR. GOODWIN: Fred. W. Goodwin, Secretary of the New Jersey Taxpayers' Association.

Before reading a prepared statement, I would like to refer to a statement made by Mr. Kirk Brown in regard to Section VI, Paragraph 7, and that is the section which would give the Legislature the right, notwithstanding any express or implied limitations of

this Constitution, to incorporate by reference with present and future effect any provision of Federal public law or any Federal administrative rule or regulation relating to the regulation of industry or commerce, or to taxation, or establishing technical standards of any kind. The New Jersey Taxpayers' Association fully endorses the statement made by Mr. Brown in connection with this paragraph.

STATEMENT TO THE JOINT LEGISLATIVE COMMITTEE HEARINGS ON THE PROPOSED REVISION OF THE STATE CONSTITUTION.

Taxpayers need effective constitutional protection against the enactment of laws which unjustly require New Jersey's local governments to "spend."

This protection is needed not only for the benefit of taxpayers but also for the benefit of the legislators who are besieged annually by hordes of selfish individuals and groups seeking special favors and advantages in the matter of salaries, tenures and pensions—in most cases at the expense of the public.

Over a great many years the State of New Jersey has, from time to time, enacted "Mandatory Laws" which compel municipal and county governments to spend money, whether or not they wish to do so and even if they cannot afford it.

Among other things, these laws: increase administration costs—create positions—establish tenure of office—dictate minimum salaries—inaugurate expensive services. Under the present situation, local officials do not have complete authority over all local expenditures, but they must raise the tax revenue to meet the requirements imposed upon them by these State legislated mandatory laws.

Not all mandatory laws are necessarily undesirable. But no law should be enacted by the State Legislature requiring the expenditure of money for services, salaries and pensions, which are strictly local, requiring local government to pay the costs out of local revenues.

The problem of mandatory spending laws is extremely serious and to be solved adequately requires a great deal of study and work. Solution of this problem is one of the long range objectives of the New Jersey Taxpayers' Association which has taken the leadership in acquainting the public with the problem.

About a decade ago when many local governments throughout New Jersey were in serious financial difficulties as a result of the economic depression and harassed by an aggravated condition of tax delinquency and were facing possible bankruptcy, immediate drastic reduction in the cost of local governments was needed to ease the staggering load upon local taxpayers.

In response to requests from a large number of state-wide citizen organizations the Legislature provided for suspension of the

spending requirements of the mandatory laws to free local governments from the shackles of compulsory spending and allow them to cut their spending wherever necessary in order to avert serious fiscal disaster. Suspension continued for four years, from 1933 to 1936, and during that period the accumulated reduction in tax levies was approximately $101,000,000.

When economic conditions were apparently improving in 1937, the Legislature failed to renew suspension of mandatory "spending" requirements, probably under the mistaken idea that the days of free spending had returned. Local governments were forced to resume the high schedule of spending of previous years, since the Legislature had made no progress, during the four years of abeyance, toward permanent correction of the "spending" law situation.

Since that time the matter of mandatory spending laws has been given a considerable amount of attention and study by citizen groups, county and municipal officials, the State Local Government Board, the State Planning Board and a number of others.

As the problem now stands, two-fold action is needed. One is to revise, repeal or suspend all such laws now on the statute books which are contrary to public interest, the other is to stop further enactment of unwarranted mandatory spending legislation.

The first phase of this problem is extremely complex. Hundreds of mandatory laws are on the statute books. Many of them are worthwhile and should remain. On the other hand many impose unfair burdens upon local homeowners and should be eliminated or changed, according to public interest.

The second phase of the problem can be controlled through constitutional revision. It is clear that the majority of our legislators recognize the evils of mandatory spending legislation. Nevertheless, year after year a number of legislative bills are introduced calling for new mandatory spending requirements. This was so during the current session despite war-time need for strict economy in local government operations and despite the fact that early in the session the Legislature adopted a resolution pledging among other things that it would "refrain from enacting any legislative measures which will unjustly require mandatory expenditures in any of the counties, municipalities or school districts of the State which are not necessary as part of the nation's defense program."

Strange reasoning sometimes forms the basis for bills requiring local government spending. One measure (A-256) placed before the current session would have required payment of a $2,500 salary to any county building elevator operator with 25 years of service "in any county with a population of more than 400,000 inhabitants." Just why an elevator operator in counties with 400,000 residents is worth a higher salary than those in any other county is not explained in the measure.

While the proposed revision of the State Constitution does not

provide any course of repealing or revising existing statutes in conflict with public interest, it does, however, in Article III, Section VII, Paragraph 9, strengthen the restrictions on passage of "special" or "local" laws by forbidding the Legislature "to pass any private, special or local laws . . . creating, increasing or decreasing the emoluments, term, tenure or pension rights of public officers or employees." This provision is a step in the right direction.

This Association is in accord with the proposal of Dr. Charles B. Bleasby, member of the Bergen County Board of Chosen Freeholders, who recently proposed an amendment to the State Constitution to prohibit the New Jersey Legislature from enacting mandatory laws to fix salaries and control expenditures of any of the State's political subdivisions.

Adoption of a constitutional provision such as this would be an important gain by the taxpayers since it would give them relief from the present perennial struggle against enactment of the many spending measures introduced in the Legislature. The provision should be made as strong as possible so that it will prohibit the enactment of any law, special or general, imposing unwarranted spending requirements upon local taxpayers.

MR. SCHROEDER: Are there any other individuals who desire to speak in favor of the modification of Article III? If not, I wish to announce that the next public hearing will be held a week from today, Wednesday, July 22nd, at 10:30 A. M., and we will discuss Article IV of the proposed revision entitled "Executive and Administrative."

Thank you very, very kindly for appearing here today.

(Adjournment.)

BRIEFS AND COMMUNICATIONS SUBMITTED AT THIS SESSION.

Montclair, N. J., July 7, 1942.

Joint Legislative Committee to Conduct Hearings on the Revision of the Constitution:

Madam and Gentlemen:

I favor the submission to the people by the Legislature of the draft of a revised Constitution, utilizing the body of the revision as submitted by the Commission on Revision of the New Jersey Constitution, with such further alterations and reformations as the Legislature deems the public good may now require.

However, referring to ARTICLE III, LEGISLATURE, of the Commission's Report, I suggest that it is in the public interest that ART. III, SEC. VI, PAR. 7 be dropped or drastically limited and revised. This paragraph authorizes the Legislature to incorporate in N. J. Laws certain categories of Federal Laws, and administrative rules and regulations by reference only. This presumably constitutes the exception referred to in the last line of Par. 6, immediately preceding.

The present Constitution provides in Art. IV, Sec. VII, Par. 4:

> "No law shall be revised or amended by reference to its title only, but the act revised or the section or sections amended, shall be inserted at length."

Considering this present proviso, the N. J. Court has said:

> "Much vicious and unjust legislation was obtained in this way by covert means, and it was for the purpose of preventing incautious and fraudulent legislation, procured in this deceptive manner that this constitutional provision was adopted. . . . To circumvent this provision of the Constitution the act must be completely intelligible in itself, without examination of and comparison with the act to which it refers." Evernham v. Hulit, 45 N.J.L. 53, at p. 58.

And more recently, in 1937,

> "It is well settled that the reason for Art. 4, Sec. 7, Par. 4 of our Constitution is to prevent covert, incautious and fraudulent legislation," citing the foregoing decision and others. Baldwin Lumber Junction Milling v. Moskowitz, 15 N.J.Misc. 438. (In the summary in N.J.S.A., vol. "Constitution," p. 346, note 53 this Baldwin case is erroneously cited as 118 N. J.L. 207. Also reported in 192 Atl. 229.)

This limiting provision as to N.J.'s own laws is duplicated in the proposed Art. III, Sec. VI, par. 6, Report p. 39, (p. 937). Surely if this has been good public policy in N. J. for 98 years, it deserves to be continued in our new Constitution. How much more strongly should this argument avail—that it leads to "vicious and unjust,"

"covert, incautious and fraudulent legislation"—when from the notorious welter of Federal administrative bureau rules and regulations in Washington, it is proposed to allow certain of these relating to regulation of industry or commerce, taxes, or technical standards to be incorporated by reference only, with the inevitable result the reader of the N. J. law will be in a fog until he can locate a copy of the pertinent rule or regulation; determine whether it has been revoked in Washington and is still applicable in N. J.; or whether it was the edition of this rule or regulation in "present effect" when the N. J. law incorporated it or whether "with future effect" it is perhaps the revised rule promulgated some weeks or months later.

I don't like to have the text of New Jersey laws prepared in Washington, without notice to us readers as to just what they say. It leaves open a way, in the language of our own Courts, to be availed of, in crowded and hurried legislative sessions, as a minimum effect, to incorporate covert and incautious legislation, and as a maximum sequel, for possible vicious and fraudulent legislation. In general it is a lazy man's rule, with a saving to the State of only the paper and printer's ink otherwise required to tell the citizens the full purport of the enactment.

Judging from the Legislature's own practice there are occasions when Federal acts may now be incorporated by reference, which so far as I am informed, have not been judicially questioned. For such usage additional constitutional authority appears unnecessary. For instance in the Unemployment Insurance Act, there are numerous such references as R.S. 43:21-7(b), R.S. 43:21-12 and R.S. 43:21-14.

The reason for proposing this amendment is not explained in the Commission's Report, page 16, (p. 915). Without knowing more definitely the situation that the Commission sought to deal with, it is difficult to give definitive suggestions as to modification if it is thought necessary to retain Par. 7 in part. One possible limitation might be to add thereto:

> "but only in situations where a uniformity of action and practice is required or is desirable in joint action by the State of New Jersey and a Federal department or administrative agency."

The proposal as it stands is too wide open and susceptible of too many varying and ominous meanings to receive general support by the Legislature, which should not thus delegate to Washington its law drafting functions. Its retention may well constitute a source of effective opposition to the revision as a whole.

Respectfully submitted,

ARTHUR J. EDWARDS.

TO THE JOINT LEGISLATIVE COMMITTEE FOR ASCERTAINING THE SENTIMENT RELATING TO CONSTITUTIONAL REVIEW:

Article III, Section VII, Paragraph 2, page 39 of the Report of the Commission on Revision (p. 937) reads: "The right of labor to organize and bargain collectively shall not be impaired." I propose the following addition thereto.

No person shall be denied employment because of membership in or affiliation with or resignation from a labor union or because of refusal to join or affiliate with a labor union; nor shall any corporation or individual or association of any kind enter into any contract, written or oral, to exclude from employment members of a labor union or persons who refuse to join a labor union, or because of resignation from a labor union; nor shall any person against his will be compelled to pay dues to any labor organization as a prerequisite to or condition of employment. Nor shall any corporation or individual or association of any kind deduct from the wages of its employees their dues in any association or organization of any kind either with or without the employees' consent nor exert persuasion or compulsion upon them to maintain membership therein. The Legislature shall have power to enforce this article by appropriate legislation.

This addition is a measure to secure the right to work. This right is being abridged and should be newly asserted and defined. It is not enough to say that it is self evident and needs no declaration; that argument was used against the inclusion of the first ten Federal amendments, the so-called Bill of Rights though it was true of the "liberties" that they comprised as it is true of this one, that they were included in the inherent rights of the individual. When such encroachments as those from which labor is suffering are not opposed they become established by consent or adverse possession; thus the Federal Supreme Court declared that the picketing of an employer as unfair to labor was a "familiar practice in these situations" and condoned it although at the same time the court declared the employer had not been unfair. There is danger that the abridgement of man's right to work may thus be embalmed in the law. This abridgement is of long standing and the people's representatives having failed to provide adequate remedy in legislation it is the duty and right of the people to thus legislate in their Constitution.

The employer has been the historical exploiter of labor. The causes of this lie in the profoundest depth of human forces. Sometimes it was born of necessity, sometimes of human depravity. Out of this condition sprang the associations of workers called labor unions and due chiefly to their endeavors in the interest of labor there has been built up in our times a body of law for the regulation of employment. Labor unionism is a necessary and admirable

institution but its freedom from regulation has made it amenable to these same forces and as a result some of its organizations in their structure depart as widely as possible from the democratic pattern. In these their members have no voice, their managers are clothed with unbridled power, the vast wealth collected from their workers is not accounted for and with the inevitable and quite natural result that they have been perverted from their original purpose for being and have themselves become exploiters of labor.

It is a matter of common knowledge that the right to work is violently suppressed. It is denied because of membership in labor unions and because of lack of such membership. Employers enter into agreements with those who control labor unions to deny employment to those who refuse to join them. Exorbitant so-called initiation fees are demanded for the right of membership in those labor unions that monopolize employment and exorbitant dues for continuing membership. The "check-off" or deduction of union dues from the worker's wages is made a condition of employment and the employer thus made the vicarious instrument of compulsion upon the worker. In this and many other ways labor is enslaved, and its serfdom is enforced with sadistic ingenuity ranging from economic pressure through the whole gamut of crime to arson, kidnapping and murder in this process of abridging the right to work.

In addition to violence the chief means of dragooning labor and enslaving it has been to bring it under the control of union management and keep it there, for which the closed shop and the check-off are instruments. The legal status of the closed shop is indicated in the few places where the law has touched upon it. The Railway Labor Act of 1926 provides that "no carrier shall require any person seeking employment to sign any contract or agreement promising to join or not join a labor organization," and as amended contains a special prohibition against the use of the check-off. Because this industry is so largely affected by public interest these limitations are particularly significant. The Norris-LaGuardia Act of 1932 provides that the worker shall be free to decline to associate with his fellows and to have full freedom too, to associate . . . President Roosevelt has stated that "the Government will never compel this five per cent to join the union by a Government decree. That would be too much like Hitler."

The addition to Article III here proposed would give these prohibitions a wider application. Once more war has demonstrated that even the smallest industry and its workers are impregnated with public interest.

There is no compulsion here. The Union Shop is still possible when it is brought about by voluntary action on the part of employer and employees and as long as no compulsion is exercised by the employer to prolong union membership or deny employment

in its absence. This addition works no hardship on those associations of labor that are conducted in labor's interest without addiction to compulsion.

This addition works no compulsion upon labor to accept employment that is objectionable for any cause, in fact it works no compulsion of any kind upon labor or employer but it does free labor from the compulsion of the employer and that of labor's own associates.

If such an article had been in the Federal Constitution there would have been a control at hand to prevent the high-jacking of labor at the camps and in the ship yards and in the tank shops and the ammunition plants; to prevent, too, the imperious abuse of power to stop the forging of gun and sword even while the enemy was on our soil.

A power that controls the right to work is superior to the Government which is denied that power. It is the power to enslave. It is the power to impoverish. It is the power of life and death. It is a power that no one should have.

KIRK BROWN.

Montclair, July 15, 1942.

BRIEF PRESENTED BY NEW JERSEY FARM BUREAU AND NEW JERSEY STATE GRANGE TO THE JOINT LEGISLATIVE COMMITTEE TO STUDY THE REPORT OF THE COMMISSION ON REVISION OF THE NEW JERSEY CONSTITUTION.

Trenton, New Jersey

July 15th, 1942

To the Members of the Joint Legislative Committee:

As we understand, there will be considered today the structure and the function of the Legislature. As observed last week, the purpose of dividing the State into three theoretically, but not actually, altogether independent departments was to prevent, as far as possible, abuse of political power. It was observed also that the State was, in theory at least, republican, representative,—that it, and consequently its government was purely fiduciary. But fiduciaries, being human and selfish, are apt to betray their trusts and to use the confidence reposed in them to their own ends. This is particularly so in the case of governments of limited states, where the opposing conceptions of sovereign states and governments are familiar. Accordingly, it becomes necessary so to plan the political structure that fiduciaries have the greatest possible power to perform their functions, with the least possible opportunity to usurp that power—that is, to convert it to personal selfish ends. All our suggestions in considering the structure and the function of the several departments of the State will be tested by that standard.

Considering now the commission's recommendations regarding the Legislature: We have long contended for, and our organizations have formerly approved of, biennial sessions, increased compensation for members, and shorter and more active sessions. We now reiterate these recommendations. Biennial sessions are in harmony with prevailing custom, and the proposed increased compensation should not be objectionable. Likewise the provision limiting the sessions to ninety days. The provisions regarding special sessions seem good, at least as such provisions usually are considered good. We have wondered, however, how long it will be before the public realizes that the calling of special sessions is a legislative, not a gubernatorial function. The commission has done well to provide for the re-convening of the Legislature upon petition of two-thirds of the members, and of keeping the Senate in session upon call, for the purpose of acting upon nominations.

The proposed legislative council seems a questionable innovation. We are unable to determine how such a council can render a desirable service. It might be that the Legislature itself, to its own advantage, might create a council of its own members. It is conceivable, also, how such an independent body for the purposes of study and preparation might be created, and render valuable

service to the Legislature. But we believe that the inclusion of the executive or his representatives in such a council is harmful in theory and would be found so in practice.

Again, we desire to emphasize the, to us, undoubted fact that our work here should all trend toward more complete segregation of the two departments rather than towards more complete collaboration. To that end, of course we should criticize that provision in the section which suggests one of the purposes of the council to secure greater contact between legislative and executive departments. As already indicated, we think there is far too much such contact already. Let the legislators attend strictly to their business of legislating; let the executives attend strictly to their business of administration. The further apart their respective personnels are kept, the better for constitutional government—both theoretically and practically. Again, we reiterate, separation is of the very essence of our particular form of republican government. A large part of the political scandals emanate from such contacts. When such contacts become complete, popular government is at an end.

In recent years, there has been developed a plausible but dangerous doctrine. It is that the State is a great production corporation, that accordingly, cooperation between policy-making and executing departments is necessary. The State is a corporation but not a production corporation. Nor is it a religious corporation nor a charitable or a cultural corporation of any kind. States, indeed, have too often assumed management of bureaus for some of these purposes—a quasi-subsidiary corporation or state, as it were, of which more will be said later. The business, however, of a productive corporation, whether it be composed of representatives of capital or of workmen, is limited to constructing—to creating—to increasing wealth. The business of a political corporation is quite different—indeed as different as is that of religious or of charitable corporations. The business of all corporations, as we know them in America, is limited to the purposes for which they are created. The purpose of the limited corporate state is the protection equally of all citizens, whether acting individually, or in corporate relationship, in the enjoyment of their inherent rights, while citizens conduct their own personal affairs in their own lawful way—and only in that way. When they are engaged in unlawful conduct it is the province of those who administer justice, not those who conduct the corporate affairs of the state, to take action. Every deviation from that purpose on the part of the State is an ultra vires act, and a definite trend toward totalitarianism.

Regarding the collective bargaining section, the underlying principles upon which collective bargaining is founded, are those which make all men free, and of course include working men, whether organized or not. That these principles have not been

judicially recognized, when men have freely associated for a common lawful purpose, is one of our survivors of an earlier dictatorship. But we think the proposed provision should be so extended that it would become applicable to all persons associating for any lawful purpose, whether economic or otherwise.

Respectfully submitted,

NEW JERSEY STATE GRANGE
D. H. Agans, Master.

NEW JERSEY FARM BUREAU
H. Earl Probst, Secretary.

AN ARGUMENT FOR CONSTITUTIONAL REVISION OF THE SENATE

by Walter J. Bilder

If the average citizen of New Jersey were asked whether the government of New Jersey is a democracy, he would treat the question no more seriously than if he were asked whether New Jersey has a public school system. He would merely look at the questioner, half puzzled, half amused, and would not bother to answer him. Yet, if the questioned citizen were to take note of the plain and simple facts, he would be bound to answer the question with an emphatic negative.

A democracy is a form of government which is constituted by the will of the people, deemed to be expressed by the vote of their majority. And tested by that definition, certainly the legislative branch of our State government is not a democratic institution. For, a Senate which is composed of one representative from each county, without regard to population, equates, for example, the political power of the inhabitants of an area containing 837,340 persons (Essex County), and an area containing 29,632 persons (Sussex County). This results virtually in giving each citizen in Sussex County about thirty times as much say as each citizen in Essex County, in the government of the State. Yet the first essential of a democracy is that all citizens shall have an equal say.

This undemocratic and inequitable apportionment of political power among the counties might be practically harmless if the bulk of the population of New Jersey were fairly equally distributed over most of the State's area. But, as it happens, the bulk of New Jersey's population is concentrated in a comparatively small part of the State's total area. In consequence, most of the political power in the Senate is possessed by a mere fraction of the State's total population. For, eleven of the twenty-one counties in the State contain altogether less than one-sixth of the State's entire population. Thus the action of the Senate, in each and every matter, can be determined by the votes of senators whose electorates compose only about 17% of all the people in the State.

This undemocratic apportionment of power in the State Senate is not confined within the sphere of legislation. It extends into and exerts important (although indirect) influence upon the Executive and Judicial branches of the State Government. For the consent of the Senate is a constitutional prerequisite to the appointment of nearly every major State official. Beside this, the Senate, jointly with the Assembly, now has the independent power to appoint many other major State administrative officers and to create independent State commissions, boards and agencies which have charge of important state administrative functions. In the proposed new Constitution, the Legislature's present power to create

independent State commissions, boards, and other administrative agencies, is abolished, but, in all other respects, the proposed new Constitution incorporates, virtually unchanged, the existing senatorial system, with its conditioning relationship to the executive and the judicial branches through the "advice and consent" mechanism.

To point out that the senatorial system is undemocratic is not necessarily to impugn the original soundness of the Constitution or the wisdom or the motives of its framers. For when the Constitution was adopted, the circumstances were such as made the senatorial system fairly democratic at that time. That is to say, in 1844, there was no great disparity in population between the various counties of the State. Most of the counties which today are the smallest in population were then the largest. Thus in 1844, Sussex County had a population of 27,773, while Essex, which had the largest population, had 44,512, and Monmouth County, the second largest in population, had 32,912. Today Sussex County has only 29,632, while Essex County has 837,340. The change which has taken place in the population ratio between Sussex County and Essex County is from a ratio of less than one to two (in 1844), to a ratio of one to thirty (in 1940). This instance is typical of all the rural counties in the State. From being originally nearly in accord with democratic principles, the Constitution, by force of time and circumstances, has come to be in violent conflict with those principles. It is clear, therefore, that the Constitution itself furnishes a cogent argument in favor of a revision of the senatorial system which will make it square with democratic principles today.

Indeed, the Constitution has not been able to prevent the influence of democratic principles from altering the senatorial system, from time to time, in plain effect, even although not in theory. When the Constitution was adopted in 1844, there were eighteen counties in the State. Thereafter three new counties were created out of portions taken from the then-existing counties. In 1844, Camden County was created out of a part of Gloucester County. In 1850, Ocean County was created out of a part of Monmouth County, and in 1891, it was further increased by adding a part of Burlington County. In 1857, Union County was created out of a part of Essex County. In this connection, it is important to note that the respective counties from which areas were taken to form those three new counties, were among the most populous counties in the State at that time. Thus, in 1844, Gloucester County ranked sixth in population, having only several hundred inhabitants less than Morris County. In 1850, Monmouth County ranked third in population. In 1857, Essex County ranked first in population. From all this, it is evident that the creation of these new

counties operated to redistribute relative political power among the counties in the direction of proportionate representation in the Senate.

What is more, this process of gradual democratization of the senatorial system, had been going on long prior to the adoption of the present Constitution. For, the fact is that the senatorial system was not originated by the present Constitution but by the Constitution of 1776. That earlier Constitution provided for a Legislative Council composed of one member from each County. At that time (1776), there were only thirteen counties in the State. Between 1776 and 1844, five additional counties were created out of portions of the then-existing counties. The addition of each new county to the original thirteen counties, obviously effected a re-apportionment of political power among the areas and the populations which comprised those original thirteen counties. By the creation of the new counties, the relative political power of the areas involved was increased at the expense of the areas not involved.

This clearly-marked historic trend toward democratic representation of the counties in the Senate, is a plain, although implicit, recognition and application of the principle of proportionate representation in respect of that feature of the State Government. The logic of this series of definite, although indirect, alterations of the senatorial system in the face of unchanged constitutional provisions, is unmistakable. That logic points unquestionably in the direction of a thorough-going readjustment of that system to the vast change in size of population of the various counties which has taken place since 1844.

The grossly disproportionate nature of the senatorial system is no less shocking and extreme when measured in terms of the relative economic interests represented than when measured in terms of the relative populations represented. At one end of the economic gamut is Sussex County, with tax ratables valued (in 1940) at $31,900,525; at the other end is Essex County with tax ratables valued (in 1940) at $1,438,510,536. Thus Essex County, having more than thirty-six times as much taxable property (in value) as Sussex County (as well as thirty times as many people), has yet the same representation as Sussex County in the Senate, viz: one vote. Indeed, there are eleven counties whose aggregate tax ratables (in 1940) were valued at approximately 12% of the total tax ratables of the entire State. Yet the representation of these eleven counties in the Senate, can dominate the Senate and thereby, in certain crucial respects, dominate the whole State Government.

The same enormous disparity between the relative economic importance of the rural counties and their relative political importance in the senatorial system, appears no less strikingly from

another point of view. The chief economic activity of the rural counties is agricultural. The total value of all agricultural products in New Jersey in the year 1929 was $60,300,000. Nearly all of the manufacturing and large mercantile activities within the State are located in the urban counties. In 1929 the total value of the manufactured products in New Jersey was $3,937,000,000. Thus, the ratio between the value of agricultural products and manufactured products in New Jersey in 1929 was approximately one to sixty-five. The total value of the manufacturing and mercantile business done in New Jersey in 1939 was about $7,000,000,000. The total value of agricultural products in New Jersey in that year was $119,000,000. The ratio between these two amounts is one to fifty-eight. Yet the combined political representation of the rural counties in the Senate exceeds that of the counties in which more than 98% (in value) of the State's annual economic activities are carried on.

In view of its present disproportionate representation of the economic interests in the various counties, the senatorial system stands condemned precisely by the historic facts and principles to which it owes its origin. For the Senate is the "lineal descendent of the old Governor's Council," which by the time of the Revolution had become a legislative body. This pre-Revolutionary Council was retained in the form of State Government established by the New Jersey Constitution of 1776, wherein it was called the "Legislative Council." In the Constitution of 1844 this feature of the State Government was again retained and newly named "The Senate." The colonial "Governor's Council" was composed of members appointed by the Crown upon the Governor's recommendation. Its members were always persons of great prominence and wealth. The idea that the Council represented the propertied class in the State's population and that its membership was to be drawn exclusively from that class, was universally and firmly accepted. The result was that this idea was carried into the Constitution of 1776 in the most explicit terms. Thus that Constitution provided that a member of the Legislative Council had to be a "freeholder worth at least 1,000 pounds proclamation money." This large property qualification unmistakably signified the class of citizens which the Legislative Council was meant and understood to represent; and it necessarily operated to confine membership in that body to that particular class.

Indeed, the conditioning relationship between political power and the ownership of property had been basic in the political theory and practice of colonial New Jersey from the beginning; and that relationship continued to hold sway until long after the adoption of the first State Constitution. For example, a member of the colonial assembly had to be a freeholder owning 1,000 acres

of land or be worth not less than 500 pounds. This requirement in substance was adopted by the Constitution of 1776, in the provision that a member of the State Assembly had to be worth at least 500 pounds. Again, the right of suffrage itself, in colonial New Jersey, was conditioned upon the ownership of property; and in the Constitution of 1776 the same right was likewise qualified. That Constitution prescribed a worth of fifty pounds as a prerequisite of an "elector."

It was in these colonial and post-Revolutionary forms of government, conceived so largely in terms of ownership of property, that the present senatorial system originated and became entrenched. When the New Jersey Constitution of 1844 came to be framed, the compelling influence of Jacksonian democracy which was then rife, produced provisions which abolished property qualifications for public office as well as for the right of suffrage. But that salutary influence failed to reach and modify the equally undemocratic feature of a senatorial system based solely on arbitrary and long-fixed geographical divisions of the State. The all-important fact to note in all this is that the rationale of the senatorial system, in its inception and for a long period of years thereafter, was that it provided large political representation and power to the propertied interests and wealthy classes in the State. This rationale has long since ceased to exist. In fact, as is amply shown above, the senatorial system now gives major political power and control to the smallest economic interests in the State.

Three time-worn and specious arguments are used against a democratic alteration of the senatorial system. One of these arguments makes an appeal to reverence, another makes an appeal to fear, and the third makes an appeal to a sense of what is fair. All three arguments are demonstrably false.

The first argument claims that the New Jersey senatorial system is patterned after the senatorial provisions in the Federal Constitution and from that fact derives unquestionable rightness and inviolable sanctity. The truth, is, however, that the provision in the New Jersey Constitution for equal representation of the counties in the Senate comes not from the Federal Constitution but from Article III of the New Jersey Constitution of 1776. That Constitution ante-dated the Federal Constitution by twelve years. What is more, the provision in the Federal Constitution for equal representation of the States in the Senate, is explained entirely by the historic circumstances of its origin. That provision was purely the product of a compromise between thirteen sovereign and independent but unequal States. It constituted a practical bargain between the States and not the recognition of a ruling principle of democratic government. Beyond all this, however, is the fact that the relation between the States and the Union is

fundamentally different from the relation between the counties and the State. For the thirteen original States existed as separate and distinct political entities before the Federal Union came into existence; and those States voluntarily united to create the Union. But the counties of New Jersey were always dependent and subordinate political divisions of New Jersey's political predecessor, to wit: the colony of New Jersey. The counties of New Jersey did not join together voluntarily in a political compact to form the State of New Jersey. They came to form part of the State automatically when New Jersey ceased being a colony and became an independent sovereignty in 1776. The counties were and are the creatures of the State, and not the State's creators. Counties are not separate political entities. They are mere subdivisions of the State for State electoral purposes, and they are mere agencies or instrumentalities of the State for local governmental purposes.

The next argument is that a democratization of the State senatorial system would increase the power of the political machines and bosses of the populous urban counties. This argument has at least two obvious and fatal weaknesses. One weakness is that it implies (contrary to well-known fact) that the present domination of the State Government by the rural counties is beneficent, and that the public interest thrives and prospers under the ministrations of the rural counties' political machines and bosses. In other words, the argument implies that a shift of political control of the State Government from the rural to the urban counties, would be a change from good to bad. The truth, however, is, as everybody knows, that, at the very worst, the transfer would be one from a pot to a kettle of the same hue. Certainly, insofar as the political machines and bosses were allowed to have their way, the public interest would be cooked as well or ill in one case as in the other. The other weakness of the argument is this: it overlooks or ignores the fact that the strangle-hold on the State Government which the present senatorial system inevitably gives the rural county politicians, completely discourages any effort on the part of citizens in the politician-ridden urban counties to destroy the power of their "bosses." And, nothing would do more to stimulate and to encourage such an effort than such a reconstruction of the Senate as would ensure direction of its action in accordance with the will of the majority of all the people in the State. No one can doubt that a Senate based upon the principle of proportionate representation would effect a political regeneration of the whole State, and create a politically healthy condition of affairs in which Democracy would have a chance to do its work. For by making the State Government sound in structure, it would inevitably tend to make it sound in function.

The third argument is an appeal to a sense of fairness. This

argument asserts that it is unjust to deprive the rural counties of their political power and relegate them to the fractional influence which a proportionate representation in the Senate would assign to them. If this appeal is one to principle, it is obviously an appeal to a principle of force, viz: that he who possesses power is entitled to retain it. For surely such a principle finds support neither in reason nor in justice. On a tenure of political power perpetuated solely by a kind of force, lapse of time confers not rightfulness but an increased iniquity. Moreover, to assert or to assume that the disproportionate power which the rural counties now have in the Senate is actually prized by the majority of the citizens of those counties, is to do those citizens a grave injustice. It is not the rural citizen but the rural politician who lays vehement claim to the excessive political power which the rural county now possesses in the Senate. The attribution of that claim to the rural citizen is a transparent piece of ventriloquy. To assert or to assume, moreover, that the possession of that excessive power is actually beneficial to the rural citizens, is to ignore the patent facts. The only benefit which all (as distinguished from a few) of the inhabitants of the rural counties get from their political relation to the State, is State financial aid to public institutions or facilities located in the rural counties. That aid takes the form of financial assistance in the matter of schools, roads, and welfare agencies. To the extent that such financial aid fulfills only the actual and proper needs of the rural counties in those respects, the State aid given to the rural counties does not derive from or depend upon the coercive hold which the political representatives of those counties have upon the State Government. The fruits which that coercive hold yields do not go to the people of the rural counties but to the politicians in those counties or to those pressure-groups or special interests which those politicians regularly or occasionally serve. It is these special beneficiaries of the senatorial system who have reason (but not good reason) to claim for the rural county populations an inalienable right in perpetuity to their disproportionate representation in the Senate. In permitting such a claim to be made for them, the people of the rural counties are unwittingly making themselves accessories to continual crimes against good government and indeed against their own highest interests. For the true welfare of the people of the rural counties will be best promoted and their highest interest will be best served and secured by the establishment of good State Government in New Jersey. And nothing militates more strongly and destructively against good State Government in New Jersey than the present senatorial system. In his second message as Governor, Woodrow Wilson said:

"The powers of corrupt control have an enormous and

abiding advantage under our Constitutional arrangements as they stand."

No one who is not wholly ignorant of the history of New Jersey government can doubt that Woodrow Wilson's statement had chief reference to the senatorial system.

UNIVERSITY OF NEWARK, NEWARK, NEW JERSEY.

July 7, 1942

Hon. Lloyd L. Schroeder,
Chairman, Legislative Committee on Constitution Revision,
Trenton, New Jersey.

Dear Senator Schroeder:

I am sending herewith to you and to the members of your Committee, my approval of the Proposed Revision of the Constitution in so far as that revision affects the first three articles.

I respectfully refer you to memoranda prepared by a committee from the University of Newark which was submitted to the Committee on the Revision and which will be submitted to your body by Mr. John Bebout.

I want specifically to comment upon Paragraphs 6 and 7 of Section VII of Article III dealing with zoning and access condemnation. It happens that for more than twenty years I have been familiar in the municipal field with the problems therein involved. The existing amendment to the Constitution dealing with zoning was drafted by a committee of which the late Honorable Alfred Hurrell was chairman, and of which I was a member. I personally drafted the Planning Act of the State. The amendments to Paragraph 6 have my hearty approval. It was felt by the original committee that the use of land should be restricted but they yielded to objections in the rural districts. Since that time great strides have been made in the public consciousness of the necessity for limiting and restricting use of property adjacent to public owned lands, including highways. Some of the later New York decisions have pointed the way. I deem it highly essential that the grant of power for these purposes should be included in the fundamental law since I have grave doubts that our Courts would sustain a mere legislative grant of power for these purposes.

The foregoing remarks apply with equal cogency to the provisions of Paragraph 7 which I deem highly essential to any proper future development in the State of New Jersey.

I speak not only for myself in this matter, but for the members of the Faculty of the School of Law of the University of Newark who have made careful study of these provisions.

Respectfully yours,

GEORGE S. HARRIS,
Dean.

PUBLIC HEARING

July 22, 1942

Morning Session

on

Proposed Revision of the New Jersey Constitution
Article IV. "Executive and Administrative"

The Joint Legislative Committee appointed pursuant to Senate Concurrent Resolution No. 19, passed June 15, 1942, convened in the Assembly Chamber in the State House at Trenton on Wednesday, July 22, 1942, at ten-thirty o'clock A. M., for the purpose of holding a Public Hearing in connection with the Proposed Revision of the New Jersey Constitution (1942) pursuant to announcement previously made.

The following members of the Joint Committee were present:

Hon. Lloyd L. Schroeder, (presiding),
Hon. H. Rivington Pyne,
Hon. Edward J. O'Mara,
Hon. John M. Summerill Jr.,
Hon. Manfield G. Amlicke,
Hon. Dominic A. Cavicchia,
Hon. Vincent S. Haneman, and
Hon. Mildred A. Preen.

The Chairman opened the Hearing and the Hearing proceeded as follows:

MR. SCHROEDER: The hearing on Article IV, entitled Executive and Administrative, will be opened.

The first speaker this morning will be Commissioner Spencer Miller Jr., representing the Citizens Committee for Constitutional Convention.

MR. MILLER: Mr. Chairman, members of the Joint Legislative Committee:

On the north side of the State House Annex there have been carved in stone these words—

THE LEGISLATURE
BY THE ENACTMENT OF WISE LAWS
THE GOVERNOR
BY CAUSING THEM TO BE FAITHFULLY EXECUTED
THE COURTS
BY IMPARTIALLY INTERPRETING THEM
HAVE EARNED FOR NEW JERSEY
AN ENVIABLE REPUTATION

Whether these words are history or prophecy, I leave to you. But there is one idea implicit in this dedicatory phrase namely that upon the executive devolves the responsibility for the administration of the State Government.

It is to that principle as embodied in Article IV dealing with the Executive function that I want to speak to you again in my capacity as a citizen and as Chairman of the New Jersey Committee on the Constitutional Convention.

May I make bold once again to remind the members of the Joint Committee of a statement of the Board of Trustees of our Citizens Committee on May 28th last.

"Without passing judgment on details of the Constitution proposed by the Commission, the Committee feels that the changes in the executive, legislative and judicial departments constitute a forward step toward providing New Jersey, for the first time, with a frame of government based on tested American principles and adequate to modern needs."

I shall discuss the proposed Article IV, dealing with the executive and the administrative branches of the State Government, in the light of this statement.

In other words, I shall point out what seem to me to be the principles in this article which command the support of most of our members. I make this statement without prejudice to any changes which may be suggested later in this hearing. Generally speaking, our members are primarily concerned about the principles, not the details, of the proposed Constitution. We all hope that these public hearings may develop a number of refinements which may be incorporated in the document submitted to the people. We none of us insist upon this draft or any other draft without the crossing of a T or the dotting of an I. We want the Constitution when it is finally adopted by the people to be as truly as possible the Constitution of all the people of New Jersey. It is not our wish to knock down well founded and sincerely held minority views by the mere weight of numbers. Without wasting time, sacrificing essential principles, or disregarding the clear lessons of experience, we trust that conference and respectful consideration of divergent views may win for the final draft the enthusiastic support of the vast majority of our thoughtful citizens.

In this spirit, therefore, I approach the Article on the executive. I shall not advocate any specific changes in the draft proposed by the Revision Commission, but in my representative capacity I shall take the liberty of calling attention to a number of proposals which I think have sufficient support to make it desirable that they be carefully canvassed.

At the beginning of any discussion of the position of the executive in a modern State Government, I think it is important to

recognize the fact that this is a subject upon which men of 1844 were not too well qualified to speak. The primary reason for this is that State Government one hundred years ago had very little executive or administrative business to do. The makers of the present Constitution took away from the Governor his old powers as chancellor, ordinary and presiding officer of the council, both in its capacity as the Upper House of the Legislature and in its capacity as the court of last resort. They then solemnly declared that the executive power should be vested in the Governor; but they thought this power so unimpressive, that several of the leading members of the Convention expressed the fear that the office would "not be of sufficient importance for the best man" or even a good practicing lawyer to accept it.

A hundred years ago the annual disbursements of the State were less than $100,000. Of this sum, about $30,000 was disbursed for local schools, while legislative expenses, State officers' salaries, and the upkeep of the State Prison accounted for most of the rest. Obviously there was no reason to think of the Governor as a general manager of this business. The application and enforcement of State laws was left for the most part to county and local officers. On the other hand, the chief executive of the State enjoyed no powers corresponding to the President's control of foreign affairs or his command of the army and navy. Finally, as the debates of the Convention of 1884 show, the Revolutionary hatred against the arbitrary acts of George III still made many Jerseymen look with suspicion on anything resembling a strong executive. This doubtless accounts for the prohibition against a Governor succeeding himself, and for the fact that all other State officers were made practically independent of the Governor, either through election by joint meeting or by virtue of fixed terms longer than three years.

One almost wonders why they created the office of Governor at all. It can probably be ascribed partly to the obvious need for a ceremonial head of the State, partly to deference to the theory of a formal separation of these powers, and partly to the desire to find a more acceptable repository for the power to appoint certain high judges and other officers than the Legislature itself.

No Article of the present Constitution bears more clearly the marks of the age that produced it than the executive Article. In view of the changes in society and the resulting changes in government which have occurred since that time, there is no Article which is more in need of reconsideration in the light of present conditions. I believe that most Jerseymen agree that the State's business is now big enough to require the supervision of a chief executive or general manager. The State now disburses some $140,000,000 a year and performs a great number of vital services through upwards of a hundred distinct departments and agencies.

The results of the traditional neglect of the executive office are apparent on every hand. A modern chief executive in a large scale enterprise is expected to concern himself with matters of general policy and to supervise his organization through a small number of administrators directly responsible to him. Details are left to these chief assistants and their subordinates. In the New Jersey Government the order of things is reversed. The Governor is required to appoint and deal with a whole host of minor functionaries, while most of his principal assistants are carefully insulated against both his legal and his moral influence. A new Governor discovers that the administrative part of State Government, of which he is supposedly the general manager, is divided among something like a hundred independent, often competing agencies. Many of these departments are headed by boards, the numerous members of which it would be utterly impossible for the Governor to become acquainted with during his three-year term. The Governor finds that his duties with respect to the several departments are bewildering in their number and dissimilarity. Furthermore, many of his duties are of such an inferior or inconsequential character that they have no value whatever as instruments of executive power. He is soon involved in a great mass of "busy work," which, if it needs to be done at all, might just as well be taken care of by the lowliest clerk.

In spite of such constitutional and traditional weaknesses, Americans, including citizens of other States, have come to expect their chief executives to perform a very important dual role. They expect them to represent and guard the major interests of the whole State against the combined minor interests of its segments. And they expect them to take care that the public business be conducted efficiently, honestly, and economically. The first expectation implies a limited participation in legislation. The second implies full responsibility for the non-judicial aspects of administration. This is not a violation of the separation of powers as understood by the Founding Fathers; because the dual role of the chief executive was written most clearly into the Constitution of the United States, admittedly the best of our early Constitutions.

Few will deny that a central weakness of the New Jersey Constitution of 1844 is its failure to provide properly for either role of the executive. Fortunately, the Commission on Revision of the New Jersey Constitution has courageously attacked this weakness at its sources. I pointed out last week that the correction of a defective Constitution is likely to require a number of minor adjustments, rather than a single major change. For this reason it will be necessary to examine separately the principal changes in the executive Article proposed by the Revision Commission and to consider their combined effect.

(1) It gives the Governor the power to appoint and dismiss

his own chief assistants, and enables him after investigation and hearing to dismiss any other administrative officer found faithless to his trust. This, substantially, follows the precedent set by the United States Constitution. The Governor cannot be held responsible for administration unless he can enforce responsibility down the line through assistants in whom he has confidence. The proposed Constitution provides for enforceable responsibility without discarding the traditional check of senatorial approval on appointments. The requirement of a public vote on nominees within 30 days looks like a happy solution of the deadlocks between Governor and Senate, which have sometimes seriously impeded the public business.

The time limit on confirmation and the prohibition against further joint meeting appointments except for comptroller and treasurer should go a long way toward making both the Governor and the Legislature more responsible servants of the public interest. Let me read you what Thomas Jefferson said on this subject in 1816, after observing the working of legislative patronage in Virginia:

"Nomination to office is an executive function. To give it to the Legislature, as we do, is a violation of the principle of the separation of powers. It swerves the members from correctness, by temptations to intrigue for office themselves, and to a corrupt barter of votes; and destroys responsibility by dividing it among a multitude . . . "

And don't forget that Jefferson was not, like Hamilton, a particular lover of executive power.

(2) In the second place, the proposed Constitution reduces the number of administrative departments and makes the Governor primarily responsible for their internal organization and for the distribution of powers among them. No chief executive can deal effectively with something like a hundred different agencies. The proposed Constitution would reduce the number to nine. Perhaps this number is too small. We hold no brief for nine, as against eight or twelve or a few more, or for their proposed titles or grouping. The point is that the number should be small enough so that the heads of the departments can sit together with the Governor in intimate conference, for consideration of common problems and co-ordination of effort.

Discovery of the best internal organization and allocation of functions is a matter of administrative experience. Theodore Roosevelt therefore pointed out that the job of administrative reorganization is "essentially executive in its nature." The proposed Constitution recognizes this; but wisely gives the Legislature a veto on executive orders dealing with this subject.

(3) In the third place, the proposed Constitution would diminish the non-essential political and ministerial duties of the Gov-

ernor. The reduction in the number of departments and the consequent reduction in the number of separate appointments to be made to go in this direction. In like manenr, the simplification of the court system and the extension of judicial terms would ultimately reduce the number of high judicial appointments at the disposal of the Governor by 75% or more. This should probably be followed by reorganization of the lower courts, still further reducing, if not eliminating the large number of part-time judges now appointed for short terms.

I notice that the proposed Constitution does not mention county prosecutors. I take it that this paves the way for taking these State's attorneys out of politics and developing an expert full-time State department of justice on merit principles, whenever the Legislature may see fit to do so. The Legislature might also reduce the Governor's patronage in other directions, to the advantage of the executive as distinct from the political power of the Governor. This appears to be contemplated by the constitutional requirement that all possible offices and positions be included in the merit system. A Legislature uninhibited by patronage powers of its own should translate this provision into a bulwark against any violation of the principle that all the routine functions of Government should be performed by qualified personnel selected, promoted and retained solely because of merit. Once the Legislature had acted appropriately the courts could enforce this provision on the petition of any citizen.

In my opinion, therefore, one of the great merits of the proposed Constitution is the reduction in the appointing power of the Governor which it contemplates. This is important; first, because it will leave the Governor free to devote more of his time to the *business* of Government and less to the game of politics; and second, because it will preserve him from the temptation to become a political adventurer instead of a public servant. The present Constitution works in just the other way. It thwarts the Governor every time he tries to concentrate on Government; but beckons him on to the happy hunting ground of political deals for the benefit of himself and "friends."

(4) The fourth objective of constitutional revision for executive responsibility is extension of the Governor's tenure. Modern Government, like any other big enterprise, puts a premium on experience. The four-year term will give the people the benefit of a Governor's services for another year after he has passed the awkward state and got into his stride. So far so good; but the prohibition against the second term is open to serious question. In view of the proposed reduction in the political patronage of the Governor and the safeguards against job and vote trading between the Governor and Legislature, many of our members feel that it would be quite safe to allow the people to command the continued services of an experienced chief administrator for at least a second term.

(5) Finally, the Governor's role as a legislator is clarified in the proposed Constitution.

This role is expressed in the negative form of the veto and in the positive form of consultation and advice. The veto is needed to permit the Governor, as representative of all the people, to prevent legislation by the pressure and logrolling of minority or special interests. The proposed Constitution strengthens the Governor's power to prevent this sort of thing by requiring a two-thirds vote to override a veto of an appropriation item. This is important; but might it not be well to require a two-thirds vote in any case? Logrolling and special favors are not confined to State appropriation acts. Anyone who goes over the list of special tenure and pension acts passed almost every year over the ineffectual protest of the Governor knows this.

The positive role of the Governor in legislation is put on a definitely higher and more desirable plane by the proposed Constitution. In the first place, the power of the Governor to offer improper inducements to legislators is greatly curtailed. In the second place, the Legislative Council offers a place for open and dignified collaboration between the Governor and the leaders of the Legislature in the formulation of a common program. With the reduction in the present causes of friction between the two departments, a new spirit of cooperation in the public interest should develop.

These, I think, are the most important of the changes looking toward the establishment of the Governor as an effective chief executive in what has become the American meaning of that term. There are other changes of somewhat less importance which also tend in this direction. Among them are the abolition of the Court of Pardons and the vesting of the pardon power in the Governor alone.

Another change, the importance of which we now realize as never before is the streamlining of the State militia. The proposed Constitution would make effective the Governor's responsibility as commander-in-chief and require the selection and promotion of officers according to the United States Army standards.

It should also be noted that the improvement of the position of the Legislature as impartial critic of administration, should tend to keep the Governor on his toes. As it is now the Legislature, as a body, and many of its members are so involved in one or more State departments that the people do not feel that they can look to the Legislature for properly disinterested report or action concerning State administration.

There is one subject concerning which the Report of the Revision Commission does not seem to be quite clear, and on which I should like to make a few observations. That is the matter of

citizen boards connected with administrative departments. We have in many departments of New Jersey government enjoyed the unstinted services of many of our best citizens as members of boards and commissions. We have here a tradition of citizen participation which should not be discarded. Now I do believe that administrative responsibility for conforming the work of all State departments to sound fiscal and administrative practices and to changes in public policy should be vested in the Governor. I believe also that this requires the re-grouping of our present State agencies in a much smaller number of major departments, which will for the most part maintain direct communication with the Governor of the day through single heads, who enjoy his confidence. This obviously is the belief of the Revision Commission, although the door is left open for putting boards appointed by the Governor at the head of certain departments. I want to make this suggestion; that the problem of classifying functions of State Government and of prescribing a responsible system of administration for their performance may well be given further study before we decide finally on the precise wording of this part of the executive Article. It may be possible to agree that two or three functions should, because of their special character or past experience, be organized under continuing boards instead of single commissioners serving at the Governor's pleasure.

Or it may be that a reconsideration of the proper use of boards and commissions would lead to a modification of the relation between a board and its department. In this connection we should not forget that the proposed Constitution contemplates the extension of the merit system to every possible office or position. I take it that the Legislature should, therefore, provide for the office of permanent under-secretary or commissioner in each department, and that every employee in the State, from the under-secretaries down, would be protected against political dismissals and, therefore, to a large extent against improper mandates from political sources. In view of this, the need for boards with actual administrative responsibility as safeguards against partisan politics would be greatly reduced.

On the other hand, I think that boards with specific functions might perform very useful purposes, and if there is any doubt about the power of the Legislature under the proposed Constitution to create such boards, provide appropriately for their appointment and give them continuity through overlapping terms, this doubt should certainly be cleared up.

In some cases boards might be given rule-making or review powers. In other cases advisory boards, equipped with the full power to inspect all departmental activities and to report thereon, might be extremely useful. Such boards without any actual responsibility for administration could act with greater freedom, and I think with greater effectiveness in the public interest than is sometimes possible when a board is legally responsible for everything which its department does or does not do. They could give advice; act as interpreters between the departments and the public; police the application of the merit system; investigate charges of mismanagement or improper political influence; and report findings to the Governor, the Legislature or the general public. Such boards could be veritable watchdogs of the public interest, and their bark would be especially impressive because they could not be charged with having vested interests in the departments to protect.

The one central principle running through this proposed revision is this—that all departments of the Government should have more power to *serve* the people and less power to misrepresent the people. The Revision Commission has given us an inspiring lesson on how we can help win the battle for democracy right here in New Jersey by correcting known defects in our Constitution. I firmly believe that under a new Constitution the citizens of New Jersey will one day participate more confidently and effectively than ever in their own Government—not only on election day, but also on every other day in the year.

In these days of crisis as we face the task of the revision of our fundamental frame of Government, we might well appropriate to ourselves the words of Abraham Lincoln, uttered in another crisis of our nation nearly eighty years ago—"It has long been a grave question whether any government, not too strong for the liberties of its people, can be strong enough to maintain its existence in great emergencies."

MR. MILLER: May I say, Mr. Chairman, just one other word, and I am asked to make this statement to you at this time. The Governor of the State was expecting to appear before this Committee this morning to make a statement in his own behalf, as a citizen of the State, concerning this Article. Unfortunately, the pressure of the State's business, particularly a matter dealing with the problem of defense, has made it impossible for the Governor to be here this morning as he had originally hoped, but he has asked me to say to the members of the Committee that it is his hope and his intention to appear before this Joint Legislative Committee before you have concluded your sessions.

MR. SCHROEDER: The Committee will be very, very pleased to have the Governor appear before it.

At this time I will call on Mr. Paul, who desires to introduce several of the proponents of Article IV.

MR. PAUL: I would like first to introduce Mr. Roger Hinds.

MR. HINDS: Mr. Chairman and members of the Joint Legislative Committee: I represent nobody but myself, and speak with no authority except with such authority as one single citizen and

voter may have. The Committee has asked me to come here to report what I find as to the attitude of the average citizen with respect to a proposed new Constitution and particularly with respect to this matter that is immediately under consideration, the executive power and its relation to the other branches of the Government.

Now, I find that Mr. Average Citizen, whose views I have been trying to get by talking to people in various walks of life, is not a learned student of constitutional law or history and probably doesn't even know, as you gentlemen do, that the separation of the powers and functions and responsibilities of Government in the judicial, executive and legislative is distinctly an American invention and part of our American way of doing things, and probably does not think or discuss these matters in terms that a college professor of political science would discuss them, but he gets at about the same goal. I think he has the same attitude toward it that Mr. Miller has just expressed, although he gets it by intuitive or common sense processes.

Now, as I find Mr. Average Citizen—by the way, he is very much interested in this whole matter—he is disturbed and he is dissatisfied with the way things have been going on at an increasing rate for the last thirty or forty years. He hasn't figured out exactly what is wrong. Sometimes his anger and his disturbance are directed at individual personalities. Generally speaking, I find that Mr. Average Citizen is not so much concerned, however, with personalities or with fault-finding of individual office holders as he is disturbed in a vague way by the system under which the State is being operated; in other words, with the existing Contitution.

Mr. Average Citizen is becoming, in this industrial State, more and more businessman. Back in 1844 the typical citizen was one whose business interests were very simple. They did not involve any principles of organization; it wasn't necessary for him to think in terms of organization. In those days the average boss was a single individual. He had two or three employees ordinarily or, at the most, a score. Now, however, Mr. Average Citizen is beginning of necessity to think in terms of organization. He usually is an employee of a corporation or he may be an executive of a corporation. When he goes into the president's office, he is very apt to see there a chart showing authority, showing responsibility, showing how the thing functions. The bigger and better organized the corporation, the more simple he finds the chart is in its essentials. He sees at the top the stockholders who have all the power and who make all the final decisions, and then under them he sees the directors and the president and the various departments, all with straight clear lines of authority, so that the responsibility can be fixed. He knows that where there is a lack of responsibility, where there is not

simplicity, where there is not unity, bankruptcy is usually the result, but in a well run business such as Mr. Average Citizen here in New Jersey is becoming more and more familiar with, he finds that there has got to be simplicity, unity, and there has got to be some sort of organization that can be understood; otherwise, you can't hold people responsible. He looks at a chart of the New Jersey Government as it is now organized. It looks like a dish of spaghetti. It is an utterly confused thing that nobody can understand; it has overlapping terms; it has lack of uniformity; it takes a lawyer, and a lawyer who almost specializes in those matters, to tell you where the authority resides, who is responsible. Mr. Average Citizen, though as I say he is not a specialist on constitutional government, instinctively knows that is wrong; he knows that under our American system we have got to fix responsibility. He also has heard the old adage that dirt is matter out of place. He knows that a fresh egg on your breakfast plate is a palatable and wholesome food and that same egg on your vest is dirt. He knows that politics is of the very warp and woof of our American system and has a proper place in legislation. It has a proper place in electing members of our National Legislature, members of our State Legislature, and also in electing our chief executives, who partake of legislation, are recommended, have the veto power, and who are responsible for their departments. He realizes that those men determine the broad policies of government, and politics in its legitimate sense is policies. Therefore, he thinks politics is a good thing. It interests and even excites him on election day, but he also knows that just as politics is a good thing in its place and just as executive function is a good thing in its place, the two things no more mix than two different kinds of food. For example, some people are very fond of Welsh rarebit and also like ice-cream, each palatable and wholesome in its plaec, but when you mix them you have a rather nauseous mess. Mr. Average Citizen has a decided feeling of nausea in this State, as I find him, when he sees the legislative function mixing up with the executive function. He thinks that the appointment of executive officers should remain and be fixed with the executive, subject only to the approval of the Senate, which should be either given or refused solely on merit. When he sees politics entering into the appointment either of executive officers or judicial officers, he has a feeling of dismay and futility. He believes that that is largely the result of defects in the present Constitution. I don't know whether he understands just how historically those defects got in there, but I think you gentlemen do. As Mr. Miller pointed out, in 1844 there were very few executive appointments to be made by the Governor. Most of them were expressly provided in the Constitution itself, and by an oversight which has already been called to your attention by the Governor and by

Mr. Miller, it is now possible for these executive appointments to be taken out of the hands of the executive power, where they properly belong, and become the footballs of politics. As I see it, Mr. Average Citizen does not like that and he wants to see it changed.

Even worse in the estimation of Mr. Average Citizen than the mixing of politics in executive and judicial appointments and confirmation is the mixing of politics in the very function of the executive, of which we have had all too many instances in the past, where members of the Legislature have yielded to the temptation to intercede in the negotiation of private claims against the State with the executive department, which should be exclusively a matter for the executive.

Now, Mr. Average Citizen is not inclined to be too harsh on personalities involved in those matters. He believes that fundamentally these things are made possible because of a system which encourages such matters and even invites them. He believes that the personnel of our Government essentially desires to do the right thing and that if the system can be changed, as is recommended here in this new Constitution, the pressures and the temptations which throttled office holders now yield to, so that the executive function is confused with the legislative function, will be removed. While he does not believe that the millennium will arrive through a new Constitution, he believes that a scientifically designed, modern Constitution will at least make these things less likely.

MR. PAUL: Mr. Chairman, I would like to call next Mr. Russell Watson of Newark, representing the State Chamber of Commerce.

MR. WATSON: Mr. Chairman and members of the Committee: Article IV is the most controversial part of the Revision because it would tremendously expand the power and the authority of the Governor; and, therefore, it has deep and broad political implicaitons. Let us examine this Article IV as we did Article III, and try to ascertain whether it tends toward executive dominance and legislative insignificance as has been charged by, mark you, members of the Committee, the only outright opponent of this Revision.

This Article IV would center responsibility and authority—I should put it in reverse—would center authority and responsibility in the Governor far beyond his present powers, far beyond his present authority, so as we examine these grants of authority, these charges of duty, let us see what checks and balances are provided in accordance with the time-honored procedure of our democratic system. What is the present situation? What is the present scope of power of our Governor? Well, in just a few words, the Governor has the broad power of appointment of public officers subject to Senate confirmation. He may through the Commissioner of Finance restrain the expenditure of public moneys in certain instances. Only since the last session under a bill introduced by Senator Hendrickson has he had the power to investigate executive state departments, officers and agencies. And as you know, under the case law of this State, the power of the Legislature in that respect is extremely limited. He has the power to remove certain State officers, officials, in a few isolated instances. But in a day-by-day administration, management, and carrying on the State's business, aside from these broad powers to which we have just referred, he is little more than a figurehead.

Now, our present Constitution provides that the executive power is vested in the Governor and charges him with the duty to take care that the laws be faithfully executed. These provisions of the State Constitution are a mockery. They are a delusion. The executive power is not vested in the Governor. The Governor has not the power with which to discharge the duty to take care that the laws of the State be faithfully executed. The executive power is not vested in the Governor; it is vested in about ninety—the Revision Commission sets the number—it is actually vested in about ninety unrelated, heterogeneous, autonomous, and semi-autonomous boards, officials, commissions, commissioners and agencies. Let's call them instrumentalities of administrative government. These officers, officials, and board members are appointed for terms which extend beyond the term of the Governor. They are not identical with his. They are not responsible to the Governor. They are not responsible to anyone else excepting in so far as they may be restrained indirectly by the appropriating power of the Legislature. In actual practice, members of the Committee, of course, the Legislature could, but the Legislature in fact has has not. We will come to that in just a minute. These ninety boards, these ninety instrumentalities, in fact exercise the executive power. The Governor doesn't. These ninety instrumentalities in fact take care that the laws are faithfully executed or not and in many instances, they are very faithfully executed by these instrumentalities, but it just isn't so that the Governor exercises or possesses this power. The Governor lacks the power to manage the State's day-by-day business because it is done by these ninety instrumentalities.

Now, the heart of Article IV is found in Section III which would repose in the Governor broad powers to effect a reorganization of State government. This is a subject which has been talked about seriously for many years. This Section III does two things. In the first place it sets up nine administrative departments in addition to the State Treasurer and the State Comptroller, who would not be directly affected by this and should not be. They are legislative agents appointed by the Legislature and responsible to the Legislature. The heads of these departments would be ap-

pointed by the Governor subject to confirmaton by the Senate. Their terms would coincide with his. They would serve under his direction and supervision and at his pleasure. Now, the first important power lodged in the Governor, the less important of the two, would be the power to regroup among and within these nine administrative departments all of these existing ninety heterogeneous, unrelated, autonomous or semi-autonomous departments. So far so good, that is just a step toward a sound executive setup. The powers and functions of these boards would not be affected by this first step in any way whatever and the Governor would have power, unregulated power, unrestrained power, to take that first step. Now the second step would be the re-allocation, consolidation, merger, the modification among and within these nine departments of the powers and functions of existing boards, instrumentalities, commissions, commissioners, agencies and all the rest; and there is the heart of the section. That is the far-reaching, fundamental grant of power to the Governor. Now is this wise? If we agree that the present system of irresponsible power lodged in these ninety agencies is unwise, then we must agree that the Legislature has failed to provide a remedy. The Legislature has failed to exercise its power. In determining whether this transfer of power from the Legislature to the Governor is wise, let us examine the checks and balances proposed by the Constitutional Revision Commission.

What this second grant of power under Section III would do in effect would be to transfer the initiative with respect to State organizaton from the Legislature which has never exercised it except in a limited way, to the Governor, and in turn to transfer from the Governor to the Legislature the power of veto. This is done by a provision that the Governor's plan or regrouping of powers and functions shall be submitted to the Legislature and shall become effective unless the Legislature within thirty days disapproves of it. This veto power may be exercised by a simple majority vote in each house, so that is the first positive check. The second positive check is the Legislature's power of veto of all and any measures by a simple majority vote in each house as at present. The third is the power of confirmation which reposes in the Senate of all appointments of the heads of these administrative departments. It is not to be presumed that the Senate would confirm unqualified appointees. The next and a most important power is the power of appropriation. The Legislature would still hold the purse-strings. Another is the new provision in the Revision, I think it is Article VI, Section I, Paragraph 2—I know it is—which strengthens the civil service and would protect all State employees below the rank of executive heads. It would protect the men and women who actually carry on the State's business against arbitrary abuse of this power by the Governor. The final and most important check and balance, counterbalancing check, let us call it, is the provision that the Governor shall be limited to one term of four years. Now, we disagree with our good friend, Mr. Miller, in that respect. This Revision contemplates a tremendous expansion of executive power. A Governor so minded might have the opportunity to build a personalized political machine and thereby perpetuate himself in office or retain himself in office for a long while. So the Revision Commission very wisely, we think, members of the Committee and Mr. Miller, retained the present veto, simple veto, by a majority vote in each house and provided that the Governor in order that he should not be able to erect this personalized political machine shall be limited to one term. So we say that these checks and balances very effectively preserve the Legislature as a coordinate branch of the State government, really in the last analysis as the dominating branch, and do nothing more than to give the Governor the power and authority and responsibility which he needs to carry on effectively, economically and efficiently the State's business.

Now, we have a division of opinion in our Chamber of Commerce so it becomes my duty to step from this side of the aisle across to the other. I shall try to state as adequately and as fairly as I can the countering view. The representatives of the agricultural industry and it is an industry, an important industry in New Jersey, are important, influential and valued members of the State Chamber of Commerce. The State Chamber has for the last several years promoted energetically and successfully, we think, the community of interest between agriculture and industry. Now, say our agricultural members, we think that this Section III of Article IV would work out badly in practice. They say the Agricultural Department is well administered. We not only agree to that; we assert it. The Agricultural Department is well administered. Under the present system I believe it is administered by a board appointed by the agricultural organizations and societies of the State. They say that this well administered department should not be exposed to the manipulation of a partisan politically minded Governor, and we agree that there is much merit in that view. No one can be unaware of the political implications of this section. Now, that is the view of our agricultural members as we understand it, and I think it is fairly stated and I am sure it is clear to you members of the Committee. But the prevailing view among our membership is in favor of this Article IV. The prevailing view is that this system of centering responsibility and authority in the executive subject to these checks and balances by which it would be restrained by the Legislature is sound and therefore should be adopted.

Doesn't the choice between the two systems rest upon that fundamental principle of democracy stated by the Revision Com-

mission in its statement of transmittal? I think I referred to it at an earlier hearing, but it is particularly pertinent to this section. It is on page 10 (p. 911).

> "The constitutional machinery, however, can be no better than those who operate it. The transformation from a program—the Constitution—to a government functioning with adequacy and integrity, and in the public interest, can only be carried out by an intelligent, conscientious, and observant electorate."

Now, if Article IV becomes the Constitution of this State and if the Executive Department, the executive branch of the State's Government breaks down, the people will know upon whom to fasten the responsibility. Both the power and the responsibility would be in the Governor and the people would have it in their hands at all times to remedy the situation if they want to, and that, members of the Committee, is the essence of democracy.

Now, there are other provisions of this article to which we should like to refer very briefly. First, it is provided that appointments must be confirmed by the Senate within thirty days. That is akin to a similar provision in the legislative section and we merely repeat what we said before; it is no diminution of legislative power. It merely requires the Legislature to exercise its power within a reasonable time. The Governor is empowered to remove State officials after hearing. It seems to us that that is wise and sound. The power of pardon and commutation is reposed in the Governor with the advisory assistance of a board on pardons and commutations, which seems to be an improvement.

There is a provision that in case of the absence of the Governor, temporary or permanent, he shall be succeeded by the Director of the State Department of Taxation and Finance instead of by the President of the Senate and by the Speaker as at present. It seems to us that that is sound in that it tends to separate the Executive Department from the Legislative Department. A vacancy in the Executive Deaprtment would be succeeded to by another official in the Executive Department rather than by an official in the Legislative Department. The choice of the Director of the Department of Taxation and Finance has merit because the director of that department by reason of the scope of his duties would have a more comprehensive knowledge of the other departments in State Government generally than any other department head. The requirement that a vetoed appropriation item must have two-thirds of the vote of each house seems to concentrate in the Governor's Office the budgeting power which appeals to us as wise.

Now, there has been some criticism of details of this article—one—the combination of the Department of Education and Civil

Service in one department. It seems to us that that is a mistake, that those departments are not so related that they should be in one department; but we agree with Mr. Miller that such things are details. It is immaterial whether there be eight departments or ten departments or twelve departments. We are advocating here this morning the principle, and may I also in conclusion quote from one of the founding fathers, Benjamin Franklin. When the work of the Constitutional Convention was about to be concluded he said this—and it applies to this Article IV and to every section of this proposed Constitution.

> "I confess that there are several parts of this Constitution which I do not at present approve, but I am not sure I shall never approve them. I agree to this Constitution with all its faults, if they are such, and there is no form of government but what may be a blessing to the people if well administered. I doubt, too, whether any other convention we can obtain may be able to make a better Constitution. It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does. I cannot help expressing a wish that every member of the Convention who may still have objections to it would, with me, on this occasion doubt a little of his infallibility, and, to make manifest our unanimity, put his name to this instrument."

MR. PAUL: Mr. Thomas L. Parsonnet, Legislative Representative of the State Federation of Labor.

MR. PARSONNET: Mr. Chairman and members of the Committee: I have been instructed by the officers of the State Federation of Labor to express its desire for the adoption of this article, as well as the other articles, of the proposed Revision. Commissioner Miller has expressed completely the thoughts of the State Federation of Labor on Article IV. There is no need to review the comments made by Commissioner Miller except to say that we endorse them. We have some doubt as to the advisability of limiting the Governor's term to one term for all time, feeling that if an able executive is obtained we should not be foreclosed of the right to keep him in office. With that exception, we thoroughly agree with the provisions of Article IV. We believe that the executive should be a real executive and not a token. We believe that his power to control the administrative forces of the Government should be effective through the simplification as provided by Article IV, and we urge the adoption of the article, if necessary in present form, rather than the making of too many changes which will only complicate the situation and prevent the adoption of the Revision at an earlier time.

Thank you.

MR. PAUL: Mr. Mortimer Eisner of the Law School of Newark University.

MR. EISNER: Mr. Chairman, I have only one observation to make. At the last meeting of this Committee I made the suggestion that this Revision subordinates the art of politics in the Constitution of the State to the science of government, and there is no place in the whole Revision where that is more glaringly demonstrated than in this Article IV, where under our present Constitution the limitations on the authority of the Governor, the futility of his veto power, the weakness of his control over fiscal policy—all these show the present need for Revision and the requirement that the executive shall be made the responsible head of the State government. I recognize the dangers that others mentioned with respect to giving too much power to an executive, but I concur with the views expressed by Mr. Hinds and Mr. Watson that we must recognize that if we want satisfactory, responsible government, we must take the chance in having that type of administrative. I would say, therefore, that the provisions of this Article IV, with the Revision proposed in the judiciary, are in my opinion the heart of the new Constitution and are the most important needs that we have for Revision under the present Constitution.

I should like to say further that there are those of us who believe that since this issue has been started now, the seeds of Revision in some form will grow and blossom in full fruit; that the Legislature may well recognize that Mr. Average Man, as Mr. Hinds has well said, is interested in seeing better government in New Jersey, and if the present instrumentality doesn't serve to give us better government he will, as time goes on, be more insistent in his demands that better government be given, and if that requires, as it does require, a Revision of the Constitution, he will insist on the Revision.

I submit, therefore, to you, and I commend to the Legislative Committee, not only the need for better government here, as illustrated by these two articles, but the wisdom, I might say the good politics, of considering the present Revision as a method by which good government may be accomplished and by which the legislators themselves might get increased rewards in politics later on.

MR. PAUL: Mr. Harry W. Wolkstein, representing the Newark Committee on Constitutional Convention.

MR. WOLKSTEIN: Mr. Chairman and members of the Joint Legislative Committee: I should like to stress the fact that there is urgent need for economy and efficiency in our State Government. Our ninety-eight-year-old Constitution, although providing that executive power shall be vested in the Governor, did not provide him with the necessary authority to enable him properly to supervise and to conduct an efficient administration. Accordingly, we

have developed in the twentieth century a legislative type of government, one that is headless and decentralized, a government consisting of ninety odd commissions, boards and agencies—each having its own "little governor"; in short, a government of extravagance and inefficiency.

It is inconceivable that a private corporation, spending millions of dollars annually in operating expenses, would think of setting up an administrative organization consisting of ninety-four agencies, these agencies having no controlling head. Yet this condition exists in our State governmental machinery. If we, the residents of New Jersey, are to hold our chief executive responsible for his administration, then it follows that we must provide him with the necessary authority and facilities to enable him to conduct an efficient administration, and to prevent wasteful expenditure of the State's funds.

Further attempts to correct the defects in our present Constitution by the amendment method would serve only to complicate our governmental machinery. We must have a general revision of our basic law, represented in the Constitution, if we are to assure ourselves of establishing a State Government of centralized responsibility, with a resulting decrease in administrative costs and taxes.

The movement for reorganization and simplification of State governments is not a new one, for it began in 1910. To date, more than twenty-five states have remodeled their administrative structures, in order to adjust them to current economic and social conditions. Surveys by commissions and independent agencies of the past have all advised our own State to reduce and consolidate the many boards and departments under responsible authority. The Princeton Survey of 1932 reported that New Jersey could attain economical administration only through an executive empowered by law and equipped with a proper staff to enable him to exert a constant pressure upon State spending agencies.

The proposed Constitution, as submitted by the Constitutional Revision Commission, offers a remedy by providing that the nomination and appointment of administrative officials be made by the Governor with the advice and consent of the Senate. The Senate is required to take action within thirty days on the Governor's nominations. The proposed Constitution offers a further remedy by providing that the Governor consolidate the executive and administrative offices into nine major departments.

A reorganization of the State's administrative structure as proposed would result in a reduction of governmental costs and taxes, a greater degree of uniformity in taxation, and a proper control over State expenditures.

May I close by quoting Woodrow Wilson, that skilled student of government, in his second annual message to the Legislature:

> "The government of New Jersey, like the governments of most of the older states, has developed on its administrative side, not systematically, but by patchwork . . . by the multiplication of boards and commissions, by the addition of first this piece and then that piece to existing departments. There has been constant addition, no subtraction, no elimination, no co-ordination. It has grown very much as the State House itself has grown, but without the necessity of at least some semblance of architectural unity, without the connecting corridors and the common roof which the State House must of mere physical necessity be given. The number and variety of state boards and commissions is utterly confusing . . . It is necessary to bring order out of this chaotic miscellany, not merely to have the satisfaction of conducting the business of the State in a businesslike and efficient way, but to prevent waste and forestall abuses of many kinds."

MR. PAUL: Mr. Morris Isserman, representing the C.I.O. and American Labor League.

MR. ISSERMAN: Mr. Chairman and members of the Committee: The C.I.O. and the American Labor League basicly are in favor of the contents and the provisions of Article IV as set up by the Commission on Revision. I would like to reserve time in the future to discuss some of the modifications.

In approving the article as written at the present time, we have in mind that part of the Constitution which says the inherent power is vested in the people of the State. Article II of the Constitution divides the functions of government between the legislative, executive and judicial, and in our present Constitution there is a provision which says that the Governor shall see that all the laws are faithfully executed, and to me it is perhaps a sorry spectacle to see that the Governor of the State, who is granted the full powers to see that the laws are properly executed, cannot even get his own Attorney General to see that the law is properly executed; that in this State the Attorney General appointed by the Governor, acting for and on behalf of the executive, has the power to take independent action contrary to the wishes of the Governor, and that is only one example of what is happening in this State.

I often wonder why we spend thousands and thousands of dollars to run a campaign for Governor, why there is any necessity for any primary, Republican or Democratic, and why the people of this State should be called upon to vote for Edison or Hendrickson or the next person. What is all the fuss about? What power has the Governor in this State, that we ought to waste any real time electing him? I say that for most of his functions a

glorified office boy could do his work, and for that we are called upon to pay $20,000 a year—not that it is the Governor's fault; not that the men who have held the office of Governor aren't capable and able to act as heads of the Government; but it is because our antiquated machinery makes it impossible for that man to be an executive.

I glanced through the list of these ninety odd agencies in the State, and I say that it is physically impossible for the executive to see that these ninety odd agencies adequately and effectively execute the laws passed by this Legislature. They run loose; they do as they please; they are not accountable to the Governor. He has no power to regulate their policies; he has no power to tell them what to do. They are self-sustaining, self-supporting, and political. I suppose that some of my friends of the opposition will say we want to keep these agencies out of politics. You may take them out of the hands of the Governor, in whom the power is vested, but they are political nevertheless and they operate in little political cliques among themselves, and they will probably be down here today, some of them, to raise the objections that there should be no interference because the smaller the group and the more left alone, the better they can carry out what they want to do. And we contend that when the people of this State elect a Governor, that Governor must be charged with the responsibility that any executive in any large business corporation or municipal corporation is charged with; that he should be able to pick assistants and aids to head these departments, who will carry out his wishes in accordance with the mandate which he has received from the people of this State.

Let us take the particular department I am interested in at the present time, the Department of Labor—and by the way, this is no criticism of the Department of Labor and there is no criticism as to how these agencies have been operating within the scope and within the law of the Constitution; they have probably done a good job. I want it understood this is not a criticism of these particular agencies. Here is a Governor elected who, in his inaugural address, wanted to put into effect some new legislation and provide for better administration of the Department of Labor, and the gentleman running the Department of Labor says, "Mr. Governor, that is what you want, but you can do as you please; I am running this Department; you can't displace me; you can't displace my aids. You have nothing to say about it. You may cut my appropriation; I will go to the Legislature and I will get it any way," and that is actually the situation.

Going further down the list, the Departments of Institutions and Agencies, Education, Banking and Insurance—Banking and Insurance is probably the one exception—the Law Department,

and the ninety odd other departments—all that the Governor can do, as I see it, is go over the budget, send nice messages to the Legislature, and they ignore them as a rule, if it is a Republican Legislature, and then hope that some day the people will awaken so as to give him responsibility. I know of no State in the Union today where the Governor has less executive power and less to do than in the State of New Jersey, and we believe that a change in the departments, reorganization of the departments with the department heads particularly responsible to the executive, ought to be initiated.

Now, I think the Commission ought to be given credit for doing a job. I agree with the rest of the speakers. You may need twelve departments, fifteen departments, eight departments. The number of departments, the method, isn't important. The importance lies in the fact that the man who is elected by the people to serve the people should be permitted to do a job.

As I said before, I would like to reserve my comments, unless you want me to go on now, Mr. Chairman, on modification.

MR. SCHROEDER: On modification? No, I think probably you should wait until we reach the modificationists.

MR. PAUL: Members of the Committee, there are a number of ladies and gentlemen here who are very much in favor of constitutional revision, who are on the whole very largely in favor of the Constitution proposed by the Revision Commission, but who have one or two modifications to suggest, and I have recommended they speak under modification, so that we are finished at the present time.

MR. SCHROEDER: The next speaker will be Mrs. Maxwell Barus, representing the New Jersey League of Women Voters.

MRS. BARUS: Mr. Chairman, Members of the Committee: So much ground has been covered and so many excellent arguments have been advanced that I don't think I will take your time to add anything more. I will make one brief point, and that is I think the present situation of the World has thrown into high relief the desperate need we have here in this State for coordination of authority and responsibility in government. We all know what frightful blunders, what a chaotic mess, we went through until finally the conduct of the war was put under an efficient body with authority firmly placed and indisputably put on the shoulders of the men who have great power to carry out the war effort. The war, after all, is high-lighting the needs for efficiency and economy in government which goes on under ordinary conditions. I think it has just shown up in bolder relief the needs existing in this State for many years.

MR. SCHROEDER: Are there any other proponents of Article IV?

MRS. BARTH: Yes. I represent the Consumers League of New Jersey.

May I say that the Consumers League agrees in principle with Article IV as taken up today. We are extremely gratified with the streamlining of the administrative departments of the government as set forth by this Paragraph and by the placing of the actual responsibility of the executive division of our government in the hands of the Governor, where it belongs, and giving him the right to name his own administrative assistants and also to get rid of them if they are not doing the job, because we feel that that is the only way in which government, just as modern business, can be run efficiently and economically. The Governor, who has to take on the deadwood of former Governors and hasn't the right to tell them what to do and how to do it, isn't much good to me or you. We would, however, like you to consider, in going over this Paragraph, whether or not it is the wisest thing for the Governor not to be permitted to succeed himself or to run for more than one term, and also the question of majority vote for veto—that is, of the Legislature over the Governor's veto. I would like to reiterate again one point Mr. Watson brought out in reading from the message of transmittal. I think that is something that we as citizens are much too prone to forget, that while we may ask, and we are asking, of this Legislature a mechanism of government which will give our State the kind of government we feel it needs in order to make this or any other government work, the final responsibility "can only be carried out by an intelligent, conscientious, and observant electorate." I think we in this State have been much too apt to forget our public officials from election day to election day, and if we are going to expect a good job, it is our job as citizens to watch this Government of ours every day, and if we are a little bit more careful on election day as to whom we put in the position of Governor, it will not be so important for us to worry about giving the Governor too much power, if the right man is there. We will have the right to expect the job that needs to be done and expect a workmanlike job, so that in the final analysis the responsibility is ours, and I think it is time we undertook to assume it.

MR. SCHROEDER: Are there any other proponents of Article IV? If not, we will declare a recess until two o'clock this afternoon, at which time we will hear opponents and those who favor modification.

(Recess)

PUBLIC HEARING

July 22, 1942

Afternoon Session

on

Proposed Revision of the New Jersey Constitution
Article IV. "Executive and Administrative"

The Joint Legislative Committee re-convened in the Assembly Chamber at Trenton on Wednesday, July 22, 1942, at two o'clock P. M. pursuant to announcement previously made.

The Chairman opened the Hearing and the Hearing proceeded as follows:

MR. SCHROEDER: Having heard the proponents of Article IV this morning, we will now proceed to hear the opponents. The first speaker this afternoon will be Mr. R. Stockton Chance, representing the Manufacturers' Association of New Jersey. Mr. Chance.

MR. CHANCE: Mr. Chairman and Members of the Committee:

It has been quite interesting to hear some of the remarks this morning. One of those remarks was that the Manufacturers' Association was the only outright opponent of any change in the Constitution. Those who have been through the course of the debates will know that that statement was not quite accurate because you will recall that we did mention certain things that we would not oppose. As we proceed today other things which we do not oppose will be mentioned and it seems to me that there has fallen over the deliberations a certain cloud owing to the way we are registered here—that is, as proponents, opponents and for modifications—and before launching into the major remarks that I wish to make, I should like to clarify this situation if I can.

I read by the Senate concurrent resolution which created this Committee that it is a concurrent resolution creating a joint legislative committee to ascertain the sentiment of the people of the State as to the various proposals and recommendations for change in the New Jersey Constitution made by the Commission on Revision of the New Jersey Constitution, and to report thereon to the Legislature. I read further upon page 11 of the Report of the Commission (p. 912): "The Commission unanimously recommends"—I will just pick out three of the things which are sufficient for the illustration of my point—"The Commission unanimously recommends a revised Constitution for the State of New Jersey, the text of which is set forth in Part II of this Report." (pp. 930-956). Further down in the page it says, among the things

unanimously recommended, that the submission of the revised Constitution should be in such form that the people will either vote for or against the document as a whole." And still further down—"It is impractical to utilize the amending method provided by Article IX of the present Constitution." And without mentioning any more of page 11 (p. 912) it would seem to me that the thing which we are either proponents of or in opposition to or in modification of are the various proposals and recommendations for change in the New Jersey Constitution made by the Commission on Revision of the New Jersey Constitution. It is that set of recommendations to which we have registered in opposition. It is interesting to note that very few indeed, if any, of the speakers, have stood here and said that they concur in and are actually proponents of the recommendations of the character that I have mentioned, so that really it looks as though we were almost getting around unanimously to the proposition that the sentiment of the gathering is in opposition really to the various proposals and recommendations for change that you are to ascertain the sentiment of. Everyone who speaks for modification is speaking in a sense against the unanimous recommendation of a revised Constitution for the State of New Jersey, the text of which is set forth in Part II of this Report, (pp. 930-956), and is also speaking against the submission of this proposed text as a whole, and even the proponents, so-called, I have observed this morning, have indicated that perhaps there should be some other provisions here and there that should be modified or changed, so that really it looks as though we are almost getting around unanimously against the proposition in the Commission's Report. What we think, we enumerate as we go through. What the others think, they enumerate as they go through. But we think that the stenographer's transcript will bear us out that we are not alone in not approving the unanimous recommendations and proposals which have been made by the Commission.

Listening to some of the speakers, it has seemed to me that they have painted a very glamorous picture. They have told the lofty accomplishments which will be brought about by the change which has been recommended, but they don't put their finger on the Paragraphs or the sections that are going to accomplish these great achievements. And as we look through them, we feel that we can't find the paragraphs that will do a lot of the things which it has been said this unanimous recommendation of the Commission would accomplish.

One of the speakers has been quite interesting to me, too. He has posed as his proposition that these clauses will give the Governor more powers, tremendous powers, and in the next breath has indicated that that does not mean a tendency toward executive domination.

Now, also, I have noted with interest the supposed analogy between a government of the State and a large corporation. It seems to me that the analogy does not exist. The first joke about all of that analogy is this, that in their proposal they say that the executive could not under any circumstances have more than four years. I never heard of any big corporation yet that set up as one of its plans and one of its unvariable rules that a good man couldn't be president of the corporation any more than four years. Another thing that destroys the analogy, in a corporation if the president or if the directors disregard the law and do anything which is outside of the scope of their function and which is destructive of the purposes of the corporation, they can rush them into court, have a receiver, or have the directors thrown out in no time, and that is enough to destroy the analogy. There might be other reasons given that I will not take the time to mention. So that what we are dealing with here is not a corporation; we are dealing with government.

Our examination, I say, of this article does not lead us to recede from the view expressed at the first hearing that the proposal of the Commission tends toward executive domination and legislative insignificance, and in our discussion of the fourth article of this Proposal, we shall, among other things, point to provisions which confirm and substantiate the soundness of that proposition. We shall not just make general charges in the air without backing them up, but as upon previous occasions, we shall point to what it is that does it.

Now, at the threshold of our presentation, it is desired and deemed desirable to dispose of two things—first of all to dispose of the suggestion that the Manufacturers' Association of New Jersey is an outright opponent of the possibility of any change in the existing system, and secondly, to dispose for our purposes of the seventh paragraph of Section II and Section IV of this fourth article. Now the seventh paragraph of Section II and the fifth section of this article relate to pardons and paroles and a new parole commission that is to take the place of the present Court of Pardons. We are inclined to the view that the recommended change is desirable. The fourth section also deals with militia. Two questions come to our mind concerning Section IV. The first involves the provision that the Adjutant-General shall serve at the pleasure of the Governor; and the second provision is that no commissioned officer shall be removed from office except on courtmartial nor shall general officers be suspended by the Governor except for cause. There seems to us to be a conflict between the removal at pleasure and the suspension for cause. The second question which we raise is as to whether it is necessary or desirable that the Constitution should contain some provision for

the organization and maintenance of a Home Guard at times when the National Guard is in the National service.

While there are certain other provisions to which we have no objection, we have thought it desirable to bring these two provisions to the head of our discussion because in them least of all do we find ourselves at difference with the proposal.

But, turning to the text of the article in its regular order, it is observed that it is headed "Executive and Administrative." This seems to indicate that the framers of the proposal deemed it appropriate to co-mingle with the executive, as though it were a part of the same thing, the administrative aspect of the Constitution. While it is true that there is much administration in connection with the Executive Department, it is by no means true that all administration is executive. For this we have the word of the Commission because at page 16 of their Report (p. 915) they claim that administrative agencies "which combine all three types of powers, have become a part of the machinery of government." Now, assuming for present purposes that administrative agencies combine legislative, executive and judicial functions, why should the title "Administrative" be grouped together with the title "Executive" as though the legislative and judicial functions were to be absorbed under the executive? Now, if the administrative agencies are of the peculiar type which are not in a constitutional sense either legislative, executive or judicial, as is indicated in the case of Ross versus Freeholders of Essex, 69 New Jersey Law, 291, why not have a separate article to embrace administrative provisions in the Constitution? The foregoing of course assumes that it is necessary to have "administrative" in any title. There is no such title in the Constitution, but the proponents scarcely deny that there are administrative agencies in operation at the present time.

Now, while we are on this subject of administration, let us at this time take up the third section of the Article which is captioned "Administration." We are opposed to placing in the Constitution most of the provisions of this section and to arrive at this conclusion it is not necessary to determine whether there is any need for reorganization and consolidation of the various departments of the State of New Jersey. This is so because there is no need to amend the Constitution in order to effectuate an administrative reorganization; it can be done by statute. When the State of Illinois reorganized its state departments in 1917, it was not found necessary to amend the Constitution. A statute sufficed. Up to 1940, twenty-six States had reorganized. I think I heard one gentleman say something like that before this morning, but he did not note that only three of them found it necessary to amend their Constitution in order to effectuate this reorganization. A few years ago the question of reorganization came up in New Jersey and I think there is a report by some institute in New York in 1930—

I haven't read that report—but I recall the agitation and discussion, and I don't recall that at that time it was supposed that a constitutional amendment would be necessary to accomplish the result; all that would be needed would be a statute. So much as to the means. But not only do we feel that the provisions of this section should not be put in a Constitution, we think some of them should not be put in force in any fashion. In the first place, we do not see the wisdom of freezing by a constitutional provision all the present and future activities of the State government into the nine departments mentioned or any other nine departments. Conditions change from time to time. New departments might be needed and we think it would be going far enough to say that there should be such departments as may from time to time be established by law. This would allow some flexibility and would permit setting up a new department, if needed, without amending the Constitution. Incidentally, there is no department of manufacturing and industry in this enumeration and we have just wondered what department we would be likely to fall in under this scheme.

On the opening day of the hearings and since, I have stated that the proposal tended to executive domination, not dominance—domination is the word I used, sir—and legislative insignificance. Some of the speakers before and some today have professed an inability to see the tendency. Now, let them look at this section, this Section III, and read it carefully, not superficially. I think they will find the answer. Now what does it provide, this first paragraph? After mentioning nine departments without any specification of what scope the several departments shall have, the section proceeds to say, "The Governor shall by executive order from time to time allocate all executive and administrative offices, agencies and instrumentalities of the State government among and within the foregoing departments and offices." That is on page 44 of the Report (p. 942). And according to the schedule which appears at page 56 (p. 955) and which is really related to this Section III, "Executive," the Governor is to complete the first allocation of executive and administrative agencies, offices and instrumentalities of the State Government within and among the departments and offices required by the proposal, all by executive order and on or before July 1, 1943. So long as the allocation is of the kind mentioned under this Paragraph 1—that is, of offices, agencies and instrumentalities—the Legislature has no voice whatever in the matter. Speaking colloquially, the Governor would be given a blank check, which he could fill in as he pleased in this regard. As we read this first paragraph, the Governor, according to his own fancy, could take any existing executive or administrative office, agency or instrumentality of the State Government and put it into any of the departments in the first instance or

reallocate it and put it into another department whenever he saw fit, without the Legislature having any power to prevent, and is not that a provision for executive domination and legislative insignificance?

Now, you will note that the third paragraph has no relation to allocating or reallocating offices, agencies or instrumentalities mentioned in the first paragraph, but only refers to executive orders which allocate or reallocate functions, powers or duties "pursuant to Paragraph 2 of this section." The last mentioned, or what I might call the Paragraph 2 type of order, is to be transmitted by the Governor to the Legislature in regular or special sessions before it can become effective, but so long as offices, agencies or instrumentalities are juggled around, this section gives the Legislature nothing to say about it, except of course that the State Treasurer and State Comptroller, who are appointed and responsible to the Legislature, can't be so moved. And even in the case of the Paragraph 2 type of order that I have just stated has to be submitted to the Legislature, it will be observed that there are some unusual provisions as to how that kind of an order can get to be a law. This morning it was said that both houses of the Legislature would vote on that and if both houses voted on it, disapproving it, it would not become a law, but I will show you that it doesn't take both houses. Now, under the present practice, it takes two houses of the Legislature to make a law; but under this section, it only takes a Governor and one house of the Legislature to make an order under this second paragraph allocating executive functions and administrative functions, powers and duties or reallocating the same.

The second paragraph purports to indicate the basis on which the Governor may propose to the Legislature an executive order making allocations from time to time of functions, powers and duties. Now, note what it says will stop such an order from taking effect. The pertinent provision is in Paragraph 3. I quote. "Such order shall take effect in accordance with its terms, provided it has been before the Legislature for thirty days and prior to the expiration thereof the Legislature has not, by concurrent resolution, disapproved of the order." Now, what does that mean? It means simply that unless both houses join in the concurrent resolution disapproving, the order becomes effective. By way of example, if the Assembly does not join with the Senate in disapproving the order, it becomes effective regardless of how the senators vote. On the other hand, if the Senate does not join with the Assembly in a concurrent resolution of disapproval, the executive order would become effective. Can anyone deny that this facilitates executive domination? It looks like a very clever way to me to reduce the senators from the rural counties to insignificance for if a Governor can get the Assembly with him on one of

these reallocations of functions, powers and duty orders, he need not be concerned about what the rural senators or any other senators think. If there is to be any provision put in the Constitution for allocating or reallocating the offices, agencies and instrumentalities of the State government or allocating or reallocating functions, powers and duties within the departments, it seems to us that both the public and the present officeholders are entitled to have some advance notice of what it is proposed to do. Indeed, we think that public interest would be better served if the pattern of any reorganization of administrative departments were set up in a bill in the Legislature on which everyone concerned who desired could be heard before action were taken. In this regard the proposal would give legislative power to the Governor and one house notwithstanding the fact that in Article III it is proposed to say that the legislative power shall be vested in a Senate and General Assembly and note it says "and" and not "or." Certainly a proposal whereby a Governor could get something made law if he could get one house of the Legislature to agree with him instead of having to get two houses, tends to executive domination and insignificance of at least one house of the Legislature. Also it would be easier to set one house against the other. We think we have heard before something about divide and conquer. Study those paragraphs and see what that does.

Now, it is perhaps fortunate that Paragraph 4, right after these first three, deals with appointments; otherwise, one might overlook one feature of the allocation and reallocation powers of the Governor under this section. Paragraph 4 reads: "The heads of all administrative departments shall comprise a single executive, unless otherwise provided by law. All such department heads and the members of all boards, councils and commissions, except the State Comptroller and the State Treasurer, shall be nominated and appointed by the Governor, by and with the advice and consent of the senate." Now, standing alone, this puts power of appointment in the Governor and the Senate in the case of the officers mentioned. But if the appointee didn't do as the Governor wanted, the Governor could switch the office, agency or instrumentality in which the party is an officer into some other department, without the consent of either house of the Legislature; or if he could get either the Assembly or the Senate to agree with him, he could reallocate the functions, powers and duties of the particular appointee. All he would have to do is to make an executive order or a reallocation of functions, have one house of the Legislature refuse for thirty days to join in a concurrent resolution disapproving of the executive order, and the order would be law without any consent of the Legislature. That would offer a way to appoint by indirection or perhaps to put the officer out of the way. A

Governor could let the Senate approve for one job and then by reallocation put the appointee in another .

Note that the first paragraph says that the nine departments shall be and I quote "under the supervision and control of the Governor." Now, does control of the Governor not mean executive domination?

It has been suggested that the Governor is responsible for the efficient, orderly and coordinated conduct of government business. Just how much that is so I'll not take the time to go into in detail; but so far as the agency is legislative or judicial, I maintain that he is not responsible for any such thing. Did anyone ever hear it suggested that the Governor could be impeached because of some irregularity in an administrative agency? As I have noted, not all agencies are executive agencies. Now, why should the Governor have control in the case of agencies or officers whose duties are prescribed by law? For example, what control could the Governor exercise that would make the Department of Education, the Department of Motor Vehicles and others that I could mention, any more efficient, and with what other departments should they be coordinated or could they be coordinated with?

We do not think that the legal relationship of the Governor to the Legislature is so obscure as has been said by some. We don't think it is any mixed up macaroni plate at all. The difficulty of those who think it is lies in the fact that they search for something that would give more power than the Constitution framers ever put into the Constitution. The report says it is not to the best interest of the State to give the Governor power to dominate the Legislature through any other increase in the veto power than as proposed, but we do not see that they had any hesitation about giving power to dominate in other ways.

The fifth paragraph reads: "The heads of all administrative departments shall serve during the term of the Governor appointing them at his pleasure and until their successors have been appointed and qualified." We are by no means convinced that it would be desirable to have the terms of all of the department heads end at the same time that the Governor's term ends. We think this might very well—indeed, we think it would result in interjecting politics into some departments where efficiency and not political expediency is desirable. Here again I mention as an outstanding example education, which we would hate to see made the political football to bounce around with every change of administration.

Page 20, of the Report (p. 920) says the department heads are removable at his, the Governor's, pleasure. Whether this paragraph says that or not is a question in my mind. Note it says they shall continue not merely at the Governor's pleasure, but "until their successors have been appointed and qualified." To me this seems to

mean that regardless of the pleasure of the Governor in the matter, the department head would stay on the job until his successor had been appointed and qualified. Appointments of department heads are made by nomination of the Governor with confirmation of the Senate. It seems to me the net result is that it takes both the Senate and the Governor to get rid of a department head under this paragraph. Since the report, however, indicates otherwise and since speakers have interpreted it otherwise as indicating that the Governor should be able to remove department heads at his pleasure, we think that the ambiguity should be cleared up and the "at his pleasure" stricken out because we do not believe that a department head should rest merely on the pleasure of the executive.

To the sixth, seventh and eighth paragraphs we offer no universal objection except that there might be a provision put in that the Comptroller and State Treasurer shall continue until their successors have been elected and qualified. I suppose that would result anyhow. But as to this eighth paragraph, there is one thing: the second sentence that any money received by an employee by virtue of his position would have to be turned in to the State. The thought occurs to us if we should endeavor to obtain a transcript of anything said at these hearings, for example, and the stenographers should transcribe their notes at night on their own time, would they be compelled to turn over to the State anything that was paid to them? It would seem that kind of a clause would require it and would that be a fair proposition? We suggest it be referred to the stenographers whether it would or not.

Now the ninth paragraph says that no rule or regulation by an executive or administrative agency, except such as relates to the organization or internal management thereof, shall be effective until it is filed with the Secretary of State and that it shall be published speedily or words to that effect. That is all right as far as it goes. The difficulty, however, is, as I pointed out once before, that it will be very small consolation to tell a person that a copy of the order has been filed and published. We think that the people should have a chance to be heard when general rules and regulations are being made. Again I commend to your attention the provision that I suggested in the first hearing to the general effect that such rules and regulations as govern private conduct or affect private rights should be of no effect until approved by both houses of the Legislature with the same procedure required for passing a bill. This would keep legislative power in the Legislature. It might be further suggested that it would go a long way toward preventing oppression by administrative agencies if provision were made whereby one ordered to do an act or to desist from it or to refrain from any course of conduct might have appeal to some court as a matter of right with a trial de novo

both as to law and fact. One of the favorite devices of administrators is to get a provision into the law which either makes the agency's finding of fact conclusive, if supported by any evidence, or at least a presumption in favor of the agency's action. Let him find the facts and he need not worry about what the law is. Mere filing and publication of an order is not enough protection to a citizen called upon to confront an administrative agency which makes its own laws, makes its own charges and decides the case.

Now getting back to Section I captioned "Executive Office," the first paragraph says: "The executive power shall be vested in a Governor." Precisely the same words are in the present Constitution. We have no quarrel with that proposition. It is to provisions which would allow either an executive or an executive's satellites to get over too far into legislative and judicial fields that we object.

The second paragraph of the section requires the election of the Governor to be in odd numbered years. It is the view of the Manufacturers' Association of New Jersey on this subject that this is a matter concerning which the experience of this Committee and the members of the Legislature will be your best gauge of decision.

The second paragraph also provides that if an equal and greatest number of votes are received by more than one candidate, one of such candidates shall be chosen by the votes of the majority of the members of both houses of the Legislature at joint meeting. Now this wording is substantially the same as the wording in Article V, Paragraph 2 of the Constitution, the fact that the proposal changes the time when the Governor's term would begin to the 15th day of December next after the election, intsead of the 3rd Tuesday of January next ensuing the election, as is the present constitutional provision, suggests a question as to whether the same result would follow under the two documents from these same words or substantially the same words in the event of a tie at the general election. Would this new provision mean that the outgoing Legislature would have to be called in special session before December 15 of the election year to act upon the matter or would there be a vacancy if it were not called in that way so that pursuant to Paragraph 6 of the first section of Article IV, the head of the Department of Taxation and Finance would take over on December 15; further, if the Legislature didn't actually choose one of the two candidates before December 15, how could one reconcile the provisions that the Legislature should elect one of the two candidates with Paragraph 6 that in case of vacancy the head of the said department should serve until a new Governor shall have been elected and qualified, the new Governor to be elected at the next annual election? We don't know the answers; we merely suggest these questions.

The third paragraph of Section I extends the Governor's term to four years, changes the beginning date in the term to December 15 next after the election instead of in the following January, and provides that no person shall be eligible for more than one term. We find no fault in the proposed change in the beginning date of the term and we find no fault with the suggestion that the term be four years. The provision that no person shall be eligible for more than one term as Governor does not seem to us to be either necessary or desirable. Experience in the office of Governor we regard as a qualification, not as a disqualification. Notwithstanding the experience which the four years as Governor might give one and regardless of how thoroughly and how earnestly the people might approve of his record and desire his continuance. this clause would prevent the people from choosing a man for Governor if he had had one term. We think we had better let the people rule on this from time to time without any such proposed restriction. Under the present Constitution the Governor is prevented from succeeding himself, but there is no obstacle to his being a candidate after three years' intermission. Of course, these provisions are supposed to prevent a Governor from devoting his time to building up a political machine instead of attending to his governmental duties, and to prevent him from placing political expediency above principle. If any precaution of this type is desired, it is believed that the present Constitution is sufficient for the purpose. If we were amending this Constitution, we would eliminate any such restriction. If the Governor could run to succeed himself, it might furnish a very good indication as to whether the people approved of his term or did not and could furnish a pointer for the activities of the ensuing administration. Incidentally, it would also furnish an incentive to a Governor to please the people, not to boss them and run them.

The next paragraph to which we direct attention is Paragraph 5. Its opening sentence seems to contemplate that during the absence of the Governor from the State or temporary disability of the Governor, it would be possible for a member of Congress or a person holding office under the United States to exercise the office of Governor. This is specifically forbidden in the present Constitution. While other provisions in the proposal indicate that under the circumstances mentioned, the head of the Department of Taxation and Finance shall act as Governor, we think the first sentence in the fifth paragraph should be clarified. It says: "No member of Congress or person holding an office under the United States or of this State shall exercise the office of Governor except during his temporary absence from the State or temporary disability as specifically provided in this Constitution." So far as we have discovered, it is nowhere else suggested that a member of Congress or a person holding an office under the United States shall exercise

the office of Governor during the temporary absence or disability of the Governor. Nevertheless we think the fifth paragraph should be changed so there could be no room for suggestion that any person holding an office under the United States could act as Governor under any pretext or circumstances whatsoever.

It may be noted that the provision in the Constitution as well as in the proposal to the effect that the Governor shall not be elected by the Legislature to any office under the Government of this State or of the United States during the term for which he shall have been elected Governor would not have the same consequence now that it had when the present Constitution was adopted. Then United States Senators were elected by the Legislature and the Governor could not during his term have been elected to the United States Senate. The same restriction would not follow now, when the Senators are elected by direct vote of the people. It is further to be observed that while members of the Legislature are forbidden by the proposal to receive appointments for one year after they go out of office, there is no corresponding disqualification of the Governor for one year after he goes out of office. We don't think there should be any such disqualification in either case.

Turning to the sixth paragraph, the discrepancy between this provision and that on page 38 of the Report (p. 936) about the Attorney General acting in the place of the Governor on the proposed Legislative Council, has already been suggested. Just why the head of the proposed Department of Taxation and Finance should succeed to the governorship in case of temporary or permanent vacancy, is not known. So far as succession during temporary absence or disability of the Governor is concerned, possibly the thought is that the proposal would give the Governor such control over the department head as would assure his doing nothing in the absence of the Governor which he was not sure the Governor would approve. In this connection we recall that when Senator Powell was Acting Governor some years ago, he declared an alleged emergency at an end and wiped out the so-called State Recovery Administration theretofore existing. We doubt if any similar independent action by an Acting Governor would ever occur if the proposal were adopted and the Acting Governor were the head of the Department of Taxation and Finance. This paragraph would remove from the Presidents of the Senate and Speakers of the House of Assembly the possibility of ever having the honor of serving as Acting Governor in case of the disability or death of the Governor, as the present Constitution allows. We leave that likewise to your discretion and judgment as to whether that is desired.

Section II: It is not observed that the first paragraph makes substantial changes in the general provisions relating to the Gov-

ernor's duties except such as would necessarily follow from the changes made in the other paragraph. In the parallel reference book (appendix IV p. 960 et. seq.) you will find them set off, and I think you can see that is so. It is noted that while this paragraph mentions the duty of the Governor to convene the Legislature or the Senate alone whenever in his opinion public necessity requires, it says nothing about doing anything in the event two-thirds of the members of each House petition for a special session provided in Article III, Section I, Paragraph 4 of the proposal. We think it would be better to harmonize this paragraph with that in the third article to include in this paragraph a provision that it is the duty of the Governor to convene the Legislature upon receipt of the petition of the specified number of members of each House unless you are to make, or unless whoever drafted the Constitution were to make, a provision whereby one of the officers of the Legislature himself would call that in a case of inaction by the Governor. We still think that a majority instead of two-thirds should be sufficient to call a special session. The concluding sentence of this paragraph makes the following provision about appointment of officers, "The Governor shall also nominate and appoint, by and with the advice and consent of the Senate, all other officers whose election and appointment is not otherwise provided for by law"—is not otherwise provided for by law. We think the words "from time to time" should be inserted after "otherwise" in that place or that some other change should be made to indicate that the provision by law is not merely as provided in present law but as may be provided now or hereafter by law. The quoted sentence presents the question as to what officers would be subject to appointment by nomination of the Governor with the advice and consent of the Senate.

It will be recalled that Article III, Section VII, Paragraph 1, of the proposal would prevent the Legislature from electing or appointing any officers except the State Treasurer and State Comptroller. Article IV, Section III, Paragraph 4, would require all department heads and the members of all boards, councils, and commissions, except the State Comptroller and State Treasurer, to be nominated and appointed by the Governor, by and with the advice and consent of the Senate, and the judicial article also contains a similar provision, but the subsequent provisions I shall not particularly mention at this time; I will take them up when we come to those articles.

Now, of course, as to the officers to whose appointment the Senate must consent, this would give the Senate participation in the appointment. For the appointment of other officers, the Legislature could provide but it could not make the appointment itself because of Article II, Section VII, Paragraph 1, already mentioned. Now, if it did not provide the Governor could appoint, one can conceive that administrative agencies could be created whose functions could be solely quasi-legislative or solely quasi-judicial or a combination of the two, with little or no executive functions. In such case, no reason would necessarily exist for the Governor to have any part in the appointment of the members of such an agency. The second paragraph of the section would require the Senate to act on nominations within thirty days; otherwise, the nomination would be deemed confirmed at the end of the thirty days after submission of the name. The last sentence of this paragraph would make a restriction that no nomination could be sent to the Senate during the last month of the Governor's term. At the present time inaction by the Senate would not result in a nominee being entitled to the office. The present restriction is against making nominations or appointments during the last week of the Governor's term. Moreover, the present Constitution forbids an ad interim or recess appointment to the office of the person nominated but not confirmed before the recess. We see no reason why a person nominated but not confirmed should be allowed appointment during the recess. The failure of the Senate to take action would seem to be an indication that the Senate did not want the party named. We believe that the restriction compelling the Senate to act within thirty days might interfere with other activities in which it was engaged and might produce friction between the Senate and the Governor, possibly resulting in rejection, merely to have the matter disposed of within thirty days. However, we feel that the experience of the Legislature on this is so superior to ours that we would prefer not to take any decided and vociferous stand about the advisability of this thirty-day restriction.

While speaking of appointments, we note that the present Constitution has an Article VII captioned "Appointing Power and Tenure of Office," in which provisions as to those subjects are assembled at one place. The Revision Commission has scattered its provisions on this subject around without any conspicuous heading and has blended or scrambled, depending on whether or not you like these provisions, so that you have to turn from place to place and compare and reconcile the provisions to get the full picture of what the situation is about appointments. This remark relates only to form. The content and substance of it we have already spoken of in another way. At the hearings before and at the hearings today we have heard it said that the power of appointment is a peculiarly executive power. At page 17 of the Report (p. 917) it is assumed that appointment to public office is "an essentially executive power." Thomas Jefferson has been trotted out and quoted. In denying the correctness of the assumption that the power of appointment to office is an essentially executive power,

I quote from the opinion of the Court of Errors and Appeals of the State of New Jersey by Mr. Justice Dixon, one of the most highly regarded judges ever to serve in this State:

> "The question presented is can the power of appointing to office be said, in our Government, to belong properly to the Legislature, or to the Governor, or to the courts, so that its exercise by any, save one, of these departments is prohibited?
>
> Under the English system of Government it might be said that in a sense the king was the depository of the power of appointing to public office, 'the fountain of honor, of office, and of privilege,' as Blackstone calls him. 1 Bl. Com. 271. But in our system there appears no indication that any single department of the Government can be deemed the King's successor in this regard. Although in *State* v. *Parkhurst*, 4 Halst. 427 (A. D. 1802), Chief Justice Kirkpatrick decided that the Governor, being invested with the 'supreme executive power,' had authority to fill a vacancy in the office of the Clerk of the Common Pleas arising during a recess of the Legislature, yet he considered this power not as inherent and absolute, but as created and limited by the necessities of the case, so that it would yield to any other provision made by the Legislature. *In Police Commissioners* v. *Pritchard*, 7 Vroom 101, 110, it was claimed that the Governor of the State had succeeded to this branch of royal authority, but Chief Justice Beasley said: 'My consideration of the questions involved in this inquiry has also entirely satisfied me, that there is not the least propriety in the assumption that the authority of our executive over public offices, is at all comparable with that of the English King.'
>
> An examination of our constitutional and legislative history will dissipate the idea that the power of appointing to office is the peculiar property of any one of the three departments of our Government."

While there is other discussion in the opinion to the same effect, and I commend its full reading to you, this quotation so succinctly states the true rule that further quotation on that I deem unnecessary. And not only is the power of appointing to office not peculiarly the property of the executive, neither is the power of removal from office. This subject too has received consideration in the courts of this State. In *State ex rel Police Commissioners of Jersey City* v. *Pritchard, et al.*, 36 New Jersey Law 101, the case I mentioned in the quotation from Justice Dixon, it was held in an opinion by Chief Justice Beasley, another eminent jurist, that the right to remove a State officer for misbehavior in office does not appertain to the executive office. Such act is judicial and belongs

to the court of impeachments. Without quoting this opinion at length, we feel sure that a reading of it will destroy any notion that the power of removal of office holders is an essentially executive power. In passing, we note that at page 112 this last named opinion expresses a view as to the residuum of power which we have maintained in the course of these discussions. Speaking of a suggested method of proceeding to remove an office holder, the learned Chief Justice said:

> "Such a course is inconsistent with the fundamental idea upon which is founded the whole structure of our political institutions, which is that the power of each organ of the Government is definite, and that the residuum of power remains in the hands of the mass of the community."

Now, later cases in which it has been held that the Governor has power to remove certain public officers for neglect of duty or for other misconduct in office, of which *McCran* v. *Gaul*, 96 New Jersey Law 165, is typical, in no way detract from the view that removal from office is not an essentially executive function or power. In that case the Governor's authority came from a statute duly passed by the Legislature. Whether the statutory removal power be called legislative, judicial or quasi-judicial function is not material. It is enough to know that it is not executive, nor did the view taken in *McCran* v. *Gaul* that the legislators could give the Governor the power to remove an officer though not without vigorous dissenting opinion by Mr. Justice Kalisch and another by Judge White, and the vote of the court was only seven to six under the particular circumstances and statutes of that case and the principles involved.

Now, clearly Article VII of the present Constitution does not make appointment and tenure of office the sole province of any department. If there is to be any change in this regard it will have to be because the people have determined upon a change and not because of any such false notion as that either the power of appointment or the power of removal of officers is essentially an executive function when viewed from the standpoint of New Jersey's political history or present law.

No objection is offered to the third, fourth, and fifth paragraphs of the section. They make certain changes in the manner in which a bill may become a law. They give the Governor more time to consider approval or disapproval of passed bills, change the times when the Legislature may act upon disapproved bills, require a vote of two-thirds of the membership of each house to over-ride the veto of appropriation items. Of course, this two-thirds requirement to overcome the veto of appropriation items does place the matter of spending more under the control of the Governor and gives an additional tendency to domination, but we

do not feel it is proper for us to object to that or any of the provisions of this paragraph unless it be one fact that seems to us to stand out. The provisions might allow a Governor to return a bill with his disapproval two days from the end of the session. Now, there is a requirement that three days have to intervene before you could act on a returned bill. If it were returned two days before the end, the Legislature could never get the three days which would be necessary before you could take it up again, and in that way a veto might go into effect without the Legislature ever having an opportunity to vote on whether they would over-ride the veto or not. We would suggest that that provision be looked into and perhaps this difficulty cleared up.

The sixth paragraph of the second section is entirly new. It has to do with investigation and removal of officers by the Governor. In Section VI impeachments are dealt with and in Section II of Article VI investigation provisions occur, and we have wondered if it wouldn't have been better to put anything that was supposed to go along that line of investigation at that place. However, as long as it is at this place we shall discuss it, reserving for further consideration the things which we may have to say under the other Article later on. As already noted, the removal of officers is not a peculiarly executive function. We think the Constitution should go no further in this regard than to leave it for the Legislature to enact legislation as to the extent, if at all, it wishes to vest the Governor with power to exercise the judicial or quasi-judicial function of removal of officers or, perhaps it should leave the matter to impeachment. At any rate, we do not approve the sixth, nor the method that it provides. These words "in his opinion" we bring especially to your attention in next to the last line of the paragraph. We would object to those words whether they occurred in the statute or a constitutional provision, because the effect of those words would be to prevent any successful appeal to the courts, for no court could say that what the Governor states his opinion to be is not his opinion. If the Governor is to be given any power of removal other than the impeachment power, which of course is not his power, if the Governor should be given any power of removal we maintain that it should be for cause only, that the causes should be inefficiency, neglect of duty, or malfeasance in office, and moreover in recognition of the judicial nature of the power of removal, it being a sort of substitute for impeachment, the officer should be entitled as a matter of right to an independent judicial review as to law and fact, in which no presumption should exist in favor of the Governor's action, a trial de novo determinable upon the weight of the evidence, equal justice under law. The provision which would condition the Governor's action upon a complaint submitted to him by at least twenty reputable citizens

we regard as useless. If you are going to give the Governor any such power as this, it is ridiculous, it seems to us, to stick in any provision about twenty names, twenty reputable citizens. It is assumed that there would be no Governor who would start an annoying investigation without a scintilla of a ground for so doing and if there would be any Governor who would use his official position in that way, there can be no doubt that a Governor could get at least twenty supposedly reputable citizens to sign a complaint. Furthermore, if we assume that the Governor is to be given removal power and it should so happen that there should be some misconduct in office that twenty people didn't know about—we will say ten did know about—is it presumed he wouldn't be allowed to make an investigation because there weren't twenty people who could really be truthful bona fide signers of the petition and knowers of the facts which would be necessary to put in a complaint? Whether the provision goes or doesn't go in the Constitution or statute, we are unalterably opposed to the idea there should be any final unappealable decision "in his opinion," and we also think it ridiculous to put that twenty name provision in.

This completes the review of these provisions. I don't think I shall attempt to summarize what my position has been—it is divided and each thing speaks for itself—any more than to say that I conclude somewhat as I began, with the thought that the more these hearings go along and the more we hear people get up here and propose this modification, that modification, and another, the more we even hear the proponents say that the study based upon the draft of the proposal will lead to further improvements before a Constitution is finally submitted to the people for adoption, the more we are of the view that many of those who have been recorded as proponents and many of those who are recorded as for modification really should be recorded as in opposition to the various proposals and recommendations for change in the New Jersey Constitution made by the Commission on Revision of the New Jersey Constitution. Far from being alone in that regard, we have many companions.

I thank you.

MR. SCHROEDER: Will the gentleman submit to a question by the Assemblyman from Essex?

MR. CHANCE: Yes, I will try to answer.

MR. CAVICCHIA: Mr. Chance, did I understand you to say that you would not give the Governor the power of removal but that you would make removal subject to review by the courts?

MR. CHANCE: Yes.

MR. CAVICCHIA: Did you mean by that you would make the Governor answerable to the judiciary?

MR. CHANCE: I am not talking about the Governor being answerable. I am talking about the protection of a man who is brought in and against whom the judicial power of removal from office is being exercised.

MR. CAVICCHIA: You admit the Governor would have to go before the judiciary in order to press charges?

MR. CHANCE: Well, if he removed a man and the man took it into court, the Governor either in person or by some legal representative would have to appear before the judiciary and show whether or not there had been any cause for dismissal or whether it had been an arbitrary dismissal without just cause.

MR. CAVICCHIA: You have put much stock in legal precedent and you have cited a good many in support of an argument that I will come to later. Are you familiar with the case of *State* v. *Governor*, 25 New Jersey Law Reports, which holds that in order to preserve the independence of the three branches of Government, one branch of Government cannot compel another branch of Government to do something?

MR. CHANCE: Well, we are not talking about the Legislature compelling the Governor to do something. We are talking about it being a judicial power to remove officers, and if the Legislature out of its abundant wisdom decides that it will have a sort of judicial, quasi-judicial, tribunal, to be made up of the Governor, such as was involved in the *McCran* v. *Gaul* case I mentioned, then they are not forcing the Governor to do anything; they are letting him do it if he wants to.

MR. CAVICCHIA: Assuming that your theory was put into practice, if the removal of a State officer was in question before a judicial tribunal, you would bring one branch of the Government, which is the Governor, into court. Now, under the case of *State* v. *Governor* that is impossible, because the judicial branch of the Government cannot rule with respect to the executive functions.

MR. CHANCE: Perhaps you are forcing me into the position that I should say the Governor should have nothing to do with the exercise of this judicial function, and that impeachment should be the sole way of removing an officer in a judicial tribunal where he should have a full and fair hearing.

MR. CAVICCHIA: That brings me to the other question. You have quoted at length the decision of the court with respect to——

MR. CHANCE: ——appointment power and removal power.

MR. CAVICCHIA: Was that it?

MR. CHANCE: I did quote that; that was the extensive quotation.

MR. CAVICCHIA: Yes, the appointment power. You quoted these New Jersey decisions to show that the power of appointment was

not essentially an executive function, but weren't you actually quoting an interpretation of the New Jersey Constitution as presently formed or formulated, as against a philosophy of Government which this Commission enunciates in its report? In other words, weren't you basing your case on the construction, the legal construction, of the present Constitution as its provisions now are?

MR. CHANCE: Not exactly. I was basing—that is one thing that I was doing. That was the ultimate conclusion on the Constitution and the law as it now is and the history of New Jersey as it has been, but in the course of the reasoning by which that result was reached—the ratio decidendi, I think they call that—I was enunciating that in the English system of Government the king was the depository of the power of appointment to public office and that never in New Jersey have we yet come to the acceptance of the doctrine that that prerogative of the king had been carried down into the Governor as essentially executive power.

MR. CAVICCHIA: Exactly, because we haven't so worded it in our Constitution, but as a philosophy of Government it can be differentiated or distinguished from what we have set forth or what the framers of the 1844 Constitution set forth.

MR. CHANCE: Oh, yes.

MR. CAVICCHIA: That is exactly the point I am making.

MR. CHANCE: You could, and maybe they have in this thing said you could, have a four-year king and the kingly prerogative heretofore and before the Revolution exercised in Great Britain can now and hereafter be exercised in New Jersey. The people can have that if they want it in the Constitution. I hope they don't want it.

MR. CAVICCHIA: Let's you and I not talk about kings. Let's keep our feet on the ground. In this discussion of fundamentals, let's not go off into—

MR. CHANCE: It is fundamental that you get this kingly prerogative.

MR. SCHROEDER: May I suggest that the question be propounded and then the answer be made?

MR. CAVICCHIA: I will go to something else, Mr. Chairman. Let me ask this: Mr. Chance, you represent the Manufacturers Association, which I take it, is composed of men in industry in this State.

MR. CHANCE: Manufacturing and industry, I call it.

MR. CAVICCHIA: Do your clients believe in the operation of Government along business lines?

MR. CHANCE: Operation of Government along business lines? Well, we feel that there are certain principles of democracy that are as lasting as the hills, and that you cannot run a democracy upon a strictly efficient business basis. While I think of it, I have a little book here—this strong executive idea didn't originate in the discussions that we have had here today.

MR. CAVICCHIA: Mr. Chance, my question is not directed now to the executive function. I am directing my question to your thought that reorganization of Government can be effectuated by legislation and need not be effectuated by constitutional provision.

MR. CHANCE: Yes.

MR. CAVICCHIA: Now do you know how many times within the past ten years bills have been submitted to the Legislature to reorganize this Government by statute?

MR. CHANCE: I don't know how many there have been, but if there hasn't been enough public sentiment behind the man who introduced them to get them over, then it belies all the arguments that have been made here that there is such an outstanding demand for administrative reorganization.

MR. CAVICCHIA: Do you think it is more politic in the public interest to permit reorganization of Government by statute, by action of one Legislature, and then to have that reorganization ripped out of existence by the next Legislature, than it is to have the reorganization fundamentally made in the basic law of the State?

MR. CHANCE: I don't believe very much in laying down in what we might call legislative or constitutional concrete, where it is hard and fast there, that you can't change the things by legislative enactment without amending your Constitution, and if you are going to have the kind of amendment program I have heard some of them say here is such an easy way of amending, maybe you might as well not have a Constitution. I don't believe in, and I don't believe the people I represent believe in, freezing hard and fast lines of nine departments without any specification of what the powers, functions, and duties of any of them are to be, and then to vest it in the power of an executive to juggle around offices, agencies, and instrumentalities, and with the vote of one House of the Legislature in his favor to be able to make an executive order that will go into effect, switching the functions around.

I don't know whether I have answered it or not, but I have tried to.

MR. SCHROEDER: Any other questions, Assemblyman Cavicchia?

MR. CAVICCHIA: No, that is all.

MR. SCHROEDER: Any other opponents to Article IV? Mr. Fisher, will you give your full name?

MR. FISHER: I. E. Fisher, Bordentown. Mr. Chairman, members of the Committee, and ladies and gentlemen: I appreciate the opportunity of being here and hearing what is being said as it relates to drastic changes, as I call it, in the Constitution of New Jersey. I am just an ordinary fellow in the ordinary walk of life who believes in constitutional government and in the American way of doing business. I believe in three separate and distinct branches of our Government to function in their respective places. In a democracy in my mind the people are the Government and not the setup. The setup, in my mind, through the years is to serve the common good of the people; and because that hasn't been done, we are in the midst of a mass of ceremony and confusion. Because I believe that this report that is under discussion will add to that confusion that we have already got and nothing done, I think it is completely out of order. I think the Governor and the members of the Legislature who are responsible for this controversy that is now on ought to get on the job under the present Constitution as it is and do their duty for the common good of the people of New Jersey and the best interest of their homes. The present Constitution will safeguard their interest to a greater degree than it has been safeguarded by the members of the Legislature who are interested in this revision of the Constitution and the Governor included.

Now, then, what is there in their records that points to the common good of the people for service rendered that recommends that the power be vested in these people that are discussing this or who are responsible for this? Why should they amend the Constitution? What is in their records that recommends them, that the people would commit their trust to these people who are responsible for this controversy? The same thing is going on in Washington. Assumed position on the part of the executive is responsible for the deplorable condition that we have in Washington and this is the beginning of the same thing that we have in Washington. I think we have enough of it, and if I had my way about it and was on the Committee and a member of the Legislature, I would put this whole thing on the shelf and let it stay there until after the election in November and let us work out these problems which arise as a result of the war being on, not with ceremony, but something actually done for safeguarding the interests of the people. Here we are in the midst of a lot of ceremony and men who have the courage of their conviction, that are doing their duty, are being smeared by these ceremonies—people that haven't done anything, anything but a bunch of hot air. Shelve this thing. Get back on the job and serve the common good of the people of New Jersey.

I recommend this to help redeem the condition as now prevalent in Washington. It seems to me that this is the most important congressional election in the history of the United States. I believe in our Government. I believe in the United States. I believe in the Constitution of the United States. I believe in men who have the courage of their convictions when in Congress or anywhere else to safeguard what they believe is in the interest of the people, without being smeared by those who simply talk about things. We have got the men. We have got the women who will redeem America and put the United States in its proper place on the map. We are in the midst of a world crisis and in my mind, not only after the war, but dealing with the immediate, now as never before the condition is calling for real men, men that dare to do. I thank you.

MR. SCHROEDER: Are there any other opponents of Article IV? If not, we will proceed to hear those in favor of modification of Article IV. The first speaker will be Mr. John Bauer of Montclair, a member of the Committee on Constitutional Convention.

MR. BAUER: Mr. Chairman and members of the Committee:

THE PROPOSED NEW JERSEY CONSTITUTION

ARTICLE IV—EXECUTIVE AND ADMINISTRATIVE.

With one important exception and some minor ones, the provisions of the proposed New Jersey Constitution are well designed for efficient and responsible administration.

I shall refer to only one minor matter which under special circumstances might become important. Except as to appropriations, any legislation vetoed by the Governor may be re-enacted upon a mere majority vote of each branch of the Legislature. More than a majority vote should be required to override a veto. This may become vital in any subject of Legislation which has been discussed before the voters during the preceding election, and as to which the Governor may consider to have a mandate from the people.

The Governor's Second Term:

The major provision which would work against good administration is the prohibition against a Governor's serving more than one term. The term itself is extended from three to four years, which is good, but a second term is forbidden. The reason assigned for this restriction—"the possibility of a Governor perpetuating himself in office through the creation of a strong political machine"—is hardly persuasive to anyone acquainted with the executive experience in New Jersey and in other States.

The restriction places a double handicap upon democratic

government. First, while the Governor is the chief executive, he is also the chief representative of the people. He is inevitably the leader in matters of important policy for the State, and his leadership, if satisfactory, will be particularly effective for a second term (or more if the people want him). Second, merely as an executive, a newly elected Governor necessarily faces a tremendous job to get acquainted with the administrative ramifications. He will need the greater part of the first term to fit himself for the far-flung responsibilities, and can begin to be a good executive only toward the end. If then he has proved himself to the people, he will be a better manager for the second term, as well as a more effective leader in State policies.

Under the particular safeguards provided by the proposed Constitution, the Governor would hardly be able to build up a political machine which could interfere with good administration. First the executive departments are prescribed, and the Governor has the appointment of only the heads. Second, civil service control is established providing for appointment upon merit. Third, there is direct responsibility and accountability upon the Governor for efficient administration.

Beyond these safeguards against politicalization, the danger that a Governor might build up a political machine and keep himself in office regardless of the quality of his leadership and his executive capacity is obviated better through other means than the prohibition against re-election. It should be clear, morover, that permanently effective measures against political machines can hardly be provided by the Constitution. The problem is a continuous one, and it far transcends the realm of the governorship. It will have to be met by popular demands, investigations, and legislative action as time unfolds. While a Governor should be available for re-election as long as he is the people's choice, full freedom of choice should be assured. This is a matter of constant public alertness for the future, rather than strangling constitutional rigidity.

New Jersey has had the prohibition against a Governor's succeeding himself (but not against a later second term or more). Since the restriction to direct succession has not prevented the creation of powerful political machines, why assume that the elimination of any second term would succeed? As an instructive comparison and sidelight, New York has had no limitation to the re-election of its Governors, and mostly has had much better experience than New Jersey in getting and keeping outstanding leaders. The loss to New York would have been tremendous if its able governors could not have been re-elected for a second term or longer.

MR. AMLICKE: The next speaker in favor of modification is

Mrs. Edwin Bebout representing the New Jersey League of Women Voters.

MRS. BEBOUT: Mr. Chairman and Members of the Committee:

Again, as at previous hearings, the League of Women Voters appears in the group desiring modifications of the proposed article. Again, we emphasize that we are not uncompromising in our attitude. We do believe that the modifications which we present are changes which help to meet criticisms voiced at these hearings and elsewhere and if adopted will make the proposed Constitution not only a more consistent and workable document in the public interest, but will make it acceptable to more people. We hope, therefore, that ample opportunity to discuss all the proposals made at these valuable and historic hearings will be given when all the articles have been covered.

Again the League finds many of its own suggestions for changes included in the proposed Article IV as follows:

Section I, Paragraphs 2 and 3. The Governor to be elected for a term of four years in odd-numbered years.

Section II, Paragraph 2 requires that the Senate shall either confirm or reject the Governor's nominations for appointive offices within thirty days after they are submitted or the nominations will be deemed confirmed.

Paragraphs 3 and 4 give the Governor the right to disapprove specific items in appropriation bills and requires a two-thirds vote of the membership of each house to override the veto.

Paragraph 7 gives the Governor the right to grant pardons.

Section III, Paragraphs 1, 2, 3, 4 and 5 reduce the number of departments and give the Governor the power to allocate executive and administrative duties and powers among the departments subject to legislative approval; give the Governor the right to appoint all department heads and members of all boards, councils and commissions with Senate approval; and make their terms coincidental with the Governor's and at his pleasure.

Paragraph 6 gives the Governor the right to require from the Comptroller and Treasurer written statements of information on any matter relating to the conduct of their respective offices.

Section IV eliminates the old section on militia and gives the Legislature the right to provide by law for a state militia with the Governor as Commander-in-Chief.

We endorse the following changes not suggested by the League.

Section I, Paragraph 3 provides that the Governor's term shall begin on December 15th following his election instead of the third Tuesday of January.

Section II, Paragraph 6 gives the Governor the right to cause an investigation of the conduct of any state official, except members of the Legislature, Treasurer or Comptroller, or judicial officers, and remove such officers after hearing, if, in his opinion, such investigation discloses misfeasance or malfeasance in office.

On the following points the League disagrees with the proposals in Article IV:

Section I, Paragraph 3: The League recommended that the Governor be given a four-year term and be eligible to succeed himself. This provision that "no person hereafter elected shall be eligible for more than one term" denies to the people of New Jersey the right to choose freely the only state official who represents in State Government the people of the entire State. It seems to us that it would be quite as logical to limit the terms of members of the Legislature. The people should be trusted to decide when a Governor who is vested with clear responsibility has acted in their interest and to continue him in office if that is their desire. This proposed Constitution does place responsibility by giving the Governor power over the heads of administrative departments. By placing the thirty-day limit on Senate confirmation of appointments and by reducing the number of appointments made by the Governor subject to Senate confirmation, it seems to reduce the "opportunity for political control over the Legislature" mentioned in the "Summary and Explanation" of the proposed Constitution, as a reason for the limitation. Furthermore the right of the Legislature to "investigate any and all phases of State government" granted in Article V, Section I, Paragraph 3 seems to provide that body ample opportunity to protect itself from executive domination and to inform the people of the State if the Governor is taking advantage of his position against their interests.

The Summary and Explanation states that "the Governor's term of office is lengthened to four years in order to provide him with ample opportunity to carry out his program." That term includes only two sessions of the Legislature and seems to us to provide a very limited opportunity. It would no doubt be long enough to show up a poor Governor and the people would have the opportunity to vote him out. On the other hand, it seems to provide again the situation deplored by Governor Wilson, which requires only sufficient patience on the part of a political machine or an unfriendly Legislature to "sit out" one term to be rid of a nuisance. While the "sitting out" would be one year longer it would be only two legislative sessions instead of three.

What opportunity does this limitation provide for the people to assure themselves the continuance of an executive program approved by them? There are too many restrictions on the inde-

pendence of the voter in New Jersey law. Let us not place a new one in our new Constitution.

Section II, Paragraph 4 retains the old provision for overriding the Governor's veto except on appropriations, by majority vote. We believe that study of the long lists of vetoes by our Governors of bills such as pension and tenure bills will convince the general public that a two-thirds vote should be required for all measures vetoed as an economy measure if for no other reason.

Section III, Paragraph 1 names Civil Service in the list of departments. The League endorses placing Civil Service in the Constitution among the administrative departments if it means that Civil Service will be under one responsible administrator instead of under a Commission as it now is. This is a reform long desired by the League. However, we object to placing it within any of the other departments, even that of Education, as the proposed paragraph does. We believe it should stand by itself in order that the responsibility for its operation may be perfectly clear and not in any way involved with the concerns of another department. We note that the proposed Parole Commission is placed "in the executive branch of the government." We wonder if that implies a separate "executive department" which might include a completely autonomous Civil Service Department responsible only to the Governor.

MR. AMLICKE: The next speaker will be Mrs. Ruotolo, representing the Newark Constitutional Convention Committee.

MRS. RUOTOLO: Citizens who are interested in the basic law under which we live in the State of New Jersey have only highest praise for the report brought in by the Commission on Revision of the New Jersey Constitution. It represents many hours of actual work and real vision on the part of the members of that committee. It is the ray of hope that New Jersey citizens have been waiting for, for many years.

Today we appreciate the privilege of appearing before the Joint Legislative Committee in the truly democratic manner. In truth, we approach the convention method. The document we discuss this afternoon is so good that "very little and not too late" would make it a perfect document.

We would like particularly to express our approval of the 9th item of Article IV in the Revision Report, which states that the Governor's veto of any item in an appropriation bill shall require a two-thirds' vote of each house of the Legislature for passage over the veto. We ask that the same procedure be extended to include all matters of legislation, for laws are as important as money.

A second point concerns the eligibility of the Governor for more than one term, Article IV, Item 2. Citizens can express their approval or disapproval only through their vote. If we limit the Governor to one term, there is no way to express ourselves as to his services rendered. A worthy Governor should know if citizens feel he has represented them well, and vice versa. He is the only officer for whom all New Jersey citizens may vote. As such, we feel he should continue to serve when citizens so desire. The present system which forbids a Governor to succeed himself has not to date resulted in preventing political machines from being set up in New Jersey.

MR. AMLICKE: The next speaker in favor of modification is Mr. Winthrop A. Mandell, representing the Independent Club of East Orange.

MR. MANDELL: Inasmuch as the Governor is the only man in our State Government who has been elected by a majority, direct vote of all the people, his veto of any bill is an important act. This act calls for sober re-consideration of the bill vetoed in both Houses. In order to force such sober re-consideration and discussion, it is necessary to have a two-thirds' vote of both houses to pass any bill over the Governor's veto. If the veto power is important, and I am sure we all consider it so, then let it be a real veto, not a nominal one.

MR. AMLICKE: Mr. Edward W. Kilpatrick, Secretary of the Legislative Committee of the State Federated Boards of Education, will be the next speaker.

MR. KILPATRICK: We do not make an appearance today to oppose the proposed Constitution but rather to recommend an amendment which shall make the Department of Education a single department. We regard education as such an important State function that it should be placed in a department by itself. Education is organized as one of the most important functions of any State government and it should not be complicated with the functions of any other State department. We regard civil service, which presumably is to represent the personnel organization of all the State departments, as sufficiently important to be placed in a department by itself. A properly organized personnel system is one of the most important phases of State government. Because it deals with all State departments and must be responsible for the rating and progress of the personnel of all departments, it is obviously rather difficult to include its functions in those of a department which is coordinate with other departments.

New Jersey for nearly one hundred years has had a Department of Public Instruction, which, in addition to the functions which a State department should exercise, has been made respon-

sible for large supervisory functions in relationship to local school districts. Generally speaking, the progress of education in New Jersey and its advancement bear a close relationship to the work of a department dedicated solely to the functions of public education. It has been able to do much for the advancement of education. Boards of education of the State and representatives of its teachers feel that a department with such large reponsibilities should be maintained for the discharge of this function alone.

Beginning with the emergency declared by the President of the United States, the Department of Public Instruction has been charged with the responsibility for the training of thousands of workers for the defense and war industries. It has been able also to devote itself to many other problems connected with the war effort in which education must play a large part. This illustrates how a department with such large responsibilities can best function when devoted to the single objective of public education.

We strongly endorse the retention of the section in the Constitution now operative which provides a permanent school fund for the support of free schools and which directs that "the Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this State between the ages of five and eighteen years."

MR. SCHROEDER: The next speaker will be Miss Lelia O. Brown, representing the New Jersey Education Association.

MISS BROWN: Mr. Schroeder, Members of the Committee:

First of all, I should like to commend the members of the Commission on the Revision of the Constitution for their constructive attempt to provide better government for the citizens of New Jersey.

The greatest asset of the State or the Nation is its children. The kind of government, the kind of world we hope to live in from now on, will depend upon the education of those children. I represent 28,000 teachers who are practically unanimous in the belief that the Department of Education should be a separate department. The citizens expend through their local boards one hundred million dollars yearly for the education of 600,000 persons. The type of its responsibility and the purpose of the department's work make it impossible to include its functions with those of other departments.

I should like also to call to your attention again for the record the statement made by Mr. Kilpatrick, that as to the Civil Service, because it deals with all State departments and must be responsible for the rating and progress of the personnel of all departments, it is obviously rather difficult to include its functions in those of a department which is coordinate with other departments.

And now, without appearing to be out of order but because education does cross-section practically this entire revision, for the record I should like to commend the inclusion on page 40 (p. 938) of Paragraph 8, the fund for the support of free schools and all moneys, stock and other property and so on, with the rest of the paragraph. It has been taken from the old Constitution and placed in the new one, and that I wish to commend.

MR. SCHROEDER: At this time we will hear from Mr. Manuel Cantor, representing the Communist Party of New Jersey.

MR. CANTOR: Mr. Chairman:

The assertion has been made in the course of these hearings that proponents of constitutional change must be "practical." Presumably this means they must water down their proposals to effect a meeting of the minds with the minority opposed to any revision.

The Communist Party is guided in these discussions solely by considerations of the interests and the present, practical needs of the people of New Jersey. We cannot accept the premise that weak, limited demands by proponents of revision will produce the best "compromise." When the body is threatened with a malignant ailment the surgeon must apply the knife with the latest technique if the patient is to live. Nice colored pills, like a nice "practical" compromise constitution, will be without any practical effect. The stubborn, evasive actions of the reactionary opponents of constitutional revision demand the bold, forthright challenge of sincere proponents. Our changing times require such leadership. Our people are ready for it.

We regard with favor those provisions of Article IV of the Revision which would establish greater centralization of administrative agencies, their greater accountability to the executive and their increased efficiency. We approach with caution the abstract argument that the power of the Governor must be strengthened. Most proponents of such steps are motivated by a sincere desire to bring about more democratic and more efficient government for our State. The present situation in New Jersey appears to lend weight to their argument. A more progressive Governor finds himself in frequent conflict with and often is completely hamstrung by a reactionary Legislature of opposite political complexion. We must keep in mind, however, that this relationship is but temporary. We are here constructing a plan for our governmental machinery which must function for some time to come.

In our opinion the way to remedy the situation permanently is to make the Legislature more democratic, more responsive to the

people's will, and not to make the Governor's office less so. We wish, then, to reassert at this point our proposals for a unicameral Legislature elected by proportional representation from single election districts. This, together with other suggestions made in the last hearings, would render machine control more difficult and would bring about a more representative Legislature which would cooperate effectively with a progressive Governor.

We believe the proposal in Article IV, Paragraph 3 of a four-year term for the Governor moves away from the correct concept of public control of elected officials. Rather would we suggest a two-year term, with no restrictions on succession. The two-year term is used in twenty-three States. Thirty-one States have no bar to re-election. Two years is long enough for an executive to make clear his program. Let the people judge the Governor every two years. If he is found satisfactory the people will re-elect him. If he is found wanting the people will vote him down. No special election machinery of expense is required. The argument that a two-year office holder has to campaign continuously is valid only for that incumbent who has no real program or record on which to stand. Impeachment, and even recall, are too limited and too difficult to provide proper relief to the electorate to warrant the four-year term.

We propose that Paragraph 2 provide for a run-off election in event of a tie vote. Though the possibility is remote, we see no reason to deprive the people of their right to elect their Governor.

The meaning of Paragraph 5 is not entirely clear. Even the present article is less ambiguous. We suggest rephrasing.

Paragraph 6 provides that the head of the Department of Taxation and Finance shall act as temporary substitute for the Governor in the event of death, illness, disqualification or absence from the State. We fail to see why an expert on matters of finance necessarily is the best understudy for the Governor. We believe the chief executive officer of the Legislature would be better qualified. We would also propose the inclusion of the Governor's recall by the people as one of the reasons for his incapacity to serve. We will propose the recall as a method of redress in a later article.

In place of the proposal in Paragraph 6 of the method for electing a new Governor in such an emergency situation, we propose a special election to be held in the manner established by law and the Constitution.

In Section II of Article IV, nominations and appointments by the Governor are to be made by and with the advice and consent of the Senate. Even under the present set-up, confirmation by the Senate is one of the evils of which proponents of progressive

government complain. In line with our proposals on the Legislature, we would substitute the consent of the single chamber at this point and everywhere else where Senate confirmation is required in this article. We understand Paragraph 1 does not bar the appointment of boards and bureaus by the Legislature itself. Mr. Chance referred to Article III, Section VII, Paragraph 1, which reads that neither the Legislature nor either house thereof shall elect or appoint any executive, administrative or judicial officers except the State Treasurer and the State Comptroller. It is my recollection that in the case of the much discussed Milk Control Board; the Legislature did not appoint the officer, it appointed the Board which in turn appointed the Director. We make a proposal in Section III to deal with this problem.

The restrictions on delay in confirmation of appointments are welcome improvements.

We differ with the requirement of a two-thirds majority to over-ride a veto of appropriation bills. A reactionary Governor, by vetoing the appropriation item in any piece of social legislation can effectively defeat the measure. We propose a uniform majority vote of the membership of the chamber.

Paragraph 7 establishes that the power to grant pardons and commute sentences would exist only after recommendations of a parole commission. A case deserving of executive clemency may be effectively "buried" by the commission's deliberate refusal to take it up. Thus a labor or political prisoner may be kept in jail indefinitely. The Governor should be granted power to require the commission to make recommendation within a given period and upon failure to comply, to act without such recommendation.

We heartily approve the consolidation of administrative departments as proposed in Section III. In view of the extreme difficulty of adequately defining executive and administrative offices, agencies and instrumentalities, it may be wise to stipulate that the provision includes all boards, offices, etc., except the special categories delimited specifically by the Constitution itself.

To remark parenthetically on the question of a separate Education Department, in our original presentation we were in favor of including education in the Bill of Rights as a very basic right of the people, and we certainly would concur in the necessity for a separate educational department.

We would propose the inclusion of at least one more department, a Consumers' Department. Obviously the consumers comprise the largest section of the population. The argument that everybody is a consumer and that no special representation is necessary falls flat in the face of recent sharp divisions between consumers and other special interests in the State. Heads of in-

dustrial and commercial establishments or large producers and distributors of farm products may have viewpoints quite at variance with those who purchase from them on important problems of mutual concern. The need for consumers' services has prompted the Federal Government to establish special agencies of war work activity. A Consumers' Department in our State government could make studies, conduct investigations, submit reports to other branches of the government. It could represent consumers at hearings, conduct educational campaigns of great public benefit, propose necessary protective legislation, help improve commodity distribution, and act as a regulatory apparatus where necessary.

In addition to the State Comptroller and the State Treasurer, we propose that the Attorney General be included in Paragraph 4 as exceptions to the Governor's appointive power. Paragraph 6 should stipulate that the Attorney General be elected every two years at the general elections. As head of the very important law department, the Attorney General should be the agent of the people and responsible to them. We have had too many instances in our State where the Attorney General represents some individual officer whose conduct is being questioned by the people. The State Comptroller and State Treasurer should have only two year terms, we propose.

We would add to Section III a provision that the heads of all the departments constitute an administrative council which shall meet from time to time to advise the Governor. This council should be implemented by an advisory board made up of members of the public representing labor, the consumer, business, the farmer, educators and social welfare agencies, to serve without salary, appointed by the Governor, to make studies and recommendations to him and to the department heads.

In Section IV dealing with the militia, we would specify that there be no discrimination on account of race, color or creed in any phase of its activity. Stipulation of the test of "merit and fitness" unfortunately has proven insufficient safeguard against discrimination in many other fields.

MR. SCHROEDER: The next speaker will be Mr. Frank Casey, representing the New Jersey Civil Service Association.

MR. CASEY: Mr. Chairman, I shall endeavor to make my remarks as brief as possible for two reasons—first of all, because it is getting late; and second, the objections that I intended to voice to certain features of this Revision have been well voiced by people preceding.

First of all, I would like to say that we concur in Mr. Chance's criticism of Article III. Now, to get down as briefly as I can,

we are opposed to Article IV, which limits the term of the Governor to four years, for the reasons given by the previous speaker, and for the further reason that that seems to put a premium upon inexperience. It is common knowledge to all of us, I think, that a Governor in the last term of office is better able to discharge the duties of that office than he is in the first year, because of the experience that he has acquired. I think it is axiomatic that a legislator, an experienced legislator, or an experienced judge is more capable of discharging his duties than an inexperienced legislator or an inexperienced judge, and I think the same thing applies to the Governor. The reason given by the Commission was the danger of a Governor building up a political machine. I don't think there is any real substance to that, and if there is, in my opinion the present provision in our Constitution would take care of it. It might well be that you wouldn't want a Governor to succeed himself. Our present Constitution prohibits that, but this goes further than that. This goes further to the extent that any man who has ever occupied the office of Governor can never, either eight, twelve, sixteen or twenty years later, ever occupy that office again. We feel that is bad.

We are opposed to Article IV, Section II, which provides that the Legislature shall be able to override the Governor's veto by a majority vote except where a veto concerns a matter of appropriations. We feel that if it requires a two-thirds' vote to override the Governor on a veto of an item in the appropriations bill, the health, the safety, the welfare, and the education of the children in this State require the same consideration. Why the distinction? If the Governor eliminates a five-dollar appropriation, a five-dollar item in the appropriation bill, it stands unless you can get a two-thirds' vote. I say to you that if the Governor or the Legislature by enacting legislation along Civil Service lines could possibly undermine Civil Service, could do more damage than a five-dollar item in the appropriation bill, and we are asking that to be changed to make a two-thirds' vote required to override the Governor's veto on any legislation.

We are opposed to Paragraph 6 of Section II for the reasons previously stated by other speakers, in that it gives to the Governor the right to fire a man, discharge a man, without affording that man the opportunity to be heard, to be confronted with witnesses, the right to cross-examine witnesses against him. It puts the Governor in a dual role of prosecutor and judge, and that is certainly not the American way of doing.

We further say that if you are going to make misfeasance and malfeasance subject to dismissal, why not also make nonfeasance? It is certainly conceivable that a public official who wilfully re-

fuses to perform his duties in any respect whatsoever can do much more damage to the State than an officer who performs his duties but performs them in an unlawful way. We say that feature is bad.

We are opposed to Section III, setting up nine administrative bureaus or departments, because civil service is not given an individual status. It is tied up with education and we feel and we contend that there is no such inter-relation between civil service and education as to put them under the same department head. We can conceive of an outstanding educator being at the head of the State Department of Education, and I believe we have had them for the past twenty-five years to my knowledge, but that wouldn't make that man an expert in civil service, and on the other hand, if you pick a man for the head of the department because he is an expert on civil service, that wouldn't ipso facto make him qualified to head the educational department of the State, and for that reason we are opposed to it. We feel that we are entitled to a separate department. We feel education is entitled to a separate department.

We oppose, finally, Paragraph 6, Section II. It gives the Governor power to remove, at his pleasure, the heads of these departments. We say that is too much power to give to any man. We say that you would not get, and I am sure you wouldn't, to head the Department of Education, any outstanding man to take a job on those terms. First of all, to get him he would have to sever his connections with some well known institution or some well paying position, and any man that would take that position, who would sever his connections and would come in to the State of New Jersey to head our department, knowing his head was subject to being knocked off any time he disagreed with the Governor —I would say the mere fact he would take the job would disqualify him from being entitled to that position, and the same goes with civil service. We don't want any man at the head of civil service who holds his job subject to the whim of the Governor, because it is conceivable we would have a Governor who wouldn't believe in the spirit of the civil service law, and the head of the civil service in this State, if he valued his job, would be but a yes-man for the Governor, and we oppose that feature.

As I said before, I intended to make some rather extended remarks, but I think the field has been well covered. I think I have stated our position. We are opposed to those features I have just mentioned, for the reasons I have just given and for the reasons other speakers who have preceded me and who have spoken against them have also given.

MR. SCHROEDER: At this time we will hear from Mr. Morris Isserman, representing the State C.I.O.

MR. ISSERMAN: Mr. Chairman, I shall be very brief. I would like to discuss some of the matters which we believe require modification. We are opposed to Section I, Paragraph 3, which limits the term of the Governor to one term. We are not concerned too much about the possibility of a Governor creating a strong political party and personal following which would perpetuate him in office. I believe experience in America has shown that a good Governor ought to be re-elected and that the people generally would choose properly in electing the Governors of their State, and therefore we would recomn end the term remain at four years but that he be permitted to succeed himself.

We suggest that Paragraph 6 of Section I be changed and that there be provided therein either the provisions under the old Constitution, which allows the President of the Senate to act in the failure or inability of the Governor, or that there be created a new office, that of Lieutenant Governor, who shall act in place of and instead of the Governor during his absence from the State.

As to Section II, Paragraph 4, I cannot understand why financial matters are matters only which would require that the Governor's veto be overridden by a two-thirds' vote of both houses. We believe that other matters of great importance, matters which may affect human interests, matters which may affect good health and welfare of the citizens of this State—when bills of that type are presented to the Governor, and if in his discretion he finds that such bills are not to the best interest of the State, it should require a vote of two-thirds of both houses of the Legislature in order to override his veto. Apparently, the framers of this document have picked out, for some reason, matters of appropriation only. I would like to point out that we believe that these others are of sufficient importance, perhaps of far greater importance, than mere matters of appropriation, and that the veto of the Governor, who after all is at the present time and under this new Constitution the only person elected on a statewide basis, should have great weight and power.

The next section we would like to see modified is Section III, Paragraph 1. We agree with the speakers who have suggested that the Department of Education, because of its extreme importance, ought not to be lumped with any other department, and we have consistently advocated, even at the present time, the passage of a law by the Legislature, creating, if you want to, another commission among the ninety odd commissions, and that is a Consumers Interest Division or Commission, a commission which will devote itself to the interest of the poor consuming public, because

after all, they have no representation and no voice at all in the State Government, and no one to talk for them. This has been proven at hearings before the Milk Control Board, when the consumer interests were not, and never have been, properly represented, and we believe that if this new setup comes into effect. there should be a special Consumers Interest Commission.

These, I believe, are our principal objections to the document as it stands today. We could go on. There is phraseology and language which I believe that this Commission will eventually get to and correct before it is submitted to the people, but principally these are the points we want to make as to modification.

MR. SCHROEDER: The next speaker will be Mr. R. C. McManus of the Spokesman Magazine.

MR. MCMANUS: Mr. Chairman and Members of the Committee:

Before I come to this particular article, I would like to read this into the record. Reference was made at the hearing last week to the fact that the State Bar Association had been opposed to this proposed draft of the Constitution, and I would like to read into the record an editorial from the New Jersey Law Journal of Thursday, May 28, 1942:

> "The action of the State Bar Association in urging rejection of the proposed revised Constitution before its membership had any sort of an opportunity to study its merits constitutes a new low in the already sorry record of that organization. Consider the following chronology:
>
> November 5, 1940, Governor Edison elected, stressed need for revision of State Constitution and pledged to work for a constitutional convention.
>
> January 11, 1941, at mid-winter meeting, State Bar Association approves in principle convocation of a constitutional convention and authorizes appointment of a committee to offer assistance to the Governor in this effort.
>
> May 31, 1941, Governor Edison, guest of honor of the New Jersey State Bar Association at its annual meeting, spoke on constitutional revision, enthusiastically applauded.
>
> June 1941, Governor Edison breaks with Mayor Hague.
>
> May 14, 1942, Legislative Commission presents proposed revised Constitution to Governor and Legislature.
>
> May 20, 1942, Mayor Hague announces opposition to proposed revision.

> May 23, 1942, State Bar Association urges rejection of the revised Constitution, accompanied by some excoriating vituperation against Governor Edison.
>
> No charges of the association being 'controlled' or being used as a political football can be more persuasive than this record in cold print. As a result of this action a valiant few members have been chagrined but they can walk with heads high. Many who should have known better will feel ashamed at their lack of courage. The shameless cynics and their sycophants will chortle with glee—the boys did it again! There was no discussion of the merits of the revision; no comparison between the old and new; no discussion of text; no reasoned, logical or lawyerlike consideration of a most important document; nothing but a blitzkrieg with misrepresentations, half-truths, and political skullduggery.
>
> President William J. Connor has his work cut out for him if he hopes to salvage what once was at least a respectable bar association. He will soon learn, if he does not know it already, that he can expect little help from his official family. The controlling influences of the Association are past masters of both political and bar association chicanery and scheming. To them the State Bar Association is but another instrument of political machination.
>
> Never has the State Bar Association stultified and degraded itself more patently than it did last Saturday at Atlantic City."

Now, on this Article we agree in general with the provision which makes the executive a more effective office, making it more possible to run it in a businesslike way. We were surprised to hear that the manufacturers do not expect efficiency in government, but we want it ourselves.

We are in sympathy with those who ask that the Governor should be allowed to succeed himself and that a two-thirds veto should be extended to all legislation as well as fiscal legislation.

On the question of Article IV, Section III, which is the one that divides up the various departments, we found a great deal of excitement about that among existing departments. Some of it no doubt springs from an ordinary bureaucratic desire to protect themselves; but in our opinion there is merit in much of it and we feel that this Article should be considered and given much more

thought than appears to have been given it up to now. It seems that there is a danger in several cases, perhaps in the Institutions and Agencies, in Agriculture, that something that we have which is good in the State governmental structure may be harmed by this proposed change. We have been discussing the matter with the leaders of agriculture, and as we understand it, their position is somewhat like this—that if this consolidation takes place, the present Department of Agriculture will be like a lot of cats and dogs. Certain other branches of State Government which do not directly concern agriculture would be pushed in there because there is no other place for them to go. The suggestion was made that Fish and Game would be one of those and maybe Horse Racing would be another, and it might turn out that the Secretary of Agriculture would be a horse racing man instead of a man who knew anything about dairying or growing potatoes. We think there is merit in that position. Another feeling that has been expressed to us is that the present Department of Agriculture has been built up on a continuing policy. It has represented the very best interests of the agricultural people of the State, scientifically and every other way. I have travelled around the country and have seen some other agricultural administrations and I agree with them. I think men like Bill Allen and Dean Martin over in New Brunswick and a great many others are outstanding men in their field. I don't think the State wants to do anything that will harm the first-class public instrument which we now have. I am sure, I am convinced as a resident of an agricultural county and having talked with my neighbors and newspaper editors and official spokesmen for the farm interests, that agriculture doesn't want to be represented as obstructionists. They don't want to say we won't take a new Constitution because such and such directly affects agriculture, but I think that they are entitled to have a hearing on their objections to the Proposal.

Now I would like to make two tentative suggestions to meet the objections that I have cited. One of them is that there should be a Department of Recreation which would put the horse racing and Secretary of Agriculture where he belongs and that would include Fish and Game, and it would make provision for what we hope will be a park building program after the present war. That would be a plenty big enough job for any individual administrator. The other suggestion—and I stress that is all it is—is that the Secretary of Agriculture who is to become a member of the Governor's cabinet be chosen from among a group of three or five or seven, perhaps, nominees offered by the County Boards of Agriculture; that the men be chosen so that there is some assurance that the man eventually chosen will be the kind of

man who is a spokesman and a man of knowledge of agricultural problems. I thank you very much.

MR. SCHROEDER: Are there any other individuals who desire to speak in favor of the modification of Article IV? If not, we will close the public hearing and the next public hearing will be one week from today, July 29, at 10:30 a.m., and the Article will be Article V entitled "Judicial"

(Adjournment.)

BRIEFS AND COMMUNICATIONS SUBMITTED AT THIS SESSION.

BRIEF PRESENTED BY NEW JERSEY FARM BUREAU AND NEW JERSEY STATE GRANGE TO THE JOINT LEGISLATIVE COMMITTEE TO STUDY THE REPORT OF THE COMMITTEE ON REVISION OF THE NEW JERSEY CONSTITUTION, TRENTON, NEW JERSEY, JULY 22, 1942.

To the Members of the Joint Legislative Committee:

Considering the summary on Page 19 of the Commission's Report, (pp. 918-919) Paragraphs 1, 2, 3 are in accordance with formal recommendations of our organizations and, of course, have our approval. Likewise, we desire to endorse Paragraphs 4, 9, 10, 11. Paragraphs 5, 6, 7, 8 we recognize merit in their purpose, but must criticize methods for several reasons. First, the inclusion of "Agriculture" as one of the departments of State Government is wrong. The Board, or Department, of Agriculture is neither an administrative nor an executive agency. It is not a State agency of any kind. It is a private, independent corporation. It bears no greater relationship to the State than any other private corporation organized to render some specific service of a public nature, and for which the State contributes to its support. It has a distinctive name, a common seal, a private membership, representative government, continued succession—all the attributes of a corporate entity. Private corporations for public service are numerous, they take on various forms, some being more closely related to the State than others. But all independent of the State. Among these, we now have the Port Authority, the several Bridge Commissions of one type. There are the several agricultural societies which supply the membership of the State Board of Agriculture representing another type; and there are Voluntary Firemen's Associations, exempt Firemen's Associations, Detective Associations of a third type; Drainage corporations, Civic Improvement Societies of still another type. Or is it intended to include all such corporations in the regrouping? If so, they should be advised of it. All are private corporations, composed of private individuals, privately designated and organized by legislative enactment for the purpose of rendering service of a public nature. In the case of agriculture, to change this time-honored form or organization in New Jersey would be to work a definite injury to agriculturists, one which it is our duty to say they would resent with all their energy.

But there is also general objection to a part of the sixth paragraph. It is that part which proposes to include the several bureaus as a State function. The Departments of Law, Public Works, State, Taxation and Finance are purely departments of State Government and severally may include all offices, boards,

etc., within their scope. But, Social Service, Labor, Education, Commerce and other administrative or legislative bureaus generally in an ideal structure should not be included. We expressed our opinion of the administrative or legislative agencies last week. They are in substance corporate organizations of the State. In States of free people, they should have corporate structures similar to that of the State itself. Furthermore, the bureaus are as much a legislative as an executive attribute of the State. Cannot we now seriously undertake to solve this problem in the light of experience, rather than to shove it still further into politics? As for Social Service and Education, there seems no present way to segregate them from politics, but should not our efforts here also be to keep these agencies as far from spoilsmen as possible?

Regarding the fifth and particularly the eighth paragraphs, whether State officials should serve only at the pleasure of the Governor, we have grave doubts. Unquestionably, there is merit in the suggestion according to the character and purpose of the executive. If there could be assurance of continuation in office of men of the character of the present Governor, there would be no doubt, but there can be no such assurance and so the balance of power must be maintained in some way. Even so, so far as the purely executive officers are concerned, perhaps orderly constitutional procedure indicates that the Governor should have removal power. But not so with the personnel of the bureaus and other quasi-governmental agencies. They are in an entirely different class. They are not a part of the State proper. The State should not be burdened with them. Let us not now undertake to tie them more closely to the State, but let us begin now to plan for their greater efficiency through segregation. We believe there are many ways in which efficiency through such processes may be accomplished.

Respectfully submitted,

NEW JERSEY FARM BUREAU
H. Earl Probst, Secretary

NEW JERSEY STATE GRANGE
D. H. Agans, Master

July 28, 1942

HON. LLOYD SCHROEDER, Chairman
Special Legislative Committee on the Revision of the Constitution
State House
Trenton, New Jersey

Dear Senator Schroeder:

On behalf of the professional licensing and examining boards which include the State Board of Medical Examiners, State Board of Registration and Examination in Dentistry, State Board of Professional Engineers and Land Surveyors, State Board of Architects, State Board of Veterinary Medical Examiners, State Board of Public Accountants, State Board of Embalmers and Funeral Directors, State Board of Examiners of Nurses, State Board of Optometrists, State Board of Commissioners of Pilotage, and the State Board of Pharmacy, the enclosed statement is submitted for the consideration of the Committee which is now conducting hearings on the Report of the Commission on Revision of the New Jersey Constitution.

We respectfully request that notice be taken of the enclosed statement in connection with Article IV, Section III, of the proposed Constitution.

Thanking you for any consideration that may be given to the suggestions offered and assuring you of our cooperation, we are

Respectfully yours,

ROBERT P. FISCHELIS, Secretary
The Board of Pharmacy of the State of New Jersey

STATEMENT SUBMITTED ON BEHALF OF THE PROFESSIONAL EXAMINING AND LICENSING BOARDS WITH REFERENCE TO ARTICLE IV OF THE PROPOSED REVISION OF THE CONSTITUTION OF THE STATE OF NEW JERSEY.

To the Special Committee on Revision of Constitution:

Pursuant to the privilege extended of submitting a statement suggesting possible modification of the proposal to revise the Constitution of the State of New Jersey we herewith submit the following:

Under Article IV of the proposed revision it is provided that "All administrative and executive offices, boards, bureaus, commissions, and departments of the State Government shall be placed by the Governor within nine administrative departments as follows: Agriculture, Commerce, Education and Civil Service

Labor, Law, Public Works, Social Welfare, State, and Taxation and Finance."

It is further provided that "The functions, powers and duties of executive and administrative offices and agencies may be reallocated by the Governor within and among the nine civil departments, but the Legislature may veto any executive order of allocation within thirty days after the order is transmitted to both houses."

Ever since the establishment of the professional examining and licensing boards in the State of New Jersey, they have been under direct supervision of the Governor and he has appointed the members of these boards without the advice or consent of the Senate and he has received annual reports from these boards and has had the power to remove any member of the board from office for cause. In this division of the State's Government, at least, there has been complete executive authority and control without interference from the Legislature. The history of the operation of these boards has been a credit to administrative procedure in the State of New Jersey. They have not only been self-supporting financially but they have carried on their functions in a manner to assure to the people of New Jersey a high quality of professional service and the professional standards have been maintained at a high degree of efficiency. Many neighboring States are envious of the high quality of the professional standards and their enforcement which exist in our State.

It would seem, therefore, that there is no occasion for a change in the executive direction and administrative supervision of the professional examining and licensing boards. To place them under any other administrative department would rob them of the independence which is so essential to the proper discharge of their duties. Unlike many other departments of the State Government which involve routine administrative procedures, the functions of the professional examining and licensing boards are concerned with the qualifications of professional personnel which in many instances affect the lives of our people and in all instances seriously affect their welfare. We believe, therefore, that a system of administration, which has been tried and has been found so uniformly successful and of no material expense to the State as a whole, should be continued.

The history of professional examining and licensing boards in the States where they have been subordinated to other departments or bureaus is one of added expense to the taxpayer and less efficient law enforcement because of the inevitable effect of political considerations.

We have been informed that the Commission on the Revision of the Constitution had no intention of changing the present status

of the professional examining and licensing boards and it would not be in the public interest to sacrifice a system which has been found workable and efficient. We trust therefore that in the proposed revision of the Constitution and subsequent executive or legislative action seeking to make the revision effective, there will be no change in the status of the professional examining and licensing boards.

Respectfully submitted,

State Board of Medical Examiners
State Board of Registration and Examination in Dentistry
State Board of Professional Engineers and Land Surveyors
State Board of Architects
State Board of Embalmers and Funeral Directors
State Board of Examiners of Nurses
State Board of Optometrists
State Board of Public Accountants
State Board of Veterinary Medical Examiners
State Board of Commissioners of Pilotage
State Board of Pharmacy

PUBLIC HEARING

July 29, 1942

Morning Session

on

Proposed Revision of the New Jersey Constitution
Article V, "Judicial"

The Joint Legislative Committee appointed pursuant to Senate Concurrent Resolution No. 19, passed June 15, 1942, convened in the Assembly Chamber in the State House at Trenton on Wednesday, July 29, 1942, at ten-thirty o'clock A. M., for the purpose of holding a Public Hearing in connection with the Proposed Revision of the New Jersey Constitution (1942) pursuant to announcement previously made.

The following members of the Joint Committee were present: Hon. Lloyd L. Schroeder (presiding), Hon. H. Rivington Pyne, Hon. Edward J. O'Mara, Hon. Mansfield G. Amlicke, Hon. Dominic A. Cavicchia, Hon. Vincent S. Hanemann and Hon. Mildred A. Preen.

The Chairman opened the hearing and the hearing proceeded as follows:

MR. O'MARA: The first speaker for the proponents will be Commissioner Miller.

MR. MILLER: As we meet in this Assembly Chamber to consider the judiciary article as contained in the Report of the Commission on Revision of the New Jersey Constitution, it may not be amiss to recall that at noon today in Washington the Supreme Court of the United States has been summoned by Chief Justice Stone to meet in special term to receive petitions for habeas corpus writs in behalf of certain German saboteurs, now on trial before a military commission appointed by President Roosevelt.

It is destined to be a history-making term of the Supreme Court. But once before in our history has such a question been raised before our highest court. That was during the Civil War in the celebrated case of Ex-Parte Milligan.

This action by the Supreme Court today dramatizes, as no other single act of our time, the contrast between Anglo-Saxon justice with its meticulous concern for the civil rights of the individual and Axis justice with its total disregard for such rights. Here in America we give the accused "due process" in the belief that "by giving exact justice to the guilty and depraved, we guarantee

justice to the innocent." Such an action should also make us more proud of our heritage and more conscious of the fact that under our system, the ultimate guardian of our constitutional liberty is an impartial and independent judiciary.

"The effort to establish and maintain an independent and uncontrolled judiciary long antedated the adoption of our Federal Constitution. The great desire to have a place in Government where the humblest citizen might seek justice with no fear that his cause would suffer from political power was interwoven with the long struggle for the Anglo-Saxon race" said the late Senator William E. Borah, a distinguished champion of Constitutional Government.

More than a century ago Thomas Jefferson observed that "the execution of the laws is more important than the making them." It is certainly important to have a Legislature which can be counted on to make wise laws in accordance with the best interests and the settled convictions of the people. But the best law can be twisted in the execution. In our system the execution of the laws is the joint responsibility of the so-called executive and judicial departments. Indeed the very essence of the American doctrine of the separation of powers is "its insistence upon the inherent distinction between lawmaking and law interpreting." To the executive branch is entrusted the more active phase of law enforcement —the ferreting out of violations, the prosecution of offenders, the promulgation of administrative rules and police regulations, and the performance of such services and the execution of such legal mandates as do not require an interpretation or an order from a court. To the judicial branch is entrusted the duty of interpreting the laws and applying them to particular cases, as well as the high responsibility of enforcing the Constitution and protecting the essential rights and liberties of the citizen, even against the other branches of the Government.

The people, therefore, think of the courts as the ultimate bulwark, not only of fair dealing in controversies between man and man and between the individual and Government, but also of the tradition of personal liberty and orderly Government according to law which distinguishes our system from others with which we are now in conflict. Governor Edison, therefore, spoke advisedly when he said in his inaugural address that "For the good of our democracy the people must have unimpaired faith in the sanctity of the courts and in the impartial administration of justice."

We are proud of the honorable tradition, which is summarized in the phrase "Jersey Justice." No honest man can deny, however, that the phrase has today a somewhat hollow sound to too many Jerseymen. One reason for this is the suspicion that partisan politics plays too prominent a place in the making and confirmation

of judicial appointments. That at least is the popular belief. From this belief it is natural to draw the conclusion that in some courts the issue that is tried may sometimes be not the justice of the cause, but the political or personal affiliations of the clients or their counsel.

As a layman, I do not assert that these suspicions could be supported by an alarming multitude of examples. Whether they could be or not, the fact that such suspicions are so prevalent is very dangerous, in the present plight of democracy. This being the case, I believe that I can speak for the great mass of our people, including the members of the New Jersey Committee on Constitutional Convention, in expressing the hope that a revised Constitution will provide a method for appointing and retaining judges, which will reduce the reasons for such suspicions. It seems to me that the revision proposed by Senator Hendrickson's Commission would accomplish this. First, by setting high professional qualifications for appointees; second, by providing that all Constitutional Courts be composed of full-time judges, unencumbered by divided interests and loyalties; third, by eliminating strictly county appointments and requiring definite public action by the Senate on nominees within thirty days, thus reducing the pressure for political bargaining between the Governor and local political organizations; and fourth, by extending the terms of judges, after a trial period, to life, subject to retirement at the age of seventy. In spite of the generally good example of our Federal judiciary, there are some who doubt the wisdom of life tenure for State judges. It may be that a compromise might be reached on a term of twelve or fourteen years, which should be long enough to give a good judge a feeling of independence, without saddling the State with a mediocre one until he retired of old age. At any rate, I think most people will agree that the present five, six and seven year terms are too short.

Current doubts about Jersey justice are not due entirely to the suspicion that politics may play too big a part in the administration of justice. What Governor Edison has mildly called "an extremely confusing system of courts" accentuates every other defect, real or imagined, in the judicial process. We must never forget that ours is supposed to be a people's Government. It is important, therefore, that the Government in all its parts be as understandable to the people as possible. As I am not a member of the New Jersey Bar, perhaps it is appropriate for me to summon as witness one of the State's most distinguished jurists, who once described the New Jersey Court system as "the most antiquated and intricate that exists in any considerable community of English speaking people." Mr. Charles Hartshorne, who wrote these words about forty years ago, went on to point out that this system "had been

brought from England by our colonial forefathers . . . and worked into a shape satisfactory to the needs of a rural community of 18th century colonists," and he likened the system to "an 18th century provincial mill built upon an English model of the middle ages."

This may all be as Mr. Hartshorne said "very quaint and picturesque" indeed, but frankly, the best informed laymen do not understand it. When a litigant finds himself in the wrong court, or discovers that he must go to two courts in order to complete the settlement of a single case, he is sure that there is something wrong. He wonders if this "extremely confusing system of courts" is really organized for his benefit or for the benefit of the same interests which he believes sometimes influence the selection of judges. Be that as it may, he knows that it is not in his interest to have a case drag on for months, and even years, which could be disposed of in a few weeks in a State with a more modern system.

I believe that the average citizen would be very much pleased with the judicial system proposed by the Revision Commission. He would be particularly relieved to know: (1) that he could not inadvertently find himself in the wrong court; (2) that he would not have to go to more than one court for the complete disposition of his case; (3) that his case would in all probability be heard by a judge especially trained to deal expertly with it; (4) that he would enjoy a constitutional right to one appeal and the conditional right to a second appeal, but that there would be no danger of his opponent's protracting the proceedings and piling up expense by still another appeal; (5) that he would not find the courts so congested with earlier cases that he might have to wait months before his own matter was brought to trial, and still more months after argument before a decision was handed down.

It would also please the average citizen to know that the proposed system would be able to provide these benefits at the least possible cost to the State. This would be achieved by virtue of the administrative supervision of the whole court system by the Chief Justice and the right of the Governor on advice of the Chief Justice to appoint special terms of the Supreme Court or to appoint temporary justices of the Superior Court.

Time is money, particularly when you are involved in litigation. Time also may mean the difference between the just and the unjust conclusion of a legal controversy. Court delay sometimes discourages a citizen from pursuing a just cause. This is known to the unscrupulous, and results in the lowering of business and legal ethics. Many a conscientious business man has discovered that a compromise which is unjust to himself, and therefore against the public interest, is less costly than an attempt to seek full justice at the far end of the legal road. If he does pursue the matter he not only helps to add to the cost of Government but also adds to the cost of doing business. This is bad enough in ordinary times when

the object of both business and Government should be to provide their services at the least cost. It is little short of treason in times like these when all our wealth and all our time must be put to the best possible account for the general good.

Last week I suggested that there was no article in the present Constitution which "bears more clearly the marks of the age that produced it than the executive article." The statement would be equally true of the judiciary article. On the testimony of Mr. Hartshorne, as well as that of Mr. Richard Field (a member of the Convention of 1844) the judiciary article was actually the product of the 18th century. Mr. Field, writing a few years after the convention, attributed the essential features of the existing New Jersey court system to the ordinances of the first royal Governor of New Jersey, Lord Cornbury. All that the Convention of 1844 did was to separate the office of Governor from the combined office of Chancellor and Ordinary, transfer the appointment of the high judges from Joint Meeting to the Governor, and substitute the Court of Errors and Appeals for the elected Council as the court of last resort. These changes were important in their way, but they did nothing to simplify the court system. If anything, they tended to complicate it, by reason of the inclusion in the Court of Errors and Appeals of the Chancellor and the Supreme Court Justices. The inclusion of these judges was the result of the feeling that there should certainly be some professional gentlemen in the highest court of the State. However, the members of the Convention seemed to be more afraid of a court composed entirely of lawyers than of one overloaded with laymen. Chief Justice Hornblower was particularly happy in the confidence that the lay judges would be selected from among "farmers, mechanics and merchants—men of intelligence, experience and character." No one seemed to want to see the rights of citizens finally determined by a court entirely "made up of the legal profession . . . too apt to be prejudiced by technicalities instead of reason and law," to quote another lawyer member of the Convention, Mr. Ryerson. Nothing could give a much better impression of the difference between 1844 and 1942 than the pride which the men of 1844 felt in their peculiar handiwork, the Court of Errors and Appeals. We are as anxious as they to have "intelligence, experience and character" on the bench; but we have come to realize that the administration of justice in the modern world requires technical competence as well. Furthermore we know that a high court of 16 members is not twice as efficient as one of 7 or 8; and we know that the volume of judicial business is entirely too great for a court of appeals composed mainly of judges with other full time duties.

Surely there is no boon for which the people of New Jersey would be more grateful than a court system devised to meet the needs of the 20th century, rather than the needs of the 18th

century. The day has gone by when people are favorably impressed by a system just because it is either complicated or old.

Perhaps in a simpler, more leisurely age, many of us might have agreed with Sir Leicester Deadlock of Dickens "Bleak House," that we had "no objection to an interminable suit in chancery," or in any other court. As Dickens reported Sir Leicester's attitude: "It is a slow, expensive, British, constitutional kind of thing . . . but he regards the Court of Chancery, even if it should involve an occasional delay of justice and a trifling amount of confusion, as a something, devised in conjunction with a variety of other somethings, by the perfection of human wisdom for the eternal settlement (humanly speaking) of everything. And he is upon the whole of a fixed opinion that to give the sanction of his countenance to any complaints respecting it, would be to encourage some person in the lower classes to rise up somewhere . . . like Watt Tyler."

Some years later, England modernized her court system, without any uprising from Watt Tyler or anybody else. We may well take courage from that example, and provide ourselves with a more economical, speedy, and responsible administration of Jersey justice.

MR. SCHROEDER: Mr. Paul.

MR. PAUL: Mr. Chairman and members of the Committee: I would like to call first on Mr. Walter Beyer, speaking for himself and for Mr. Charles Sumner Moore, former Prosecutor of Atlantic County.

MR. BEYER: Gentlemen: Mr. Moore has asked me to read this memorandum. He is a member of the Atlantic County Bar, the New Jersey State Bar, and has been interested in civic and State affairs for a number of years. Due to an illness, serious illness, in his family, he could not be here in person.

> "The writer of this memo has been in favor of revising that part of our State Constitution that deals with the administration of justice for over thirty years. He, with others, introduced a resolution at a meeting of our State Bar Association thirty-one years ago last month, calling for a Constitutional Convention for that purpose. After a spirited debate it was defeated by the lawyers attending that Convention by a close vote. The next day, some of the leaders of the Bar of this State brought forward a resolution providing for a committee to be appointed to consider legislation modernizing the practice in the courts of this State. The State Bar Association then and there adopted that resolution and the final result was the so-called Practice Act of the year 1912.
>
> Personally, the writer had never thought that any adequate modernization of the Constitution of this State could be obtained short of a constitutional convention. I was most agreeably surprised and very much pleased when the Hendrickson Commission on Revision reported the results of its efforts to the Governor, the Legislature and the people of New Jersey in May last. I wish here and now to commend these gentlemen for the exceedingly able job of statesmanship that they have performed for us.

THE ADMINSTRATION OF JUSTICE IN NEW JERSEY.

> I have had experience as a lawyer in the conduct of cases in the civil, equity and criminal courts of this State. I have also had a considerable business experience in recent years. One of the most serious criticisms that is leveled at the administration of justice in this State is the long time it takes to obtain final decision in a case. Justice delayed is very often justice denied. This is particularly true with litigants who lack financial means. Article V of the proposed new Constitution shows a determined effort on the part of the Commission to provide a remedy for this defect in our present system. In the first place, there is a great simplification of the courts available for the administration of justice. It is a most flexible and workable system. The Superior Court, which is the really big court, with original jurisdiction in all cases arising under the civil, equity and criminal laws, must meet and dispense justice in each county where the litigants and witnesses reside. The justices of this court have full power to hear and finally determine any case that comes before them. There is an appeal to either of two Appellate Divisions of this Superior Court that are designated by the Chief Justice of the Supreme Court for that purpose. There is no appeal from these Appellate Divisions of the Superior Court to the Supreme Court as a matter of right. The Supreme Court is a Supreme Court in fact as well as in name, which is some gain in itself over our present setup. Appeals to the Supreme Court can only be taken in certain cases and under certain circumstances. Both Appellate Courts, to wit: the Supreme Court and the two Appeals Divisions of the Superior Court, are required to sit and hold ten monthly terms each year. This will tremendously expedite appeals. The Supreme Court must hear any appeal within two months after the appeal is perfected, and must decide any case within two months after it has been argued or submitted. There is power reposed in the Governor to increase temporarily by appointment of special justices should the business of the Supreme Court become congested and the justices thereof unable to decide cases within the time limited by the Constitution. The Chief

Justice of the Supreme Court is granted large powers in supervision of the work of all the courts of the State. He is required to appoint an executive director of the courts to assist him in the administration of justice. He also has power to assign the Superior Court Justices to various counties where the work is congested in order that the same may be kept up to date. In fact, the whole judicial setup is so designed in the proposed Constitution as to prevent the long-suffering public from complaining about the law's delays.

Article V is in harmony as a whole with the present setup of the federal courts in this country. During the time when the late Chief Justice Taft presided over the Supreme Court of the United States at Washington, he inaugurated the movement that has resulted in more or less of a complete reform and revision of the practice in our federal courts. Chief Justice Taft felt very keenly this criticism of the law's delays in the final decision of cases.

The Hendrickson Commission has very wisely, in my opinion, adopted the federal plan for the tenure of judges for the proposed new Supreme Court during good behaviour. I have always been an advocate of the method of the selection of judges by executive appointment. This tenure will likewise apply to the Superior Court justices should they be reappointed when their terms expire after the adoption of the new Constitution. This principle will work in favor of an independent judiciary where men will be willing to devote their lives and talents to judicial office. There is ample provision in this new Constitution for getting rid of them should they not measure up to proper standards of good behaviour. Neither justices nor judges of the inferior courts that shall be created by the Legislature can hold any other office or engage in any other business including the practice of law.

I have only had time to cover some of the highlights with respect to this judiciary article. After a careful reading and consideration of it, I feel justified in commending it to the favorable vote of our Legislature.

Respectfully submitted,

CHARLES SUMNER MOORE."

Speaking for myself, I may say, after listening to Mr. Miller, I heartily endorse all that he has said. I believe that in order to cure the delays in justice and the expensive litigation that is required of litigants, we should revise our courts as proposed by this revision.

MR. SCHROEDER: Mr. Paul.

MR. PAUL: I would like to call next, Mr. Chairman, on the State Comptroller, Mr. Homer C. Zink.

MR. ZINK: The members of the Committee have been long-suffering during this hot weather. I am going to speak very briefly, because I remember the advice given by the old minister to the young minister when he said no souls are saved after the first five minutes of prayer.

As a lawyer with some training and experience in business before being admitted to the Bar, I am impressed by the business-like setup proposed in Article V of the new Constitution. Today it is important that we have one complete court system with one judicial officer in charge, such as a Chief Justice, aided by an executive director or business manager, if you please. This should appeal to taxpayers everywhere. It is important, too, that there be a merger of law and equity, that every controversy "be completely determined by any justice before whom it is heard," and that the appellate court "exercise all jurisdiction necessary to do full justice." An Appellate Court consisting of seven justices is as near the right size as can be suggested for our needs in this State, revolutionary though that idea may seem to those of us who have long been accustomed to a Court of Errors having more than twice that many members.

As a former Senator, I warmly commend the proposal to have justices hold office during good behaviour. I can never forget my feeling of bafflement and disgust when I heard a fellow Senator boast of forcing a Supreme Court Justice to come, hat in hand, begging for reappointment. The justice in question had had the temerity to decide adversely to the Senator a case in which the latter was personally interested. That sort of thing could not happen with life tenure of judges.

I do not say that the article dealing with the judicial branch is perfect in every respect. For example, I am strongly opposed to the provision that no "judge of any court shall continue in office after he has attained the age of seventy years." Believe me, at the age of sixty, one is disposed to look with ever increasing respect at men of seventy who are doing a good job in any field, including the judicial of course. We have such judges in New Jersey, and they should not be forced to retire by reason of age alone.

Then, I believe we should integrate into the new, carefully supervised system all our courts, including district courts and police courts. It is true that the new Constitution suggests such integration, but a mere suggestion may not be enough.

The provisions of the new Constitution relating to the judicial system are such a vast improvement over our present system that

I accept them, with some criticism, but still with genuine and almost complete satisfaction.

Today, when even history is being re-written, we are surely justified in re-writing our State Constitution, at the same time strengthening the very courts which must sustain that Constitution.

MR. PAUL: Mr. Russell Watson, representing the New Jersey Chamber of Commerce.

MR. WATSON: Mr. Chairman, members of the Committee: We approach the discussion of Article V with some confidence, because we find ourselves in agreement, in principle, with at least six members of this Committee. The Republican platform adopted on September 30, 1941, contains the following provision respecting the revision of the judicial article of the Constitution:

> The revision of Article VI (the judiciary) to the end that our judicial system may be structurally modernized; that the confusion and multiplicity of our inferior courts may be reduced; that our judges be prohibited from practicing law; and that the processes of justice be made quicker, less costly and more effective.

We think that the enactment, the adoption, of Article V would redeem this pledge fully and completely. If, however, the Republican majority in the Legislature thinks that the objectives outlined in this platform pledge may be better accomplished by other phraseology, by modifications of Article V as proposed by the Commission, then we would heartily favor any such modification or additions. In any event, however, we have no doubt that the performance of the Republican majority will be commensurate with the pledge.

We would like to examine this Article V in the light of the objectives sought by this platform provision of the Republican Party and—I am going to violate Comptroller Zink's principle of brevity and speak a little more at length than I have before at these hearings—let me say at the outset that, speaking for the State Chamber of Commerce, we shall not analyze, section by section, the paragraphs of Article V. It may well be that in some details some of these sections should be modified this way or that. We are not concerned with that. That may well rest in the wisdom of this Committee and of the Legislature, but we are concerned with, and earnestly in favor of, the fundamental principles of this Article V. These fundamental principles are four: First, the reconstruction of our court system; second, a reduction of the number of appeals; third, the merger of law and equity so that each case shall be decided by the judge who hears it; and finally, an improved administrative system.

First, the objectives of Article V are to simplify the judicial system by reconstructing it, to avoid conflicting judicial duties,

to provide a responsible administrative head of a unified court system, to insure the selection of experienced and independent judges, and to provide for speedy trials and prompt appeals. Can it be denied, by any "Chance," that these are wholesome objectives?

In brief, and omitting details which would unduly lengthen this statement, Article V would create a Supreme Court consisting of a Chief Justice and six associate justices, who would be appointed by the Governor with the advice and consent of the Senate, who would serve in no other court, who would hold office during good behaviour. It would replace the present Court of Errors and Appeals. Its jurisdiction would be solely appellate.

Below the Supreme Court would be the Superior Court, consisting of a number of justices to be set by the Legislature, not less than twenty-five, which would be a statewide court of trial jurisdiction in both law and equity. It would replace the present Supreme Court, the Court of Chancery, the Prerogative Court, the Circuit Court, the Orphans' Courts, the Common Pleas Courts, the Courts of Oyer and Terminer, the Courts of Special Sessions, and the Courts of Quarter Sessions. That is a long list—one court in place of all those.

Below the Superior Court would be such inferior courts corresponding to our present district courts as the Legislature might see fit to create.

The Superior Court would be divided into two sections, a law section to exercise civil, criminal and matrimonial jurisdiction, and an equity and probate section to exercise all other jurisdiction of the court. Each section, for convenience and expedition of business, would be divided into such parts as might be decided by the Supreme Court by rule.

Interposed between the Superior Court and the Supreme Court would be at least two appellate divisions—there might be more—consisting of three justices, each appointed from the justices of the Superior Court. These appellate divisions would decide appeals from the Superior Court and such appeals from these inferior courts as the Legislature might provide. Appeals from the Superior Court in capital cases and in cases involving constitutional questions would go directly to the Supreme Court, not through the appellate divisions. Appeals from the appellate divisions to the Supreme Court would lie in three sets of circumstances; one in case of a divided court in the appellate division; one on certification by the appellate division itself; and third, on certification by the Supreme Court itself, so that cases of exceptional interest or moment, in case of conflicting decisions of like cases in which the law should be settled, would by certificate go to the Supreme Court, but as you see, in the vast majority of cases there would be only one appeal.

What we are about to say is in no wise criticism of our judges. Our present court system is an anachronism. It is unnecessarily

complex; it has overlapping and concurrent jurisdiction; it is cumbersome and unwieldy. These overlapping and concurrent jurisdictions give rise to questions that are solely jurisdictional, questions of procedure, questions which have nothing to do with substantive justice, nothing to do with the merits of the controversy. All our courts lack an administrative head which could properly regulate and oversee the work of all the courts so that it would function as one unified system, efficiently and productively. Our court system is a complicated, archaic and creaking machine. It is beyond the power of any group of judges to make it work efficiently and expeditiously. It is to be marveled they have made it work so well.

First, consider the present Court of Errors and Appeals. It consists of the Chancellor, the Chief Justice, eight Supreme Court Justices, and six lay judges. All of these judges sit in other courts. The Supreme Court Justices not only sit in the Court of Errors and Appeals; they sit in an intermediate appellate court and also have the responsibilities and duties of presiding Justices of the twenty-one counties. The Chancellor is the head of the Court of Chancery. The lay judges sit in other courts. The fact is, members of the Committee, our Court of Errors and Appeals judges are part-time judges. They should not be part-time judges. The work of the court of last resort of the State of New Jersey, a highly industralized State with a population of four million people, comprising at its two ends two of the largest metropolitan areas in the world, is certainly the work of full-time judges. It is dignified, it is exacting, it requires learning, and it should not be left to the distraction, the inconvenience, the obstruction of part-time work. Therefore, in our judgment, the reduction of the number of judges from sixteen to seven, constituting a court solely of appellate jurisdiction, would be the first step toward fulfilling the pledge that our judicial system be modernized, the confusion and multiplicity of our inferior courts be reduced, and the processes of justice be made quicker, less costly, and more effective.

Next of these four fundamental principles, as we see them, consider the matter of appeals. I have no desire here to be technical; what I have to say will be readily apparent to the members of the Committee who are lawyers. I have attempted to cite concrete illustrations which will mean something to the laymen. Law actions in our Circuit Courts and the Courts of Common Pleas may be appealed by writ to the Supreme Court and thence to the Court of Errors and Appeals—two appeals. Transfer inheritance tax cases are originally decided by the State Tax Commisisoner and then may be reviewed by the Prerogative Court and then by the Supreme Court and then by the Court of Errors and Appeals—three appeals. Ordinary tax assessment cases may be reviewed by the State Board of Tax Appeals and then by the Supreme Court and then by the Court of Errors and Appeals—three appeals. Workmen's compensation cases are originally tried by a Deputy Labor Commissioner, then may be tried de novo in the Court of Common Pleas, and then may be reviewed by the Supreme Court and then by the Court of Errors and Appeals—three appeals. Orphans' Court cases may be appealed to the Prerogative Court and then to the Court of Errors and Appeals. Here is an anomalous situation: Chancery Court decrees are reviewed by the Court of Errors and Appeals, both on law and on the facts. On the other hand, a judgment of the Supreme Court in certiorari will be reviewed by the Court of Errors and Appeals only on the law, not on the facts. Is there any sensible reason why the decision, why the final decree of the Court of Chancery should be reviewed both on the law and the facts while judgments of the Supreme Court should be reviewed only on the law? Here we find the anomaly that a decree of the Court of Chancery is reviewable both on the law and the facts, as I said, while the judgment of the Supreme Court in certiorari is reviewable only on the law and not on the facts.

This is what has grown up through this long time process, which Mr. Miller described so well in his historical review of the growth of our court system: In some cases there is only one appeal, and that only on the law. In some cases there is only one appeal, both on the law and on the facts. In some cases there are two appeals. In some cases there are three. In some cases appeals may be de novo, in some on the law alone, and in some on the facts alone. It is incredible, it is inexplicable, but it is true.

Under the proposed Article V, as we have said, there will be but one appeal in most cases. An additional appeal would lie only where there is a two-to-one decision in the appellate division or where the question is certified either by the appellate division or by the Supreme Court. The jurisdiction respecting the review of the law and the facts would be uniform. We say, therefore, that the paragraphs of Article V regulating appeals would definitely consummate the pledge of the last Republican convention that our judicial system be structurally modernized and the processes of justice be made quicker, less costly, and more effective.

The third of these fundamental principles is the merger of law and equity, and that is a more controversial subject. It is distinctly stated wisely in this revision that in cases of conflict between law and equity, conflict or variance between law and equity I think the words are, equity shall prevail, but the fundamental object of the provision is that every case shall be decided by the justice, by the court, which hears it, and that certainly is a desirable objective.

Those of us who have been accustomed to separate courts of equity and law by long years of practice are likely to be blinded to the anomalies and defects in the conflicting, concurrent and

overlapping jurisdictions of our Court of Chancery and our law courts, which are productive of inefficiency. Our Court of Chancery has erected a magnificent body of equity law which has been judicially administered by a court of equity judges, many of whom have been and are distinguished by outstanding judicial reputations extending far beyond the borders of our State. The purpose of Article V is to preserve all of this in a unified system. None of it is to be discarded. The justices of the Superior Court would still administer our equity law, and the Chief Justice undoubtedly would utilize fully the learning and skill of our equity judges in his assignments. The revision specifies that in case of conflict or variance between equity and common law, equity shall prevail, but the fundamental virtue of Article V is that every case shall be determined by the justice hearing it. The substantive sides of law and equity would not be changed. They would merely be merged in a single system.

For two or three concrete illustrations: If a land owner brings a suit in the Court of Chancery to restrain repeated and continuing trespasses on his property, the Court of Chancery will issue an injunction only if his title is clear. If the Court of Chancery determines that his title is not clear, it will not issue the injunction until the landowner establishes his title by an action in the court of law. Obviously, whether his title is clear is in many cases an arguable question, so as the Court of Chancery determines that question, "Is it clear? We will issue the injunction." If his title is not clear, it sends him from the court of equity to the court of law to establish his title. All of that would be impossible under Article V. The justice of the Superior Court, the trial justice hearing that case, would decide both the equitable and legal issues, law issues, in that single action.

Another illustration: If a party sues in the Court of Chancery for specific performance of a contract, he may or may not be entitled to recover damages to which he might be entitled in addition to the specific performance of his contract, because ordinarily a court of equity does not award damages; that is the function of a law court. In some types of cases, however, the Court of Chancery will grant damages, depending upon whether or not the complainant is entitled to the specific performance of his contract. Whether a particular case is within the general rule or the exception presents a question which is solely jurisdictional. It is solely procedural. It has nothing to do with the substantive rights of the parties, just as in the trespass case whether the Court of Chancery should grant the injunction depending on whether or not title is clear is a procedural question—which court shall decide it. The substantive question of justice is the same, and Article V provides that it shall be decided in the same court.

Let's look at these overlapping jurisdictions. One illustration:

The Prerogative Court and the Orphans' Court exercise broad overlapping jurisdictions. It is unnecessary to go into details. There are many kinds, of proceedings, of cases in which both the Orphans' Court and Prerogative Court have jurisdiction. Which court will exercise its jurisdiction is usually a question of comity, but here is a peculiar thing: Notwithstanding the fact that these two courts have concurrent jurisdiction in some classes of cases, the appeal, if there be one, is from the Orphans' Court to the Prerogative Court, so we have the spectacle of the Prerogative Court and the Orphans' Court being on the same plane with respect to certain concurrent jurisdiction, while in other classes of cases the Prerogative Court is superior to the Orphans' Court.

On this same question of concurrent and appellate jurisdiction of the Prerogative Court and the Orphans' Court, I could pose a question for the lawyer members of this Committee as to whether the Prerogative Court may entertain an appeal from the Orphans' Court under certain circumstances, which would give you a good headache and after you studied it for hours, days perhaps, as I did, you might come out with the same answer—I don't know. All such procedural questions are ruled out by Article V, and therefore we favor it.

Finally, on this question of merger of law and equity, do we not find the correct answer in the experience of other States in the United States and of England? The fact is that England, which is the source of much of both our common law and our equity law, and forty-six States of the Union have merged law and equity. The exceptions are our little neighbor, Delaware, and ourselves. Wouldn't we be smug if we were to conclude that of all these judicial sovereignties, England and the other forty-six States, Delaware and ourselves alone are right? To ask the question is to answer it.

Briefly and fundamentally, the object of Article V is designed to remedy the self-evident weakness of the present system: that too much litigation involves questions of procedure—form, not substance; method, not justice. Here, again, the commitment of the Republican majority in the Legislature is clearly defined.

There are just two or three other points, which are relatively minor, but this matter of administrative reorganization of the courts is of major importance. We would have one unified court system of which the Chief Justice would be the head, the executive head, and he would have an administrative assistant, an administrative director, who would assist him in all matters relating to administration, finance, and personnel; would publish annually a statistical record of the judicial services and costs of all the courts; prescribe records, reports and audits for the inferior courts; and would perform such other duties as may be delegated to him by the Chief Justice. All of this is lacking today. The

value of a unified judicial system administered by a Chief Justice with complete public statistical information of its work and the results thereof is obvious and needs no argument.

The Article also deals admirably, in our judgment, with the question of personnel. The Supreme Court Justices would hold office during good behavior, the Superior Court Justices would be appointed for a term of seven years and if reappointed would thereafter hold office during good behavior. There is much to be said for and against judicial life terms. The proposal would use the federal system, modified by a probationary period for Superior Court Justices which has worked satisfactorily since 1789. It also embodies the present practice in New Jersey of reappointing, with few exceptions, qualified judges sitting in the Court of Errors and Appeals, the Supreme Court, and the Court of Chancery.

It is provided in the schedule that the Supreme Court Justices would be appointed by the Governor, with the advice and consent of the Senate, from the presons holding the positions of Chancellor, Chief Justice, Justices of the Supreme Court, from such Judges of the Court of Errors and Appeals as are counselors at law of ten years standing, and from the Vice Chancellors, and the Circuit Court Judges. The others and all Common Pleas Judges would become Superior Court Justices for the remainder of their present terms and all would be eligible for reappointment on the same basis. Subsequent appointments to the Supreme Court would be made from the Justices of the Superior Court, thereby making judicial service in New Jersey a career, all of which we think is commendable and sound.

There are also provisions designed to expedite the work of the courts by holding more frequent terms, by permitting the Chief Justice to assign justices as required by the volume of litigation, and by temporary appointments in case the work lags. All of these appear to be beneficial.

By way of summary: Part-time judges of the court of last resort would be replaced by full-time judges; appeals would be uniform; our separate and sometimes competing equity courts and law courts would give way to a single unified court system; our multiple and varying systems of practice and procedure would be succeeded by a single system; the delay, expense, and duplication of actions, with different results in a given case where a defense good in equity is not cognizable by a court of law, would be eliminated by a body of unified substantive law, administered through a unified system; a single remedy in one court would be substituted for different remedies for the same cause of action in different courts; a single system of budgeting, accounting, reporting, and finance would succeed two separate State systems and twenty-one separate county systems; supervision of a State court system would also provide supervision of our presently unsupervised inferior courts; the Chief Justice would become the responsible head of a single State system, with complete power of supervision and responsibility, accountable to the people for the administration of the courts, contrasting with the present lack of any responsible head; a pooled, controlled and directed use of all available judges would succeed the present disorganized and erratic use of judicial manpower.

The Republican majority is unequivocally pledged to the modernization of our judicial system, to the reduction of the confusion and multiplicity of our inferior courts, and to the improvement of our processes of justice, to the end that they may be quicker, less costly, and more effective. We have complete confidence that this pledge will be redeemed by the adoption of Article V or its equivalent.

MR. SCHROEDER: Mr. Paul.

MR. PAUL: Mr. Theodore McCurdy Marsh of the firm of Riker, Marsh & Shipman, Newark, New Jersey.

MR. MARSH: Mr. Chairman, members of the Committee: It seems somewhat unnecessary to repeat what has been said so well by Mr. Watson, who just preceded me and who has gone over and stressed the report of the changes which are proposed by this new revision of the Constitution. I do, however, want to add what weight I may, as a person who has been practicing law before the courts of New Jersey for some thirty years or more, and who also has been endeavoring for fifteen years or more to teach students in the Mercer Beasley Law School in the University of Newark what the jurisdiction of our courts may be and how to practice before them. It is difficult to make clear to them just what all this is about and why we have so many and such varied courts with such overlapping jurisdiction, and when they come out perhaps they are even more confused, and hence we have a great volume of unnecessary cases dealing with procedural and jurisdictional matters.

The reason for that is perhaps due to the fact that this Constitution was created under different economic conditions and that the courts which developed were patchwork matters and built into the system in order to take care of what were the current needs of a particular period in the history of New Jersey, and then they became frozen in that position. You had the enlargement of the county courts because you had to have some organization to take care of the local needs of the people in 1840 and 1850. We haven't got that need today, but you have got the varied courts and in some instances the jurisdictional procedures of those varied courts have become frozen and have become regarded as constitutional matters and therefore you can't handle them or change them unless you change the Constitution.

I can illustrate that by one section of this revision which Mr.

Watson did not individually comment on, and that is Section IV, Paragraph 4. It has become recognized and treated as a constitutional question whether or not a finding by a Circuit Court that a judgment, a verdict of a jury on the evidence, is part of the inherent power of that court and therefore nobody can review it, so that as now developed the Circuit Court judge, when he sends a case to the jury, says in effect, "I think there is a question of evidence which ought to be submitted to the jury." Then he is asked to reconsider that question, and he himself has to review himself and consider whether or not he made an error in the trial, and nobody else can reconsider it because it has become frozen as a constitutional power of the Circuit Court to consider that question, and therefore it has become necessary to pry that loose by putting in a section to insure the fact that a person who feels an error of that kind has been committed may have it reviewed by some other court, and he gets what he should have, which is an opportunity for reconsideration by another judicial body.

What ought a Constitution provide for a court system? It seems to me it has a very simple function and that is that it should enable a person to have a fair trial on the mreits, not to be lost in jurisdictional procedural questions, that it should be tried before a capable and impartial body of judges or jury and judges, and that then, having gone through that, he should have a reasonable opportunity to have his case reviewed by a further impartial body of persons trained in the law, and that becomes more important with the more complex situations which are developing day to day in our living. He hasn't got that under the present Constitution. He hasn't got it for the reason that the courts are so constituted that the judges of them cannot give to him the complete attention that that case requires, because they have so many and so varied other functions to perform. Also, in his review he has so many and such varied appeals to face that he doesn't get a quick and prompt determination of his rights. He also has the risk that he may get into the wrong court and be thrown out without getting a trial on the merits at all.

This revision contemplates correcting these defects; it contemplates having an appellate tribunal of specialists, limited in number, so it is not a debating society, with functions so restricted that it doesn't have to hear and consider all kinds of appeals, whether they involve fifty dollars or whether they involve some slight question of alimony such as whether a man may have to pay ten dollars or fifteen dollars to his wife per month. Those questions are weeded out in the Court of Errors, composed of seven specialists who are concentrating on the important cases. It is a desirable modification of the present cumbrous system.

Mr. Watson has commented on various other courts. I don't think there is any occasion for me to review them again except I

may say I endorse what he has said about the confusion existing in the overlapping features of their jurisdiction. May I comment, however, on the Chancery Court, because I assume we will hear arguments that the Chancery Court of New Jersey has been our pride and joy for a century and that this is going to destroy it because it now ceases to be a Chancery Court and merely becomes a division of the Superior Court. There is no change in the Chancery Court in so far as the equity of it is concerned. Its principles are the same as they have been established. The only thing that is changed is the appointing power, and that goes to the Governor instead of the Chancellor. That doesn't change the equity of the court; neither does it necessarily change the quality of the members, because the quality of that court depends upon the man who makes the appointment, whether he be entitled Governor or whether he be entitled Chancellor, and it seems to me it is desirable that the appointing power for all the judiciary should be in the same person. Then he becomes responsible and is the responsible official of the State for the judiciary, at least in the first instance as here contemplated. Then, again, there is an added feature here of value in Chancery matters. Today the Court of Errors and Appeals does not consist of Chancery representatives. Anyone appealing appeals to the Court of Errors and practically the entire court is composed of men who come up through the law side. Here you are now inserting an appelate division which has Chancery functions. Therefore, a Chancery case goes before a Chancery appellate division and gets a review by specialists in that field, so it is a very desirable strengthening of the equity side of our judicial practice. The merger of chancery and law in one court is definitely helpful to any practitioner and to any litigant. He does not run the danger of having to bring two suits; that it will be thrown out because he is in the wrong court.

Mr. Watson has illustrated the one particular. I can illustrate it by reformation. A man sues on a contract and the defendant finds the contract is wrong as written down. He has to go into equity and ask to have that contract reformed. Then he comes back and tries it again in the law court as reformed or not reformed, depending on the result in the Chancery case. Two trials, two expenses not at all necessary because one hearing can do justice to that matter.

Another thing accomplished by this revision is the creating of a system which is analogous to the Federal system as actually existing in New Jersey. Any person who is practicing law is better off, can do a better job, and take care of his clients and the people, if he only has one type of law to practice, and the Federal system is based upon a merger of law and equity. It is based upon one court which handles practically everything, one appeal to the Circuit Court of Appeals, and only in special cases does it go to the

Supreme Court of the United States. The more you can harmonize those two systems, the more you give the litigant the opportunity of getting his trial satisfactorily determined and without the confusion of jurisdictional and procedural matters, which are technical and should be eliminated so far as possible.

Another point which this provision covers is the matter of tenure of office, and it seems to me they have made a definite improvement in their recommendations that the tenure of office after a trial period of seven years be made permanent during good behavior. The question of removal of judges from political influence is vital to fair trials, and this tends that way. It can't possibly eliminate it entirely but it certainly does not require that a judge should come up and seek reappointment every time his term expires and thereby cater, at least to some extent, to the appointing power. He knows that he is there as long as he does his job, and that insures a fair result in so far as it is possible to so do.

I therefore just want to emphasize again the fact that I hope the Committee will favorably consider this revision and go forward with adopting either this or something which closely follows the plan outlined for the revision of the judiciary, because like Mr. Zink, I think there are some parts of it that perhaps could be modified to advantage but not the general plan.

Thank you.

MR. PAUL: Mr. L. Stanley Ford of Hackensack.

MR. FORD: Gentlemen: I rise to speak this morning as merely a lawyer, representing no one, appearing here on behalf of no vested interests, either right wing or left wing, trying to speak, as I can, as I may, for a few moments and only a few moments, in support of this all important section of the proposed Constitution of this great State of ours. It would indeed be arrogant for me, a younger member of the Bar, to attempt to add to that which has been said by the eminent speakers who preceded me. I know from others who will follow that further discussions will take place of the details of the plan that has been suggested.

It so happens that I am but a country lawyer having been born and raised in the Middle West, where I had the advantage or disadvantage, as you will, of having attended college in one of those little salt water schools in a State where we had just the single system of jurisprudence. In those country counties there, the common police court or county judge would sit first in the morning as an equity judge, with his cud of tobacco on the right side of his cheek, and in the afternoon he would shift it and call in a jury and he would sit as a court of law. There, under that system, I was educated, and when I came to New Jersey, to this great and beautiful State, and undertook to study for the Bar, I didn't have the benefit of Professor Marsh's course in jurisdiction. I attempted foolishly to learn the court system of New Jersey out

of a book. Well, I stand here and confess to you gentlemen I failed the Bar examination the first time I took it in this State because in a year I couldn't figure out the system of the courts in this State. That is no fault of the courts; undoubtedly it is the fault of my intelligence. There is no question about that, but the truth still remains—it is a very complicated system.

Seriously, gentlemen, as I have had the opportunity of traveling about this country, talking to lawyers in various and sundry ways, over the past ten years—I have travelled from Boston to Dallas, from New York to San Francisco, and hit many of the byways in between—speaking to lawyers of all kinds, country lawyers, city lawyers, rich lawyers and poor lawyers, when I tell them of our court system in the great State of New Jersey they look at me with amazement. "It can't be possible that you have such a system as you described; you must be mistaken," and I assure them that I am not. It is not until I tell them about the salaries that are paid to judges in New Jersey that they really envy our system. Then they would like to come to New Jersey. The other evening, about a month ago, I had the pleasure of sitting next to the Chief Justice of one of the southern States, and we were discussing the general subject of administration of justice. Somehow or another, we got around to the question of salaries. Well, I shall tell you and maybe you won't believe it when I tell you that the Chief Justice, who devotes his entire time to the work in one of our southern States—I dare not mention it obviously—gets the same salary that the Chairman of this illustrious Committee here received when he was judge of the Criminal Judicial Court in the County of Bergen, which, if I am not incorrect, I think, Lloyd, was $6500 a year. That is what the Chief Justice of one of the States gets, so you can't wonder at their marveling at our system of salaries in New Jersey, at least.

Again, seriously, gentlemen, every time that we see an arbitration agreement in a contract, isn't it shouting from the house tops by businessmen, by intelligent people, that we have no confidence in your court system? Why would they put an arbitration agreement in a contract if it were not so? Is it not because of the interminable delays?

Mr. Watson cited a hypothetical case where a suit starts in Chancery and then wends its way through the law courts on the question of a trial of title. Fortunately for me, and unfortunately for my clients, I paid my office rent for the first eight years of my practice with a case just like that—just like that. It happened in this way: Out in Bergen County where I come from there was a fight over a little strip of road not as long as the width of this room and probably forty feet wide, but there was a fight. I represented one of those ideal clients, a rich man who was mad and wanted to fight—I mean, a perfect setup—and so, when we were enjoined in the court of equity from building a structure on this

so-called and alleged right of way, I promptly pleaded "title," and we had to go into a law court and decide the question of title. Well, I am not going to bore you—every lawyer here has had cases of that kind—with more illustrations of that type, but seriously, that case was not concluded for eight years. I was moving along as the case came along. My adversaries changed from time to time. There happened to be a municipality involved and as different groups of the Fathers of the Town came into being, different municipal attorneys came into the case, and I had to spend an afternoon in conference to explain the history of the case, but none the less that is what we were faced with.

Going into the serious questions that have been set forth here, gentlemen, I have read these proposals; I have heard them argued; I have discussed them with people who I believe should know; and I believe that if the administration of Jersey justice is to regain the meaning that was originally intended for it, we must amend the Constitution, we must improve our judiciary article so that it will really give Jersey justice.

Thank you.

MR. SCHROEDER: Mr. Paul.

MR. PAUL: Mr. Mortimer Eisner.

MR. EISNER: Mr. Chairman, I simply want to say that a distinguished judge of Essex County who wanted to be here today, Mr. Daniel J. Brennan of the Court of Common Pleas, told me to say that because he is engaged on the Bench today he couldn't be here, but I was authorized to say for him that he favors a revision and that he feels the need for a prompt revision in the judicial system of this State.

I will not add anything further with respect to that. Mr. Watson and my colleague, Mr. Marsh, have already spoken of their views, which I endorse, and you will hear Mr. Clapp, who can speak with more authority on the subject than anyone I know. I heartily favor the revision as proposed.

MR. PAUL: Mrs. Andrew Steelman, representing the League of Women Voters.

MRS. STEELMAN: Mr. Chairman and members of the Joint Legislative Committee:

As representing the New Jersey League of Women Voters, I speak with the other proponents for the judicial article of the proposed Constitution. The League approaches the consideration of Article V from the viewpoint of a citizen. We do not have the temerity to feel that we can speak of the legal problems which arise under our present judicial system. We do believe, however, that the power of government is in the hands of the people in a representative democracy such as ours, and it is therefore important that the framework of the machinery to carry out

the functioning of this power shall be simple enough to be easily understood by the average citizen, and therefore we feel that we have the right to call upon our representatives in our legislative branch of the government to exert their efforts to revise our present court system so it may be more easily understood in its setup than it is at the present time. The present system is so complicated and unwieldy that even after long study it will be an enigma to a vast majority of laymen. The very names of the courts are meaningless to the people for whose benefit they are established. We even challenge that many of the legal profession will find it difficult to quickly give an adequate definition of oyer and terminer. The confusion and delay occasioned by too many courts having concurrent jurisdiction, with the numerous opportunities for appeals, the overlapping terms of the courts in which the same judges sit, the multiplicity of the duties of the judges, lack of central authority for administration and checking on the work of the several courts, does not inspire the confidence of the people in their courts.

I want to just interpolate here to emphasize what Mr. Watson said in explaining in detail the intricacies of the overlapping jurisdiction of certain courts. I should like to add that we are not qualified to discuss the legal handicaps which are involved, but I do say that as citizens we are aware that they exist and of the hardships which they exercise on some litigants, and that we are impatient of long continued failure to remedy this particular defect in our courts. The judicial branch of our government must function efficiently and speedily if it is to provide an impartial administration of justice for all litigants. The courts are the bulwark for the protection of the fundamental principles of our democracy. The League of Women Voters believes that the proposed reorganization of the courts set forth in Article V does simplify the system and does provide certain safeguards which we think strengthen it. Therefore, we join with the proponents in favoring this article. We do feel, however, Mr. Chairman, that there are some failures in this article which we hope we may be allowed to speak about under modification, and I hope that I may be allowed to speak later in the day when that time comes. I would like, in addition, to mention a newspaper clipping which was handed to me when I came into this Chamber this morning, and it deals with a report of a magazine which has been started presumably by the New Jersey Freeholders Association, and it speaks particularly of an article by a former Senator from New Jersey, whose opinion I formerly valued very highly on many subjects, but I must say I feel if this article reports what he has said correctly, it is a violation of trust that a public officer should so misrepresent the provisions of this revised Constitution or proposed revision, because this article states that if this revision went into effect it would abolish the Court of Common Pleas. Of course,

it will abolish the name of the Court of Common Pleas, but what does that mean to the average citizen? It is a county court and actually it is a misnomer in effect, because the Court of Common Pleas is a civil court and the judges of the so-called Court of Common Pleas are frequently sitting in the Criminal Court of Special Sessions, Oyer and Terminer, and Quarter Sessions, and therefore the jurisdiction of this court of Common Pleas is retained under Article V of the proposed Constitution, and I think that it is very unfortunate that the opinion should go broadcast throughout the State that any group of influential public officials are opposed to it simply because, and putting forth the straw man, it will abolish the Court of Common Pleas.

MR. PAUL: Mrs. J. Siveke of the Passaic League of Women Voters.

MRS. SIVEKE: Mr. Chairman and members of the Committee:

The people of New Jersey have long been aware of the inadequacy of our courts and the general need to revise our outworn Constitution. Freedom and justice are inseparable if democracy is not to lose its true meaning. The unnecessary expense and inefficiency occasioned by our present intricate court administration, as in other branches of State government, waste public and private funds. This money is sorely needed in various other fields. I will only mention one—public vocational schools for aeronautics and other technical skills so necessary in our war effort. Such public schools are few and now unavailable to the average youth of New Jersey. To compete with aggressor nations we cannot afford to tarry longer in directing our dollars in the right channels.

As a volunteer worker selling war bonds and stamps in Passaic, it is an inspiration to witness the generosity of adults and even children alike, contributing their share to the Government. Factory and other defense workers are serving often on Sundays and in double shifts to help production.

As a member of the Passaic League of Women Voters and Secretary of the Passaic County Branch of the New Jersey Committee on Constitutional Convention, I respectfully urge our legislators to strengthen the laws of this State by accepting generally the recommendations pertaining to our court system. Only by perfecting democracy first at home, through efficiency and economy, shall we survive as a nation, both in war and peace.

MR. PAUL: Mr. A. C. Clapp of Essex County, author of an article setting forth a proposal for unified court structure in the State of New Jersey.

MR. CLAPP: Mr. Chairman and gentlemen of the Committee:

In advocating the proposed judiciary article you have before you, I shall, I think, fairly probe a large subject and demonstrate the vitalities of the proposal, if I confine myself mainly to matters which I have heard criticized. With that for an aim, I need submit little by way of a brief on the proposed Supreme Court, for our Court of Errors and Appeals, so far as I know, stands undefended. Without discussing a transitional phase, our highest court appears today as a flashback of the House of Lords, the highest court as the colonists to New Jersey knew it, with the Lay Lords sitting down with the Law Lords as the Court of Errors. The rest of the world has come apace since then. And, indeed, New Jersey has stumbled after the times to substitute lawyers for many of the lay judges, but of uneven status they are. As it stands now, we have in the court ten lawyers of one status, five of a lower status, and one layman—each with an equal vote. Give heed, if you will, to the sheer waste of it—to pay sixteen men to decide a case when concededly seven would be adequate! Give heed to the unwieldiness of the body, so large as not to permit of time for each fully to voice his thoughts, with the result, I am told, that only three men now (an inadequate number for the highest court) probe the usual case to the bottom, leaving the remainder of the bench dependent on what they bring to light.

Controversies as to the proposed judiciary article arise not over the Supreme Court but over the Superior Court, and preliminarily here, one must examine the criticism of the many who have been beguiled by the simplicity of the Federal judiciary article. There it is written, without strapping down with constitutional language the future structure of the lower courts, that "the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish." Well enough a provision of this sort was for those who, with no experience to lean upon, had to devise a court structure to meet the needs of a new form of government, federal in nature. But for New Jersey the inadequacy of such a provision, both political and juristic, is that there is a strong body of sound opinion that will not permit of the Court of Chancery and our other courts to be beholden for their existence to the Legislature; the three great branches of government must be kept independent.

Specialization of job is the key to the efficiency of justice. But how may the judges come to specialize in a class of cases and at the same time retain their independence of the Legislature without constructing, in the Constitution, specialized courts and thus trussing them with rigid constitutional terms? The proposal before you replies: by putting into one court, the Superior Court, "original general jurisdiction throughout the State in all cases"; and then by giving to the rule-making power in the new Supreme Court the task of dividing the Superior Court into parts and of allocating this large jurisdiction among those parts, with the power to redivide and reallocate as experience warrants. That Chancery may have a certainty of a separate continuance, a section of the Superior Court bears its name, the equity and probate section.

Thus you have in the proposal a great rule-making power used to gain specializaton and at the same time to lend flexibility for the development of the court's structure; but kept in this regard beyond the hand of legislation. The new Superior Court stands in contrast to the four specialized constitutional courts it supplants, whose jurisdictions were petrified by our present Constitution in the historical form in which they happened to stand in 1844.

Some criticism is leveled at the so-called merger of law and equity in the Superior Court. There is very little of merger. There is still to be a specialization of judges, though not a specialization of courts. One of the prime reasons that every justice of the Superior Court is made a judge of that whole court and not a judge of merely one part is that there may be a minimization of the waste that arises from those useless controversies over jurisdiction, springing up between specialized courts that serve no purpose whatsoever to the litigant. Mr. Watson has told you of concrete illustrations of that. This does not mean that a case involving plainly nothing but an auto accident can be tried in the equity and probate section if the plaintiff sues there. The proposal requires that, subject to rules of the Supreme Court, every controversy, legal, equitable or of a probate nature, shall be fully determined by the justice hearing it. As in England, which has had sixty-nine years of experience of a unified court such as this, rules of court will require that in so far as practicable there be an orderly specialization of jurisdiction within each part of the court.

The rule-making authority wields power in another regard, again not subject to law; that is, over the administration—a broad word—of all the courts of the State. Through that power, the Supreme Court may set up a number of appellate divisions and may perhaps designate the office of the Supreme Court Clerk as a place convenient for searchers, for the docketing of judgments and other papers effecting a state-wide lien. The word "administration," though broad in scope, is sufficiently plain. It embraces a control of the business of operating courts and a checkup on the work of the judges. Thus in the Superior Court the proposal affords administrative adhesiveness within the court and the abolition of an aggregate of independent one-judge tribunals; but quite beyond that, all the courts of the State are knit by administrative controls into a real judicial department as a department of government, with a chief executive, the Chief Justice of the Supreme Court. The federal department of justice under the headship of the Attorney General has for the federal courts done much along the lines of what is proposed in the checkup on the judiciary. But it unfortunately brought the judiciary at times under the thumb of a political master. Moreover, it is out of accord with the genius of our institutions that the head of the department of justice, which

practices in the courts, representing so powerful an adversary as the Government, should be charged with the superintendence of the courts. That superintendence is urgently called for but it should come, as is proposed, from within the court system.

Some aspects of the procedure and administration of the courts on appeal, of which I shall mention two of miscellaneous sorts that have been criticized, have not been left to the rule-making power but are laid out explicitly in the proposed Constitution. First, contrary to our present practice, there is the suffrance of appeals as a matter of right from any interlocutory order at law. Glance at one type of interlocutory order. It is fast being recognized today that pre-trial remedies are vital toward securing justice in order that justice be not tripped by surprise. Without the check upon the court insured by an appeal, these pre-trial remedies are inadequate. Let me but cite to the lawyers the shameful confusion that marks our law today as to bills of particulars and interrogatories. Appeals are no scourge provided they conform to the pattern of the proposed Constitution, which, first, abolishes multiple appeals and leaves but one appeal as of right; and second, speeds them up by requiring of appellate courts at least ten monthly terms instead of, as now, three terms a year. This leads me to the second criticism bearing on the matter of appeals—the authorization granted the Governor, when the Supreme Court fails to decide a case within two months after it has been submitted, to appoint a special term of the Supreme Court from the justices of the Superior Court to exercise concurrently the jurisdiction of the court until the delay is cured. The proposal stands out against the three to five months now regularly taken to decide an appeal in our highest court. But aside from that, the proposal has been denounced as court packing on the theory (I wonder if the newspapers rightly stated it) that should, for instance, the decision of the pending railroad tax case be delayed for two months in the highest court the Governor might hand-pick his court to decide that case. This interpretation is unreasonable. Plainly, a special term newly appointed would not take over the railroad tax case but merely handle the fresh business of the court coming up until the railroad case is disposed of.

I have spoken as to the criticisms of the rule-making power and of appeals. I should like now to speak upon several matters as to appointments. The most obvious of the changes is the shearing off of the Chancellor's power of appointment that has grown in magnitude over the last forty years until it is lushly attractive to the political machinist. Regal are these appointments, made without the advice or consent of any openly acknowledged power. As it stands now, the appointments are of ten men at $18,000 and fourteen men at, say, $16,000, not to speak of the more numerous underlings and the vast deal of patronage which inheres in

Chancery's jurisdiction in the appointment of receivers and trustees, the making of references and the allowance of substantial counsel fees. The proposal checks and channelizes the course of these appointments through our usual democratic processes. The controversy over the Chancellor's loss of this power will not be much talked of but it will underlie much that is talked of.

In the matter of appointments two other criticisms have been made: First, that the Governor makes no appointment to any specialized part of the Superior Court or to any locality of the State but merely to the Superior Court. It is left to the Chief Justice of the Supreme Court under his administrative power to place the newcomer. The matter of locality—that is, seeing that the judges live in the localities in which they hold court—will, I think, be taken care of quite practically by a Senate representing the twenty-one counties. In the usual run—as such things work—a vacancy will be filled from the locality from which the last incumbent came. The Chief Justice will but temporarily (as, because of illness on the bench) assign a man far from his home. Likewise, the matter of specialization furnishes no practical difficulty. True, a lawyer whose experience has been in equity may be loath to take the chance of being assigned to try criminal cases, and vice versa; but this I think can be left to the Chief Justice's good judgment in assigning his men to get the most from them.

The next provision as to appointments that has been criticized is that requiring appointments to the Supreme Court to be made from those who have sat one year on the Superior Court. The tenor of the criticism is that we will not get a Chief Justice Hughes, a Justice Case, a Justice Heher, a Justice Katzenbach; that by the time men are counselors at law of ten years' standing, having had four years of college, three of law school, one of clerkship and three as attorneys, they will be in their forties and the signally successful of them, those most wanted, may be loath to give up their practices to sit on the Superior Court on the bare chance of promotion, thereby lowering the quality of the lists from which our highest court must be chosen. These considerations are outweighed, I think, first by the prospect of having appeals decided only by those who know intimately the practicalities facing a trial judge; second, by the prospect of making the judiciary a career with promotions for rewards; and third, by the prospect of having a man measured when he is put on the Superior Court, as an unwritten custom in Connecticut is said to measure him in that State, to see whether he will be equal to an assignment on the Supreme Court should he be needed there.

Criticism too has been leveled at the inclusion of the Common Pleas Judges in the Superior Court, it being argued that the county courts should be kept out of our unified court system much as was proposed by the 1909 amendments. To me one of the things

most to be gained by a reorganizaztion of the courts is the elevation of the dignity of Common Pleas Judges to the dignity now enjoyed by the Vice Chancellors. Justice as between man and man is settled by the broad discretions entrusted the trial courts, for the abuse of which an appeal is no adequate remedy. Should you have to choose between the reorganization of our highest court and the elevation in dignity of our Common Pleas Courts, I should say unhesitantly that the latter is the matter of first importance. With what reason do we put every foreclosure or other equity case to be tried by those of ranking dignity, and leave murder cases to be tried by inferior courts, two orders down in the judicial hierarchy of New Jersey?

Most of all we need specialization here; the ablest Common Pleas Judges will be the first to tell of the inefficiencies that spring from the versatility required of them in the widely different causes before them. Adding to the complexities of their tasks, the Common Pleas Courts and Orphans' Courts present an understory of law and probate courts which there is no need to keep separate from the story above.

This brings me to the probate courts, as to which I have written before. Mothered by the Ecclesiastical Courts, grandsired by obsolete concessions to the Church and the landed gentry, father unknown, none of the little accidents alliterated as Jersey justice has been so haplessly conceived as our system for the trial of probate disputes. A small piece of the business is handled by ten Vice Ordinaries and another but little larger piece by thirty-three Orphans' Court Judges. Each, giving less than ten percent of his time thereto, will, no matter how competent, have small chance to put aside a stock of information for the efficiencies of offhand use at hearings. Induced somewhat by this very circumstance, the Orphans Courts have farmed out the largest piece of contentious probate business—perhaps sixty percent, perhaps seventy-five percent of it—to Advisory Masters ad hoc, many of whom having but few cases of the sort must be paid substantially per case to study up on rudiments. The historical concessions to the Church, of which I speak, have split between the probate courts and the court of chancery, the jurisdiction over the construction of wills and their effectuation, in so undefined a way that at least a third of the difficult controversies as to those matters in the probate court are over the question whether the court has the power to undertake the decision, a question of no moment to the litigants. The historical concessions to the landed gentry have split between the law courts and the probate courts the jurisdiction over wills so that a probate court can constitutionally have but a limited effect over land; and thus it is, under our Constitution, that a will may be good as to land devised and bad as to personalty bequeathed.

Were one to devise a system for the adjudication of probate disputes, could aught be more obvious than to turn the business over to specialist fulltime judges sitting in the Probate Part of a Probate and Equity Section of a court "having original jurisdiction throughout the State in all cases." Such Part could determine as well the construction of wills, inter vivos trusts and devises, as pass upon caveats, settle accounts and distribute estates. Because there would not be enough business for such a specialist in each county, one justice would be assigned to several counties with a weekly, or in the smaller counties a less frequent, motion day in each county, the justice traveling to the litigants and not vice versa. Too, there should be only one appeal as of right instead of two or three; and that to a court *en banc*—with a further review only if allowed by the *banc* or the highest court or if there be a dissent in the *banc* or if a constitutional question be raised. Again the clerical work and non-contentious business of the Probate Part should be handled by a specialist, the present Surrogate; and there should be a single head for all the courts of the State, a Chief Justice, with the fullest administrative powers. Thus there would be offered the specialization making up the genius of the New York Surrogates with their jurisdiction, taken from the Chancellor, over the construction of wills and, taken from the law courts, over land as well as personalty; but added thereto, flexibility for improvement and administration.

These be the unwritten ideas and this the system lying within the frame of the proposed Constitution. One may have a fear that those thumbing the thin report of the commission and perhaps its minutes may not see the volumes of its reflections, too fat to be reported. The formulas of reform written in the abbreviations of constitutional language may speak but to the reformers. Within the compass here, I have been able to cite little more than the controversial corners of the proposed Judiciary article. But who of intellectual rectitude can look at those corners and not say, here indeed is a long advance.

MR. SCHROEDER: We will now recess until two-o'clock.

(Recess)

PUBLIC HEARING

July 29, 1942

Afternoon Session

on

Proposed Revision of the New Jersey Constitution

Article V, "Judicial"

The Joint Legislative Committee re-convened in the Assembly Chamber at Trenton on Wednesday, July 29, 1942, at two o'clock P. M., pursuant to announcement previously made.

The Chairman opened the Hearing and the Hearing proceeded as follows:

MR. SCHROEDER: Mr. Paul.

MR. PAUL: Mr. Charles Roemer, former City Attorney of Paterson.

MR. ROEMER: Mr. Chairman: I appear here today as a citizen of New Jersey. We have heard a great deal about these judicial proposals. Most of it has been good, and I see no particular point in repeating what the previous speakers have said or re-emphasizing them. I agree with all of them but desire to make some observations, however, which I think or hope will be of some assistance to your Committee.

Most of the criticism that has been leveled at the judicial system of New Jersey has been in the direction of the fact that our courts are cumbersome, that their jurisdiction is overlapping, and that expert minds have difficulty in comprehending the exact jurisdiction of the several courts of this State. Mr. Ford this morning indicated that as a result of that situation he was enabled to pay his rent for eight years as a result of a complicated land title action. That was probably a desirable thing from his point of view, but I would like to go beyond that, and I think I can quote nearly every lawyer of this State when I say that there is hardly a day that passes but what a lawyer ushers some person out of his office who has a valid cause of action, but who is unable to secure justice in this State because of the extraordinary costs that are entailed where there is a conflict of jurisdiction or where several courts have to be engaged in in order to litigate a given set of facts or given legal situation. It has been said that justice delayed is justice denied. What are we to say about the hundreds of citizens in New Jersey who are deprived of justice in any form because of the utter inability to secure a day in court even though they may have some valid cause of action? I believe that

the program that has been presented to the State of New Jersey by the Commission is excellent because it gives us administrative control of the courts for the first time. As a matter of fact, it clears up many things which most of us are not aware of. For example, there is nothing in the Constitution of New Jersey today which even requires that members of the Supreme Court shall be lawyers. Most of us seem to think that only the lay judges can be non-members of the legal profession. As a matter of fact, there is nothing in the Constitution that requires that members of the Supreme Court be members of the Bar, and I presume the same thing applies to the Chancellor of the State. While it is true that it is not very likely that any Governor with the advice and consent of the Senate would appoint a non-lawyer to the Supreme Court or as Chancellor of the State, the fact remains that no qualifications can be found in the New Jersey Constitution for the members of its highest courts.

I think it is an excellent thing to have an integrated judicial system, and I have before me an editorial of the Paterson Evening News, which appeared in 1939, which I believe is most helpful at this time. The editorial reads as follows:

> "The late Newton D. Baker often told the story of how, on a visit to London, he witnessed no less a personage than the Lord Chief Justice himself deciding a $76 houseboat case.
>
> The incident so impressed itself upon Mr. Baker's mind that for the remainder of his life he urged that there be only one bench in all jurisdictions, with only the highest type of lawyers appointed to it, and each of them forced, by custom or by law, to preside at all manner of cases. This, he claimed, would insure a better grade judiciary than we now have and it would also keep the judges close to the problems of all the people. Many lawyers today incline to agree with him though so far few have felt free to advocate it with an appreciable vigor.
>
> Several magistrates in New York City, who listen to only so-called minor cases, would grace the highest court in the land, their daily contact with the tribulations of ordinary men and women having enlarged their vision and broadened their sympathies, while many superior judges could learn a great deal by spending time in police court. The absurdity and hardness of opinion issuing from appellate courts spring from the fact that their judges have long since lost touch with common humanity. Instead of considering it an indignity to sit in police courts, they should consider it a privilege and a duty."

I think those sentiments are excellent.

Mrs. Steelman this morning said something to the effect that the average lawyer would have considerable difficulty in defining what we mean by Court of Oyer and Terminer. I might say that they might have some difficulty with even ordinary English words that appear in our present Constitution. It was always my notion that supreme meant the highest. When we speak of the Supreme Ruler of the Universe, we don't speak of somebody higher than that. When we speak of the Supreme Court of the United States, we speak of the highest court of the United States; but, when we speak of the Supreme Court of New Jersey, we don't mean the highest court of New Jersey as every lawyer and layman will readily understand, which I hope will enable me to emphasize this story that I clipped from a recent legal magazine. The story involves a Negro butler who asked time off to go to a meeting of his lodge. "The lodge can get along without you, Sam," he was told, "You are not the Master, are you?" "No, suh, I ain't the Master," Sam replied, "I's only the Supreme King. There is seven above me yet." That reminds me of the unusual anomaly of having a Supreme Court and then waking up to find that, as far as the average layman is concerned, there is another court above that.

No matter where we touch this matter of judicial reform, I think we must be convinced that it is the one sore spot in the whole history of constitutional reform in this State. For the past sixty years, at least one-third of all the proposed constitutional amendments that originated either with the Legislature or elsewhere have dealt with judicial reform. Most Governors that have given any thought to constitutional reform have advocated judicial reform particularly, and I am speaking now of Democratic Governors and Republican Governors; they have all seen the need of it. Now that we have this splendid opportunity to give New Jersey a new Constitution, I hope that the Legislature and the people of New Jersey will unite so that we may face the post-war world with some modern machinery so that the needs of this great State can be truly met. Thank you.

MR. PAUL: Mr. Eugene C. Gerhart of the University of Newark.

MR. GERHART: Mr. Chairman and Members of the Committee:

I have been asked to read a telegram that was addressed to your Committee Chairman from Mr. Hertzel Plaine, who is the State Chairman of the Junior Bar Conference of the American Bar Association. The telegram is dated today and reads as follows:

> "Any worthwhile change in the judicial system must embrace simplified judicial machinery. The Junior Section of the New Jersey State Bar Association and the Junior Bar Conference of the American Bar Association in this

State went on record in January, 1942, at their annual meeting, for the principle of unification. This means simply one court for the trial and disposition of all causes, providing specialist judges within the system, rather than special courts, and a right of review against arbitrary action. The plan was derived by Roscoe Pound from the best of American and English jurisdictions, and is, in the main. the present English system, adopted almost one hundred years ago. New Jersey has not kept pace with its ancestry.

The Revision Commission was made aware of the sentiment of the Junior Bar groups, who comprise over one-fourth of the organized bar in New Jersey; and the Commission has recognized the unified court principle in the proposed judiciary Article. In consequence, your commitee may be assured of the support of the future leaders of the bar in recommending the basic principle of proposed Article V to the people of New Jersey.

Respectfully,

H. E. PLAINE,
State Chairman, Junior Bar Conference,
American Bar Association."

It is on behalf of the younger members of the legal profession and particularly those lawyers of the New Jersey Bar who are members of the American Bar Association, Junior Bar Conference, that I appear before your committee. In presenting to your committee their views, I wish to make only two points:

First: The members of the Junior Bar Conference of the American Bar Association in New Jersey have been actively cooperating with the Junior Section of the New Jersey State Bar Association in the advancement of the court plan which is now embodied in Article V of the proposed revision. These lawyers, I believe, are overwhelmingly in favor of the proposed court plan. They have confidence in the scholarly way in which it was drafted. They believe that it corrects most, if not all, of the evils which plague the profession and the public under our present outmoded court set-up. Being members of the American Bar Association they are interested in helping to assist in the improvement of the administration of justice in New Jersey. These men feel that the proposed court plan established by Article V of the Revision will result in greater efficiency and convenience, especially to the public, and also to the legal profession.

Second: On behalf of the younger men in the profession, we would like to urge the committee to weigh seriously any criticisms of the proposed plan, particularly from some of the older members of the bar. Criticisms of the proposed plan based on the merits of the plan are to be sought after and encouraged. On the other hand, criticism not based on the merits of the plan but merely propounded to place an obstacle in the way of the proposal because change will involve passing inconvenience to an influential minority of older members of the bar is hardly worth the attention of this committee. Such an attitude of mind probably overtakes most of us as we near three score years and ten, which may be the reason for the provision in Article V of the Revision which provides that, "No justice or judge of any court shall continue in office after he has attained the age of seventy." While seventy and senility are not synonomous, still it is appropriate to point out to the committee that when in 1912 our then new Practice Act was proposed and finally adopted, there was a storm of criticism from members of the bar, particularly from certain older members familiar with the common law forms of pleading, that the proposed Practice Act was radical and would ruin the adminstration of justice. Since the Act has been tested and tried for the last thirty years, there was obviously no merit in such criticism. The view that "what was good enough for our forefathers is good enough for us" is an unprogressive and emotional approach to our present problem.

Therefore, we younger members of the bar urge the committee to scrutinize carefully the criticisms of the proposed new court plan and to insist that such criticisms go to the merits of the plan. We younger men are behind the proposed revision because we believe it is a vast improvement. We are not afraid of it because it is a change.

MR. PAUL: Miss Evelyn Seufert, Co-Chairman of the Bergen County Unit.

MISS SEUFERT: Mr. Chairman and Members of the Commission: We have heard much this morning about what is wrong with our courts, and there seems to be throughout the State unanimous opinion that our court system is an antiquated system. We get what amounts to in New Jersey a denial of justice. Why isn't something done about it? Why since 1875 and 1880 have the lawyers of the State, the statesmen of the State and the general public admitted that our court system did not function properly, that we couldn't get the right kind of justice in New Jersey, and yet why have we continued to have this kind of a system for over sixty years since the agitation started, we will say, way back in 1880? Well, the answer is that we have tried to change things.

In the first place the courts themselves have tried desperately to ease up the situation, to try to give justice, but they have been hampered all along the line. For example, in the Court of Errors, our highest court of appeals, where the justices not only serve three terms a year as members of the highest court and listen to final determinations, but also part of them serve as members of the Supreme Court of this State, part of them serve as members of the

Court of Pardons, and some of them carry on their own business when they are not acting as lay judges, justice is delayed in the Court of Errors and Appeals because the judges have just too many jobs to take care of. They can't be a Supreme Court Justice and a Court of Errors Judge and do two jobs well at the same time; so what the Court of Errors has tried to do in order to facilitate matters in our highest court is, as has been said this morning, divide up the work and let a few of the judges hear each case and then sit down and talk it over with the rest. The Bar Association some time ago, a few years ago, questioned the constitutionality of such an act, but realized that the necessity there was the mother of invention. Since that time in order to expedite matters further, the Court of Errors now hears one hundred and seventy-five cases a term where it used to hear only one hundred cases a term; and, of course, at the same time its Supreme Court business has increased. How can it do that; by two avenues which, of course, do react unfavorably to the litigant. In the first place, the Court of Errors has been forced to deny all arguments on motions; all must be printed now. That, of course, is a very expensive process for the litigant. In the second place, it has been forced to limit all oral arguments in trials of cases to one-half hour. We know that in many cases it is not possible to fairly and fully present a case in the highest court in one-half hour, but the judges have been forced to adopt a rule like that in order to expedite matters. So in an attempt to relieve this situation, the courts have had to take action like this which reacts most unfavorably to those involved in the cases.

In the case of separation of law and equity, much has been said this morning about persons getting involved in one court and finding they have to go over into another court because we do not have, along with only one other State in the Union, a merger of law and equity in our court system. The courts have tried and the Legislature has tried to get around that. Suppose, for example, you find yourself as a creditor, and Mr. X, who owes you money, and the debt is due, takes his real estate and puts it under the name of somebody else so that you as the creditor can't try to collect on that real estate to pay the debt owed to you. You go into equity to get that conveyance of that real estate to a third party set aside because you want to levy on that to satisfy your own debt. You find that you cannot do that until you first go into a law court and prove that such a debt exists. So, as many examples have been given this morning, you have two actions there instead of one. The Legislature quite some years ago realizing the hardship placed upon the litigant in a case like that, in 1919 passed a law providing that actions for debt and for damages on breach of contract could be brought in the Equity Courts; and what happened? A little later the courts of New Jersey declared that such

an act was unconstitutional, that the Legislature could not try to assist a litigant in such a situation because the Legislature couldn't give to the Equity Courts the power of jurisdiction that the court said belonged by the Constitution in the law courts. So here we find the Legislature stymied in trying to merge actions for the litigant in law and equity. Also, let's look at it from another angle. Suppose you, as a litigant, find yourself in a law court when you realize the action ought to be in an equity court. Well, the Legislature passed a law providing for a transfer of causes. You could transfer your cause into the equity court by what process; merely by getting an order of transfer from the court which sounds simple enough. It is just a clerical procedure. But what have the courts decided in that case; that the mere business of getting an order of the court to take the case out of a law court into the equity court is an action in itself and it is a final judgment and appealable. So before you even get into the right court, you may have to go through a whole action to determine whether you can do it or not.

The Legislature and the courts have also tried to remedy the situation in the lower courts. Take, for example, the district courts. Many of us have had experience in those courts and we know that because the judges are not able to give full time because, of course, most of them do practice on the side and they have to, to make a living, these courts perhaps are only open two or three days a week in some counties, in some counties only one day a week, and in very few counties are they open every day. As a result of the congestion of the calendar in these district courts which are now so crowded, you may by consent of both parties try your case without a jury, and that of course hastens matters considerably. But it has gotten to the point now where lawyers in order to deliberately delay cases and thereby bring about a denial of justice for the other party, deliberately ask for and demand, as they have a right to, a jury trial. In many of the district courts if you demand a jury trial, your trial is held up anywhere from one to two years. So, once again, the Legislature in trying to assist has been brought to a halt by other processes. Likewise, because the district courts have become so crowded, we have been forced to create again small cause courts in some counties such as Essex and Passaic, and these small cause courts are doing a land office business. There is no administrative head. In many cases justices of the peace preside. Justices of the peace are responsible to no superior judicial officer, and the unfortunate result of that is that nowadays frequently "J. P." is referred to not as justice of the peace, but justice at a price. So we see that the courts have been balked themselves in trying to relieve the congestion of the courts which is due to our antiquated system. Has the Legislature tried to do anything about it? Yes, the Legislature has tried to do more than any other group in this State since 1875. I would like to

review for you for a few moments just what has been done by the successive Legislatures to relieve our judicial conditions and to bring about judicial reform; and I think the record is clear, up to date nothing has been accomplished.

We start back in the history of judicial reform in this State in 1875, a bare twenty-one years, thirty years after this Constitution was adopted. There we find the one and only amendment that has ever been passed referring to the judiciary in this State. That amendment had to do with Article VII, Section II. Before that time Common Pleas Judges were selected by a joint session of the Legislature. Article VII, Section II, Paragraph 1, which was adopted, part of which, by the 1875 amendment, provided that judges of the inferior courts of common pleas shall be nominated by the Governor and appointed by him with the advice and consent of the Senate. If you will turn to Paragraph 2 of that same section, Article VII, Section II, you will find the former provision which still is in the Constitution and that former provision provides that Judges of the Court of Common Pleas shall be appointed by the Senate and the General Assembly in joint meeting; they shall hold their offices for five years. That was a clerical error. When we adopted the 1875 amendment, this second paragraph should have been stricken out, but it was not. Four times since then, in 1890, 1903, 1909, and 1927, an amendment was proposed to rectify this error; each time it was voted down by the public. So we still have the situation where in our Constitution in the same Section II of Article VII the Common Pleas Judges are both selected by joint sessions of the Legislature and appointed by the Governor and confirmed by the Senate. In other words, even a clerical error we haven't been able to have changed by judicial amendment to date.

What about other attempts to reform our judiciary? A real serious movement started back in 1880. At that time judicial amendments passed the Assembly. I will not take up your time to go into the body of those amendments and tell you what they were. It is a day's job to do that, but just a brief review of when these things were submited and what happened to them perhaps will show why we have been so stymied. In 1881 judicial reform was a subject of a commission which was appointed by the Governor to study judicial reform and report back. It might interest us, who are now spending part of our vacation in Trenton, to note at this time that that judicial reform commission held its hearings in the summertime, but they held them at Long Branch and Atlantic City, and the hearings, so the reports say, were very lively, very well attended, and well enjoyed by all. But even so, Long Branch or Atlantic City notwithstanding, no legislative action ever followed the work of that commission on judicial amendments whch had been appointed by the Governor at the request of the Legislature.

In 1883, the amendments passed the Assembly and that was all. In 1885, the amendments passed both houses. Nothing happened, of course, the amendments have to go through two sessions of the Legislature. Nothing happened in 1886. In 1887 Governor Green devoted half of his inaugural address to advocating judicial reform. Finally in 1888 Governor Green was successful in getting judicial reform amendments past the Assembly but not past the Senate. In 1889 we find that action came up to remove the ambiguity of selection of Common Pleas Judges. It passed both houses of the Legislature. It passed both houses of the Legislature again in 1890, but was rejected by the public in the special election of 1890. Four years later in 1894 we find the Legislature requesting the Governor to appoint twenty discreet commissioners to prepare such amendments as would render the administration of justice more simple, speedy and economical. The Commission did so. Apparently they were a little too discreet because nothing happened the following year. Two years later these amendments of the Commission passed one House. In 1897 they passed the Senate, which they hadn't passed the previous year, but got defeated in the Assembly. In 1901 and 1902 it looked pretty ideal because they got through both houses so that in 1903 we had a series of judicial amendments to bring about judicial reform which had passed two successive houses of the Legislature, and they were presented at referendum to the public in 1903. They were rejected by the public at a special election in 1903, and it is interesting to note that that was the only special election where only judiciary amendments were considered. Other times judiciary amendments went down in defeat with other amendments, but in 1903 only the judiciary articles were considered and yet they were defeated because at the last moment they did become a partisan political issue, which it had been agreed would not be done previous to that.

In 1905 another commission appointed by the Governor reported on judicial reforms. Nothing was done in the Legislature about the report of that commission. Nothing was done for two or three years. In 1908 the proposed judicial amendments passed both houses. They did again in 1909. So we find once again judicial reform amendments coming to the public for a vote. In 1909 we had a special election. It looked as though we might at last get judicial reform in New Jersey, but there were other amendments at that special election also, an amendment having to do with special elections, an amendment having to do with the increase of legislators' salaries. The judicial amendments went down with the other two amendments. Nothing happened then for almost twenty years in the way of judicial reform in this State outside of spasmodic attempts by groups and individuals.

Coming down to more recent times, in 1926 proposed judicial

amendments passed both Houses of the Legislature. I think that was due to the activity of the New Jersey State Bar Association. Those amendments passed the Assembly again the following year but were defeated in the Senate. In 1927 we find they came up for special election but were defeated. If you recall, there were four amendments voted on in 1927. The only amendment which was passed was the zoning amendment. The judiciary amendment went down then too. The Legislature tried different tactics in 1931. Everything so far had apparently failed. The courts couldn't bring about any successful changes; the Legislature couldn't. In 1930 the Legislature created the Judicial Council and the act creating that Council provided in part:

> "It shall be the duty of the Judicial Council to make continuous study of the organization in relation of the various courts of the State, counties and municipalities; the rules and method of procedure and practice of the judicial system of the State; the work acomplished; and the results produced. It shall from time to time submit for the consideration of the justices and judges of the various courts such suggestions in regard to the rules of practice and procedure as it may deem advisable, and shall report annually to the Governor on or before December 15 such matters as it may wish to bring to his attention or to the attention of the Legislature. The Council shall cooperate with the Legislature and its committees and shall from time to time, upon request, aid and advise the Legislature and its committees upon any subjct of law or procedure which may be before the Legislature for action."

The next year, in 1931, the Legislature did direct the Judicial Council to submit to the following Legislature, which would be in 1932, its findings and recommendations as to the amendments to the judiciary article of the State Constitution. In 1932 the Judicial Council did submit such proposed judiciary amendments to the Legislature. And, ladies and gentlemen, those proposals have still to be acted upon by the Legislature; that is, I mean acted upon favorably.

From that time on, although Governor Moore subsequently advocated their passage, the State Bar Association in 1932 advocated it, the local bars did, every single county bar association in the State advocated the passage of these judicial reforms, nothing more was done about it. In 1939 a bill was introduced which included these judicial reforms suggested by the Judicial Council; it was defeated. In 1940 it was again introduced, passed in the Assembly, I believe, and defeated in the Senate. That is the present status of judicial reform by amendment.

In conclusion it would appear that our attempt to reform our judicial processes and bring them up to date so that there will not

be a denial of justice in New Jersey cannot be successfully dealt with by judicial amendments. The Legislature has tried again and again. When it was successful in getting them passed on three different occasions, the people have voted them down. The answer apparently is, and there has to be an answer very shortly, that it cannot be done by piecemeal legislation. Apparently the lawyers of the State and the bar association of the State and the courts of the State are not working in close enough cooperation to put this thing across, so it looks as though it remains for the people to put it across with the help of the Legislature by some other method other than piecemeal amendment.

MR. PAUL: Miss Ruth Rappaport, New Jersey League of Women Shoppers.

MISS RAPPAPORT: Mr. Chairman and Members of the Committee: The New Jersey League of Women Shoppers has gone on record as favoring the revision of the New Jersey State Constitution, preferably through the most democratic way, a constitutional convention. While we recognize that the draft of the revised Constitution is certainly a step forward in the right direction, we feel that to obtain a really economic, efficient and impartial government, certain changes are advisable in the Proposed Constitution.

We believe that the revision of the judicial system as provided for in Article V will aid in the administration of justice and will undoubtedly reestablish respect for Jersey justice. We endorse and approve the recommendations of the Commission. We hope, however, that your Committee will include in its report to the Legislature the lower courts in these reforms.

Although it may be not quite in order at this time, since we have not had a chance to come down and speak before, we would like to put ourselves on record concerning some other provisions:

(1) The veto power of the Governor should be strengthened.

(2) The Governor should be permitted to succeed himself.

(3) A constitutional convention should be held every fifteen years or the amendment processes simplified.

(4) The establishment of Assembly districts as the more democratic election system, which would abolish the "acres over people" basis of representation; also the establishment of initiative and referendum.

MR. PAUL: Mr. P. J. Schotland, the Assistant Corporation Counsel of Newark.

MR. SCHOTLAND: Mr. Chairman, members of the Committee and ladies and gentlemen: I think I am a little bit out of the general run of things because I have had the pleasure of practicing a little more than four decades, and yet I heartily and sincerely favor the reform in the judicial system recommended by the Com-

mission as published. I think it shows a careful study of the troubles in our present system and a very, very fine, comprehensive reform to abolish the troubles and insure justice to be handed out evenly and equitably to all the people.

The one thing that must stand out in everybody's mind in considering the necessity for getting judicial reform as quickly as possible, assuming that through a change of conditions the congestion of the courts is not quite as prevalent as it was a few years ago, is nevertheless this situation: Trials of cases that might be of the utmost importance, possessing the greatest number of complications of all kinds, that might deal with all sorts of complicated questions of law, take place naturally before the nisi prius judge and jury. The nisi prius judge, be he ever so able, must decide on the spur of the moment, and if he possesses the wisdom of Solomon, he couldn't always be right. If you stop and figure the number of cases that are taken up on appeal, the number of pages constituting the states of the case, the number of pages constituting the briefs submitted by counsel; and then take on the other side the number of minutes in the day, you would find that if the judges of our present court of last resort were to actually carefully study every case that is up before them on appeal for decision, it would be a physical impossibility for them to decide ten percent of the cases that they do decide under the present system. There aren't enough hours in the day and night to permit them to read a hundred states of the case. Let's assume they would limit themselves to a hundred for a term, a hundred states of the case and two hundred briefs in any one term. If they did nothing else, if they neither ate nor slept nor moved except read those cases, it would be a physical impossibility to do it.

Of course, it has been very clearly and most interestingly pointed out how the courts have themselves tried to overcome the disadvantages. I only call attention to that physical fact, not only because it is an actual fact, but because it points out the real necessity for reform as quickly as possible. In considering reform, while I was quite familiar with the original common law practice before the adoption of the 1912 Practice Act and have practiced pretty actively since the adoption of the 1912 Practice Act, I am not tied to the old systems. I can clearly see the merit and the advantages of the present article as prepared by the Commission. I don't know of any better system extant than that proposed here.

I will take your time to point out a few of the reasons. In the first place, the system arranged is so flexible that it will enable our courts, under the supervision of the Chief Justice and his Director, to see that the business is conducted in an efficient manner; that where there is need there, there will be judges; that justice will never be denied because it is delayed, and will never be denied at all so far as it is humanly possible to grant it. The system proposed, in arranging for the Supreme Court to really be a Supreme Court, gives that court, by limiting the business that is going to be forced upon it, an opportunity to carefully study and consider all appeals coming before it and decide according to law and justice. If this is enacted, I dare say in less than ten years the opinions written by our Supreme Court will again command the respect of the opinions of our ancient judges, and the courts all over the land will again look to how New Jersey decided a complicated or difficult problem and be persuaded by the reasoning and argument there used to follow suit.

The flexibility that I referred to, you will note, isn't limited to having one appellate division or two appellate divisions, but as many as are necessary—not in just one place but wherever necessary. You don't have to keep them all the time, either. You keep them going as long as there is an actual demand, so that all appeals in most cases that come before the appellate division will be decided within the two months provided; they will be decided as close to the place where the litigants and their counsel live as is possible; they won't have to come from all over the State to one place, congest the calendar as well as the business; they will be decided by judges who will have nothing else to do but consider those particular appeals, study them, and decide them carefully.

Another great advantage is this: This proposed judicial revision provides for New Jersey a court system which will be outstanding. The composition of the court will be made up of judges who are judges. Once he is appointed to the Superior Court, he will have nothing to gain for himself and his reputation except by devoting himself conscientiously to the duties of his office, knowing that if he shows his ability as well as his integrity during the first term of his appointment, he will be reappointed, or there will be such a clamor against his being turned down that the Governor will be compelled to reappoint him, and once having been reappointed, having proven his qualifications, he is there for the rest of his judicial life.

True, it is fixed at seventy, and it is a wise limitation, because many a judge has unconsciously seen his reputation as a great jurist, as a learned scholar, ruined by the opinions that he wrote very late in life by continuing too long on the bench, so it is a wise limitation because it enables a judge to work in that high and honorable capacity so long as his mental powers are at their peak. Regardless of the fact that there are exceptions like Justice Holmes of the United States Supreme Court and our own late Chief Justice Gummere, whose mental vigor continued more than a decade after seventy—they are only exceptions and to adopt the rule is far wiser than to risk the other just because there are, here and there, exceptions.

Then the fact that this system enables the Chief Justice to

assign a judge, who has specialized and is especially learned and able and thoroughly understands any particular branch, to sit and devote himself to that branch is giving the people at large the benefit of expert judicial treatment.

I don't know of anything that could be said to recommend any improvement or any amendments to improve the proposed judicial part of this Constitution, and I therefore heartily recommend that everybody get behind it to see that it is adopted. I lived through, and practiced through, some of those periods when judicial amendments came before the public, which were referred to by one of the previous speakers, and my observation taught me that the reason for the defeat of the proposed judicial amendments was two-fold: First, the fear of the general public, when they were not properly enlightened upon the question, that the lawyers were trying to deprive them of some of their constitutional rights, and the fact that there was always here and there an old fogy who had been great in his time, accustomed to the old system, who would write a newspaper page letter, have it published in the papers for everybody to read, pointing out the beauties of the old and criticizing the new, without taking the pains to study it or see its good points. That is the reason that I urge that all members of the Bar—you can't deny the necessity for immediate judicial reform—get behind this unitedly and publicize the harm of the old and the good of the new, so that the people at large will know that in attempting to adopt this revision of the Constitution the lawyers are not trying to deprive the people of their constitutional rights, but are using their knowledge, their experience, their interest in the welfare of the people, to insure their future welfare.

Thank you.

MR. SCHROEDER: Are there any other proponents of Article V? If not, we will proceed to hear the opponents. We will hear from Mr. R. Robinson Chance representing the Manufacturers Association of New Jersey.

MR. CHANCE: Mr. Chairman and Members of the Committee:

I shall not attempt to put the Republican members on the spot and tell you what you have to do to live up to your platform, any further than to say that you have heard what I have thought about the preceding sections and articles; and if I am right about what they stand for, your platform doesn't make you take this yellow-backed proposal entitled "Report of the Commission on Revision of the New Jersey Constitution." I have listened with considerable interest to the lady who gave us the learned history of what has happened to what certain people thought were judicial reforms in the past. As I heard her going through all of this history, there ran through my mind the statement "history repeats itself." Perhaps we shall see history repeat itself with this proposal.

I heard someone suggest that we couldn't amend a constitution piecemeal and there ran through my mind this quotation from one of the books that I happen to have with me: "Any sweeping revision of the fundamental law is bound to contain some articles which will antagonize influential groups of the people The whole Constitution may thus be defeated by a combination of a number of elements which object to particular parts of it; so while a majority of the people may favor a majority of the parts, every group in the majority objects to some one part. In order to avoid this difficulty, New York made a successful experiment in 1938 in submitting the proposed revision which had been worked out by a convention. It provided for a separate vote on each Article. Several new additions were in this way approved which might have failed in a vote on the Constitution as a whole." That is what one of the professors thinks about it. However, certain other New Jersey professors may think otherwise.

I have also kept in mind that the resolution which appoints you indicates that you are appointed to ascertain the sentiment of the people of New Jersey as to the various proposals and recommendations for change in the New Jersey Constitution made by the Commission on Revision of the New Jersey Constitution and to report thereon. Again I take this opportunity to point out that I am registered in opposition, and what I am registered in opposition to is proposals and recommendations that you are directed by your resolution to obtain the sentiment concerning. There seems to be some effort to indicate that the Manufacturers Association of New Jersey is opposed to everything, that they are opposed to any possible change in the Constitution. I hope the newspaper men will hear this one. I repeat, as I said in my first address to you, that the Manufacturers Association has not authorized me to commit the Association finally to any attitude or course of action in advance of the determination of this Committee as to whether you will recommend the submission of all or parts or none of the proposal to the consideration of the electrate. In other words, the Association does not go off half-cocked and say, "We are for this," without hearing what the proponents have in favor and what the opponents have to the contrary. To make clearer that position, I am going to make just one preliminary statement before I go on to the text, and take the liberty, if I may, of reading a communication which went out over the signature of Mr. Henry W. Johnson, President of the Manufacturers Association of New Jersey, in their weekly newsletter to their members. It is headed:

THE ASSOCIATION'S PARTICIPATION IN THE PUBLIC HEARINGS ON THE PROPOSED NEW STATE CONSTITUTION.

"The Manufacturers Association of New Jersey recognizes the importance of the discussions concerning the pro-

posed new State Constitution sponsored by the Commission on Revision of the New Jersey Constitution which are taking place in the Assembly Chamber at the State House before the Joint Legislative Committee appointed to hold public hearings on the matter.

The Association reserves any recording of itself as for or against until the matter has been thoroughly discussed and revised in some respects. In the meantime, it is being represented at the hearings by Mr. R. Robinson Chance, law partner of our General Counsel, Mr. Frederick S. Kellogg, in an effort to bring out in the open for full discussion those particular provisions of the proposal and their probable effect which appear to be unsound and warranting further consideration. The Association believes that a sound conclusion on the Commission's proposals can only be arrived at by a frank and detailed analysis and discussion which brings out arguments both for and against the proposal. To completely rewrite the organic law of the State is of too great importance to be considered or finally acted upon in any other way.

The Joint Legislative Committee Public Hearings on the proposed new State Constitution are being held on Wednesday of each week. The hearings are open to all citizens to attend."

It is interesting to see that most of the proponents here have gotten away from the proposition that they are really supporting the recommendation of a revised Constitution for the State of New Jersey, the text of which is set forth in Part II of this Report. Most all of them say, "We are for it, but," and then they propose to enumerate the "buts", so that really if they apply the maxim of those who are not for the text which is set forth in Part II of the Report, they would be registered like me as in opposition to the proposal. Some of those who are registered as proponents say that they are not interested in the text but are interested in principle, but as I read the concurrent resolution creating your Committee, your purpose is to ascertain the sentiment as to the proposals indicated, and they are the things in the yellow book, not the numerous other suggestions that other people bring up from the starting point. The proponents really are not supporting the report; what they are doing is using it as a starting place to wander off to make their general observations as to a lot of general principles about how justice is the bulwark of liberty and all of these things that we all agree with. The question is, how many of them have you heard stand up here and say that they as proponents stand for and include as their proposition that they are proponents for the text which is set forth in Part II of this

Report, which is the thing the Commission unanimously recommends?

Let it be clear that the Manufacturers Association of New Jersey has no desire to stand in the way of progress. On the other hand, they think that one should not be misled by labels; one should not assume that merely because propaganda proclaims a measure as tending toward efficiency and progress, it really does so; one should examine the text as well as the claims when a change in the proposal of the fundamental law is made. Otherwise, he may discover later, to his dismay, that here and there what Theodore Roosevelt called "weasel words" in the text have drawn the life out of the document, so that it does not carry out the lofty aspirations proclaimed by its advocates.

Let it be clear that the Manufacturers Association of New Jersey is interested that the State have whatever judicial structure will preserve all rights of the citizens, secure fair trials, equal justice under law with reasonable expedition, at as little expense to the parties involved and the tax-paying public as is consistent with the said objectives. Possibly new courts would better attain those objectives; possibly they would not. It has come to my attention that a Mr. Brigadier is to speak with respect to this subject of judicial reform. I see he is registered here as in opposition to the proposal. I saw him at lunch time and understood he had to go back to Newark for some classes, but I have heard him speak before and I asked him if he was going to say much different and he said "about the same", so that has led me to feel that a part of the things which he would say I need not say because he has prepared for them.

Another thought in this connection arises, and that is that as representing the Manufacturers Association it has seemed that it is peculiarly a function of Bar Associations and lawyers to make recommendations for the improvement of procedure, and the Manufacturers Association of New Jersey obviously is not a bar association. I am a lawyer, one of those old guys our young friend over here was talking about. Since 1912 I have been a member of the Bar and am able still to get around, and hope that if you do change anything perhaps I can find my way around among the new things just as well as the boys just out of law school, so don't get it in your head that I am asking you to take any stand with respect to this because the poor old fellows won't know their way around and will have to forget what they learned.

I shall not enter deeply into the subject of whether the proposal is superior in all its aspects to the judicial system that is now prevailing, not endorsing or not condemning what may be said by anybody else. I think I shall leave to others the greater part of the comparison between the existing and the proposed judicial systems. I shall, however, explore the text of Article V of the proposal and state certain views concerning its present

form and context in an effort to help the Committee. So far as it goes, the Summary at page 21 of the Report (pp. 921-922)—by "Summary" I mean Summary and not explanation—seems to me to give quite an accurate statement of what the Article purports to do, and any differences I may have with that will appear as I read my remarks. The explanation at page 22 (pp. 922-923) as well as certain comments we have heard here, seems to me to overdraw the picture of the supposed defects, difficulties and complications of our present system. It seems to me that perhaps if counsel examined their books with great caution and assiduity, somewhat like they are trying to do on this Constitution, perhaps they wouldn't find themselves in the wrong court so often and there are other things of that type I think are overdrawn.

The Court of Chancery handles about 14,000 cases a year, I believe, about 14,000 started. Just to pick out certain of the illustrations of supposed terrible things which happen that have been mentioned this morning, I have obtained certain statistics. Construction of will cases was one of the kinds of things in which certain complications were supposed to exist or pertain, and I find there are about 34 to [illegible] cases per year out of the 14,000 cases started in the Court of Chancery that involve that sort of case. I am told further that the suits to reform deeds, such as were spoken about by one of the gentlemen, average about 8 to 15 per year. I am not told how long a period they went over to get these figures, and note this: About one or two of these 8 to 15 reformation things ever have to go to law courts after they have been in Chancery. You know it is a maxim of equity—I suppose you know it, some of you, most of you—I don't know whether or not you are all lawyers, but most of you are—you know it is a fundamental maxim of equity that equity does justice completely and not by halves, and that when the Court of Chancery gets a case to reform a deed, when it has made the reformation of the deed it can make its decree and dispose of the matter. Likewise, specific performance cases were mentioned. I am told that they now average, out of this 14,000 or more per year, about 75 cases a year and I am told further that about two or maybe a few more than that are of the type illustrated by Mr. Watson. If you have any doubt about these figures, check me up by asking the office of the Clerk in Chancery, but I think you will find that will be verified.

We have heard about the great multitude of groundless and frivolous, trifling appeals that go to the Court of Errors and Appeals. During the noon recess I stopped in the office of the Clerk and asked if I could have a copy of the last list of causes of the May Term. Taking law and equity together, there are listed in the May Term how many of this multitude? Nineteen cases, and when you look them over, you will find that some of them are cases which couple up; in other words, two or three cases that come out of the same transaction, so that there is really not as

many cases as the nineteen on the book. Of course, there may have been one or two or three added; I don't know; I just took it from the printed book. That is sufficient for the present purposes, it seems to me, to illustrate it is an exaggeration to say there is such a grave multitude of appeals taken to the Court of Errors and Appeals on groundless matter, and that we should restrict the right to appeal so much.

I heard a gentleman say that the young fellows were members of the American Bar Association, State Bar Association, County Bar Association, Junior Section. Well, I am not a member of the Junior Section; I am out of that category. But I am a member of all the other things, and I have attended the meetings and I haven't heard at any of them, the old folks' section, anything said about there being anything the matter with the New Jersey system of equity.

They say they want a court of specialists. Where can you get more specialists than you have in the Court of Chancery in this State? Every one of the Vice Chancellors is a specialist on equity procedure and equity practice, and also on equity jurisdiction.

One speaker spoke about the terrible confusion that there was in the law courts of our present system because of bills of particulars and interrogatories, and as he was speaking about that I was wondering how this proposal would change that, because bills of particulars and interrogatories are not in either the Constitution or the proposal; they are a matter of statute now and would be a matter of statute afterwards, so that it would make no difference as between the two on that score.

I don't know whther this is the latest or not, but the question of how would the Vice Chancellors get appointed came in for criticism. With respect to the supposed difficulties and the supposed vices of the present system, they think it is bad to have the Chancellor make appointments of Vice Chancellors. That puts it in politics, they say, but it is not going to be politics when the Governor appoints and the Senate confirms, I suppose, according to the reformers, although I did hear one gentleman this morning say that under that system where the Supreme Court Justices get appointed that way, some Supreme Court Justice at least has gone hat in hand to the Senate, so perhaps they would have to go hat in hand just the same under the new system, except in addition to the ones who now have to do that you would have the ones who would take the places of the Vice Chancellors.

Oh, I forgot—I said something about my not knowing whether it was the latest or not, but I am just looking at The New Despotism, a book written by the Right Honorable Lord Hewart of Bury, Lord Chief Justice of England, published in 1929, and up to that time at least, I see that he says here, one of the special and peculiar functions of the Lord Chancellor was the critical

task, from time to time devolved of, selecting the member of the Bar whom he is to recommend for appointment by the King to a vacancy on the Bench in the Supreme Court of Judicature, so if that is up to date, and I don't say whether or not it is—I just happened to run across it as I looked through the book—these people who look to England for their great reforms, the great superiority over New Jersey practice, fail to look at the place where it says, if that is correct yet, that the Lord Chancellor, who corresponds with our Chancellor, is in all intents and purposes the fellow who appoints all the judges, while the King does the actual formal appointing. As I read that statement, the Chancellor is the fellow who actually names the man. That is the trouble with some of these reformers—I was going to say "these" reformers but I will say only some of them—they pick out of a proposition the thing that seems to them to be good and "Halleluiah for that one!" but don't take the trouble to read the rest of them.

As I come along in taking up the text, there are some thoughts that occurred to me during the noon recess. It is a great improvement, we have been told, to have everything in your own county. You are going to have twenty-one counties; you are going to have twenty-one matrimonial courts; and when somebody wants to find out whether somebody is married or not, you have to go to the twenty-one counties, do you, to find out whether he is? You have double statistics. Even if you say you are going to have them in some central location, the court in each county will have to have its statistics and if it sends them on in to some other central place in the administrative execution of the new performance, you will have double statistics.

Also, I noticed that one of the speakers said it was a terrible thing now if you didn't—she didn't say this but I do say this—if you didn't happen to read your books and find out what your remedy was and started your suit as though you were running to a fire and didn't know where to start it and got in the wrong court and undertook to get an order of transfer, you will have a terrible situation; that you will have one case just out of the order of transfer. What have they got in their proposal? They have in the proposal that every order of this court will be appealable. You don't have to wait until final judgment and only appeal final judgments. You can appeal every order, so you will have a lot more cases under the new system than ever come up under these transfers.

They are the only notes I find here about the thoughts I had during luncheon recess, so I turn now to the text of the proposal and find that Section I is headed Judicial Power.

The first paragraph of this section, when read in connection with Paragraph 2 of Article II and Paragraph 6 of Section IV

of Article XI, furnishes some basis of our criticism. The first Paragraph of Section I provides as follows:

> "1. The judicial power shall be vested in a Supreme Court and a Superior Court, and in inferior courts of original jurisdiction which may from time to time be established, altered and abolished by law. Such inferior courts may be integrated with the Superior Court in any manner and to any extent, not inconsistent with this Constitution, as may be provided by law."

This purports to vest the judicial power—that is to say, jurisdiction—the right to decide justicable controversies—in the Supreme Court, a Superior Court, and inferior courts, but the question comes up, whether the jurisdiction so vested will stay vested.

One of the speakers this morning spoke about how the jurisdiction was petrified in the court. Well, we believe that an independent judiciary whose jurisdiction cannot be taken away except by constitutional amendment is a very desirable feature and we wonder whether jurisdiction so vested at the beginning could be impaired by legislation. For reasons presently to be stated, we have some doubt as to whether the present general doctrine of the immutability of our constitutional tribunals, applicable under the present Constitution, would apply under this proposal, except as to the Supreme or Appellate Court. But what good is an Appellate Court if the jurisdiction of the court of original jurisdiction may be affected or impaired, because if you can't get started in the trial or original jurisdiction court, you naturally couldn't have anything to appeal about.

In the present Article VI of the present Constitution, it is true that statements do not go into detail as to the jurisdiction of the several courts mentioned. However, it is to be remembered that when it used the words "A Court of Errors and Appeals in the last resort in all causes, as heretofore; a court for the trial of impeachments; a Court of Chancery; a Prerogative Court; a Supreme Court; Circuit Courts," the reference in each instance was to a particular kind of court, the scope of whose jurisdiction and remedies had a clear and definite significance in the political and judicial history of the State. Furthermore, Article X; Paragraph 1 of the present Constitution contains this statement: "the several courts of law and equity, except as herein provided, shall continue with like powers and jurisdiction as if this Constitution had not been adopted." Under those circumstances and with those provisions, the people could be sure that the jurisdictions set up to protect their rights could not be impaired in the case of a constitutional court, and that has been the holding through the years.

Furthermore, the specific provision in the present Constitution to the effect that the Legislature might alter or abolish the in-

ferior courts as the public good so required under the present Constitution furnishes an opportunity for the application of the rule of construction that the recital of one specific power might restrict by implication any exercise of a similar power in other instances. In other words, by saying that the inferior courts could be altered, it was implied that the other courts could not, but in the proposal we have a different situation, which would prevent the application of any such implication, as I will show you in a moment. "Supreme Court" is used in a manifestly different sense from that in which it has heretofore been used in New Jersey. It is also proposed to project into the governmental structure a new court to be called Superior Court. Nowhere in New Jersey political history or in English jurisprudence, which preceded it, does the name Superior Court convey any idea of the jurisdiction of that proposed tribunal. One has to look to the proposal alone to discover what jurisdiction it will have.

Morever, the proposal does not, like the present Constitution, provide that the several courts of law and equity, except as herein otherwise provided, shall continue with like powers and jurisdiction as if this Constitution had not been adopted. There is a clause there (Article XI, Section IV, Paragraph 6) that at first glance I had thought clearly indicated that the jurisdiction of the Superior Court could be impaired, but as I look at it further—I don't want to go on record as saying I think that way—what I want to say is that it is just a little ambiguous. It says:

> "6. All the functions, powers and duties conferred by statute or rule upon justices and judges of courts superseded by this Constitution, to the extent that such functions, powers and duties are not inconsistent herewith, are hereby transferred to and may be exercised by justices of the Superior Court until otherwise provided by law or rule of court."

Now, I am inclined to the present view that when you take this section with the one which precedes it, the correct interpretation would be only that it is the statute or rule of court functions, powers and duties which are going to continue until otherwise provided by law or rule of court, but it is possible that that might not be right because it says "all the functions," are going to continue until otherwise provided, and if it should be held that those functions, with a comma after it, is separated from the other things, then that might be a specification that there could be a change. I don't argue that that is correct; I just say that that is a possibility.

It is observed that the report at page 54 (p. 953), Article X, Paragraph 2, indicates that the recital of specific functions, powers and duties in this Constitution shall not be contrued in any manner to restrict by implication any general functions, powers

or duties of government not inconsistent herewith, and it is this last provision which removes any chance to apply an argument that the first Paragraph of the proposed Article V, Section I, which says that inferior courts could be altered and abolished, would allow any implication that the Supreme and Superior Courts could not.

Let me point out also that Article II, Paragraph 2 would embrace within the legislative power all powers of government which are not by this Constitution vested in the executive or judicial branches, nor in conflict with rights reserved by the people, nor specifically proscribed to the legislative branch. It is not specifically proscribed to the legislative branch, so far as I have observed, that the jurisdiction of the Superior Court cannot be impaired or altered.

Another thing: the second sentence of the first paragraph is, "Such inferior courts may be integrated with the Superior Court in any manner and to any extent, not inconsistent with this Constitution, as may be provided by law." This may indicate that a duly passed law may impair the jurisdiction with which the Superior Court may begin its existence or may change the jurisdiction from time to time, because what a statute creates, a statute can take away. The integration "in any manner and to any extent" which the sentence would allow might permit a disintegration of the Superior Court. Being an entirely new document, there is no assurance as to what "integrated" would be deemed to mean in this connection.

If the new courts mentioned in the proposal are to be established, there should be something in the new Constitution that not only transfers to the new courts all of the jurisdiction and remedies which have grown up through the centuries for the preservation of the rights of the citizen and to redress of his grievances, but something which would also guarantee such jurisdiction and remedies against subordination or destruction.

It would be a vain and empty thing to say that one has a right (whether as against an individual or a state officer), if there was a lack of any effective means of enforcing the right. Self help as a remedy for enforcing rights is insufficient, because of the facility which its exercise furnishes to the pretext that one resorting to it is committing a breach of the peace. In other words, a right may be a vain and empty thing, unless there is full jurisdiction and easy remedy in the courts to enforce it.

Both the Constitution and the proposal say that all men are guaranteed "certain natural and inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness." These inalienable rights could be reduced to nothing if the jurisdiction and remedies in the courts

could be so impaired as to become ineffectual for the protection and maintenance of those inalienable rights. If a person has inalienable rights, he should have them as enforceable rights. We should have a court which is not petrified, as one of the gentlemen said, but a court stabilized with continuing jurisdiction, not subject to impairment except by constitutional change in the constitutional manner.

Without suggesting that some better clause could not be framed to accomplish this result, I suggest that Paragraph 1 would be decidedly improved if it were made to read as follows:

> "1. The judicial power shall be vested in a Supreme Court and a Superior Court and in inferior courts of original jurisdiction. Such inferior courts may from time to time be established, altered, and abolished by law, but such inferior courts shall always be subordinate to the Superior Court and every decision of such inferior courts shall be appealable as of right to an appellate division of the Superior Court. The jurisdiction of the Supreme Court and of the Superior Court and the remedies available therein as they exist on the adoption of this Constitution shall not be impaired, reduced or made more difficult by any law, rule or regulation."

The second criticism of Article V that I offer is that it permits interference with the independence of the judiciary to a certain extent. The objection is based on Paragraph 4 of Section VI and on Paragraph 4 of Section V. Turning to Paragraph 4 of Section VI, we find that whenever the Supreme Court falls behind in its work, it is provided that the Chief Justice shall certify that fact to the Governor. The Paragraph continues: "The Governor may thereupon appoint a special term of the Supreme Court, from among the justices of the Superior Court, to exercise concurrently the jurisdiction of the court until the delay is cured."

I think the power intended by the above quoted provision should not belong to the Governor at all but should belong to the Chief Justice, if we are to have this kind of a court. Once a judge becomes a member of the judicial system, I think the Governor should have nothing further to do with his activities and no power of control or selection over him until it becomes necessary again to exercise the appointing power, subject to the advice and consent of the Senate.

The other Paragraph referred to; namely, Paragraph 4 of Section V, provides that the judges "shall hold no other office or position of profit in the government of this State or of the United States, nor of any instrumentality or political subdivision of either of them." It is to be noted that the following Paragraph forbids the judges to practice law or engage in other gainful occupation. Our objection to the clause above quoted from Paragraph 4 is the

inclusion of the words "of profit." We do not think that the judges of the court of New Jersey should hold any other office or position in the government of the State or of the United States, whether for profit or not for profit. They should be judges.

A third objection to Article V is to the limitations on the right of appeal. The right to appeal to the Supreme Court given by Section IV is absolute only in respect of capital cases and cases involving a constitutional question. At present there is no such restriction against appeal to the Court of Errors and Appeals. Incidentally, it might remove some ambiguity if the phrase were made to read "cases involving any question arising under the Constitution of this State or of the United States," because when the word "constitutional" is used in a State Constitution it might be construed as referring to that particular State Constitution and no other. On this point, I may say I do not profess to be expressing any determination or any view of the Manufacturers Association of New Jersey. All they are interested in with respect to appeals is that there be whatever the better view of the people who should know about such matters is, as to appeals. If more than one appeal is desirable and necessary and intended to work justice, they would probably favor one appeal. If they think more than one appeal is not necessary, they will probably feel there should not be more than one. On that I say, as I have before, I am not undertaking to commit the Association to any attitude or course of action, but having been around since 1912 in this profession, having appeared in all kinds of courts from justices of the peace down in Cumberland County, where I started out, up to the Court of Errors and Appeals here and even on down in Washington, I have been around and I express it as my view that there should be an equal opportunity of all persons to have their rights determined, whether those rights are based on the Constitution itself or upon the general laws of this State, and if an appeal is allowed it should be allowed as a matter of right and not be dependent upon some judge filing a dissenting opinion or some judge in the appellate division giving you some certificate or some judge in the Supreme Court giving you a certificate. All of this restriction is supposed to cut down litigation. You are not going to have so many appeals. Well, I can show you how you get twice as many, if a lawyer wants to work it that way, and if he gets his appeal allowed then you have three. First, you have your result in the trial tribunal. Nobody files any dissenting opinion. It all goes against you up to there. You are up to the stage whether or not there is going to be an appeal. The next thing you do is you get up your petition, your papers, go make your application, and then you go over to the appellate division judge and say, "Judge, I want a certificate; I am making application now for a certificate that this case can go to the Supreme Court, the appellate court." You serve all your papers on the

other fellow. He comes around, and you have a big argument. Maybe the judge says, "I will take this under advisement," and maybe he will tell you right away—I don't know how he is going to work it, but he will work it somehow—and you get a conclusion. Let's assume the fellow wanted an appeal, and that goes against him. Maybe this provision that says any order is appealable would allow you to appeal that thing to the Supreme Court. I am not saying it would, but it says any order is appealable, and why wouldn't the order denying your application for certificate be appealable? But let's leave that out, and assume it wouldn't be appealable. You go back to the office, think it over, say what you think about the result—"All right, we will try another one." We get up a new set of papers, we file our petition with the supporting affidavits and whatever is necessary, get printed up a transcript of what took place below. Then you drop down to the Supreme Court, file your petition in the Supreme Court, and say, "Nobody filed a dissenting opinion. The appellate division wouldn't give me a certificate. Now, Supreme Court, I am after you for a certificate," and if he gives me a certificate, then I have my appeal and I go ahead with my papers. That makes three proceedings to get that appeal. If the Supreme Court says, "You can't have your certificate", well, I have had two appeals anyhow, even if I didn't get the real thing that they call an appeal, so it doesn't seem to me it is beyond debate that the suggestion about limiting appeals should be in any new provision.

The second paragraph in substance provides that where what is called equity is in conflict with or different from the law, equity shall prevail. We see no objection to this paragraph. It states what we consider to be the present law under our present system, although at present it may take two courts to effectuate the result if counsel doesn't study his books and find out where to go before he rushes off and gets in the wrong court in the first instance.

The third paragraph would have the Supreme Court sit at the State Capital and the Superior Court sit in each county. I assume that if the proposal were adopted, it would seem to be a proper provision. The concluding sentence of this paragraph would have the Supreme Court and appellate divisions of the Superior Court hold at least ten monthly terms each year, and all trial courts shall hold such terms as may be fixed by the rules of the Supreme Court. While this provision is for more terms than the present practice provides in the law courts, we question the necessity for any provision for terms of court. It would seem to us just as well, perhaps better, to have the courts deemed always open; that is, as continuous. Times of trial could be regulated by rules of the Supreme Court, but this suggestion is not offered as any strong objection to the provision in the report.

Section II, which would make the Supreme Court composed

of a Chief Justice and six Associate Justices, of whom five would constitute a quorum, with power to the Chief Justice to designate a Superior Court Justice to serve temporarily when necessary to constitute a quorum, is not deemed objectionable; in fact, we do not see that it makes much difference whether the number be seven or more. We do not think it should be less.

The second paragraph says that the Supreme Court shall exercise appellate jurisdiction in the last resort in all causes subject to the limitations imposed by this Constitution, which presents the question as to what are the limitations that have already been hinted at by me imposed by this proposed Constitution. They are stated in Section IV, and they are that (1) appeals may be taken to the Supreme Court directly in capital cases and cases involving a constitutional question, which will be a preferred cause as to argument and disposition; (2) in the event of a dissenting opinion in an appellate division of a Superior Court; (3) on certificate of an appellate division; or (4) on certification by the Supreme Court to any court. Well, personally, I have expressed my view, that I favor appeal as a matter of unconditioned right, if you are going to give a fellow appeal.

In the second paragraph of the second section, it is said that the court (meaning the Supreme Court) may, upon leave granted by a Justice thereof, review any indictment before trial by certiorari. It is assumed this means that the Supreme Court is to have the power to issue the prerogative writ of certiorari to remove an indictment before trial, provided leave of a Justice can be obtained. If so, this seems to be substantially what the present Supreme Court can do, but I wonder if the sentence is not open to the construction that if the Superior Court Justice (who by Secton III, Paragraph 3 is given power to issue prerogative writs returnable in an appellate division) grants certiorari, the Supreme Court might grant leave to review the indictment in the Supreme Court before, following the words in the order that they are, "trial by certiorari" issued by the Superior Court. I think possible doubt is not desirable. If it is intended that the Supreme Court is to review the indictment before trial, the words "by certiorari" it would seem to me would be more properly placed, if they were placed after the word "may" in this sentence.

Incidentally, it would be an improvement from the standpoint of one indicted, if the provision specifically indicated that such a review might be based upon matters outside the record as well as upon the mere face of the record. I mention this because I understand that in New York State it is possible for one under indictment to obtain an inspection of the Grand Jury minutes and have an indictment quashed, if the accused can show clearly that the indictment was found without any legal evidence. The present rule in this State seems to be that even if the Grand Jury had

no evidence on which to base an indictment, or based it entirely upon illegal evidence, an accused cannot have any right to have the indictment quashed, but must stand trial. It is perfectly conceivable that in time of great public excitement a Grand Jury may find an indictment without any supporting evidence. If it does, I doubt if Jersey justice, that we have heard about today and elsewhere on other occasions, should call for denial to the accused of freedom from the expense and vexation of a trial.

The last sentence to the effect that the Superior Court would have jurisdiction of the administration and discipline of the attorneys and counselors gives the same jurisdiction that the present Supreme Court has.

The third paragraph would give the Supreme Court power to make rules as to the administration of all of the courts. To this we see no objection. The paragraph goes further and says that "subject to law" the Supreme Court may make rules as to pleading, practice and evidence in all the courts. There should be no objection to this, but it is well to have in mind that rules of pleading, practice and evidence might be of such a nature that substantive rights would, for practical purposes, be impossible of enforcement. It might be advisable to add a proviso to the effect that any changes in this regard should not be of such character as to preclude or render more difficult the enforcement of any rights and remedies now capable of enforcement in any court; in other words, something to prevent the substantial wiping out of an element of jurisdiction or remedy under the guise of change in rules of pleading, practice and evidence. History shows that Chancery jurisdiction arose in part from the kind of rules of evidence existing at common law.

Section III; The first paragraph of this section provides for the court to be called Superior Court, that we have mentioned before. The number of judges in this court could be changed by law from time to time, but never to be less than twenty-five, each of whom may exercise the powers of the court, subject to the rules of the Supreme Court. It would have ordinary general state-wide jurisdiction in all cases. If we are to have this sort of revision, no criticism would be offered with regard to this paragraph.

The second paragraph would divide the Superior Court into (1) a law section to exercise civil, criminal and matrimonial jurisdiction; and (2) an equity and probate section to exercise all other jurisdiction of the court, each section having such parts as may be provided by the rules of the Supreme Court. I don't know what "parts" means in that connection. It it supposed that it means a collection of fully qualified judges holding sessions of the particular section of which it is a part, but it may mean that the work of a section is to be divided up so that a part of the

jurisdiction is to be handled by one court and another by some other court as, for instance, a civil part or a criminal part, but this need furnish no difficulty because you will observe that the rules of the Supreme Court are to fix these parts and the Supreme Court being the final interpreter, once it has laid down its rules, which indicate what these parts would do, then any doubt or difficulty or obscurity in this connection would disappear.

No particular objection is offered to what is suggested by this paragarph, except, this: I wonder why matrimonial jurisdiction, which has heretofore been regarded as coming within the province of equity, should be transferred to the law section. Quite frequently matrimonial disputes involve property rights and custody of children, small children, and it would seem to me that these subjects are appropriate for handling in a manner of equity, of conscience, rather than to the ordinary vicissitudes of a law action. Perhaps somebody has good reason—I don't know what it is—but I suggest that as I pass.

The third paragraph provides that any justice of the Superior Court may grant prerogative writs, returnable in an appellate division which shall otherwise have original jurisdiction relating thereto. There is some room for doubt as to just what this means. Of course, it is clear that the Superior Court Justice would have power to grant a prerogative writ returnable in an appellate division, but suppose he refuses to grant such writ, does the phraseology which says "which shall otherwise have original jurisdiction relating thereto" mean that in the event the Superior Court Justice denies the application, the applicant may then go to the appellate division and make application? If so, it would seem proper. I believe that it is in line with what can now be done in our present Supreme Court, but if it is merely meant by this wording, however, to indicate that the only place one could get a prerogative writ is from a Justice of the Superior Court and that the wording "otherwise have original jurisdiction" merely means that all the Appellate Division can do in the way of original jurisdiction is to hear and determine the matter, after the granting of the writ by the Superior Court Justice, I wou'd regard this as an undue narrowing of the present possibility of getting such a writ.

It is observed that this paragraph also says "or the hearing may be in the first instance before a single justice, whose decision both as to law and fact shall be reviewable by the Appellate Division." This is assumed by me to mean that upon application for a prerogative writ being made to a justice of the Superior Court, it would be within the power and jurisdiction of that justice to determine right then and there whether he would determine the matter himself, subject to appeal to the Appellate Division, or will make the writ returnable to the Appellate Division some of the time in the first instance.

It is assumed that the words "prerogative writs" would be interpreted so as to include whatever they may mean now, whatever writs now fall in that category. However, in looking the books over about this, I have observed that in some jurisdictions the words "prerogative writs" in a Constitution have been held to include in addition to what are ordinarily deemed as prerogative writs, other writs which are deemed prerogative because the sovereign people in their capacity as a State are parties to them. I offer it merely as a suggestion but perhaps it would be well to follow the expression "prerogative writs" with an enumeration of the writs which it is intended to include by this expression.

In Re Thompson, 85 Equity 221, indicates that a prerogative writ is one that does not issue as a right but at the discretion of the court, but it also indicates that habeas corpus is a prerogative writ and I conceive that habeas corpus should be a writ of right, unless the person is held in custody by authority of the Federal Government, in which case the Federal Government would have jurisdiction, a subject which need not be further discussed here.

In 49 Corpus Juris, 1333, the note says of prerogative writs: "The principal writs of this nature are: (1) the writ of procedendo; (2) the writ of mandamus; (3) the writ of prohibition; (4) the writ of quo warranto; (5) the writ of habeas corpus; (6) the writ of certiorari," and cross references are also given, which seem to indicate that injunction and ne exeat may sometimes be prerogative writs. On the whole, I think it would be advisable to indicate more specifically just what writs are deemed to be included by the term as used in this connection.

It is noted that this paragraph indicates that the judge or court hearing the prerogative writ on its return shall determine in such manner as the rules of the Supreme Court may prescribe, and without a jury, questions of fact arising therein. I see no objection to that provision, but we note that it only relates to the proceedings after the writ has issued. The silence about what shall be the circumstances and considerations which should enter into the issuance of the writs leads to the supposition that they would issue under the same circumstances and for the same consideration which would call for their allowance at the present time. The thought occurs that this might well be stated if such is the intent, or if there is to be some other intent, that the same should be stated. The thought also occurs that if there is to be a revision with respect to prerogative writs, some consideration might well be given to liberalizing the practice, so that the issuance of some writs formerly deemed prerogative and discretionary would be a matter of right. It might be possible to draft some clause which would be a real new guarantee instead of the one in the 19th paragraph of the supposed Bill of Rights of the proposal, which for reasons heretofore given is merely illusory. I have no other suggestion with regard to that paragraph.

MR. SCHROEDER: The Chair wishes to announce that next week we will hear opponents and modificationists of the judicial Article, Article V, and if we complete that—hearing those who are present—we will proceed with Article VI. We will have a hearing on the judicial Article in September, after Labor Day, on a date to be set by the Committee subsequently, to hear those proponents and modificationists who have not yet been heard and who will not be heard next Wednesday. That is due to the fact that I have received numerous requests from lawyers and other citizens of this State who are away on vacation and who are unable to attend the public hearings between now and Labor Day. However, next Wednesday, beginning at 10:30 A. M., we will continue with the opponents and modificationists of Article V and if we complete that, then we will proceed with Article VI.

Thank you very kindly.

(Adjournment.)

BRIEFS AND COMMUNICATIONS SUBMITTED AT THIS SESSION.

Brief Presented by New Jersey Farm Bureau and New Jersey State Grange to the Joint Legislative Committee to Study the Report of the Commission on Revision of the New Jersey Constitution.

Trenton, New Jersey
July 29, 1942

To the Members of the Joint Legislative Committee:

This Article relates to the administration of justice—to jurisprudence, "The science of what is just and unjust." It is unquestionably the most important of the three divisions of the State. It is the particular division which defends citizens against the aggression of their fellows, and of their State. It is of the State but not strictly of the State's government. Every possible effort to maintain the purity of its personnel and the efficiency of its organization should be made. But its personnel depends upon the appointing power, and in providing this the electorate has the primary responsibility. But its organization is a technical matter. It hardly becomes farmers to advise. We think we know what we need, but should leave the method of its attainment to those specially trained. That includes jurists and lawyers generally. They seem to agree that the present structure of our courts is bad, but they do not agree upon that which should be substituted. That which the Commission recommends seems good to us. But the Bar Association now is considering a plan of its own. Their findings, when agreed upon, must have value. However, we understand that a considerable body of lawyers at present oppose both plans. They insist upon preserving the integrity of the equity court. But disagreement among lawyers is not unusual, nor likely to be serious in its consequences. We are told that they have been arguing this question for some fifty years, that more than forty years ago the then newly organized State Bar Association undertook to organize a movement for the revision of this Article. In 1903, and again in 1909, their plans were regularly approved by the Legislature and submitted to referendum. Each time they were defeated. We also understand that during all these years there has been relatively little actual sustained effort to cooperate in an orderly manner to harmonize differences.

Maybe in such a situation even a farmer may justify his own suggestions. Our suggestion is this—let really qualified ones actually take the time necessary to get together in a determined and serious manner, in a spirit of cooperation and, if necessary, of compromise, decide upon that which really seems the most efficient machinery for the determination of and the attainment of justice, not of some special interest. If this is done we think we can assure both lawyers and legislators that agriculture will give the plan enthusiastic support. We believe no economic or social group is more deeply interested in attaining strict and even justice than our rural dwellers generally—or repose greater confidence in persons whose nature and training qualify them to speak.

Furthermore, we have read not only the plan submitted by the Commission now before you, but also the plan now before the State Bar Association. We also have heard at least some of the arguments for separate equity courts, and for courts of specific jurisdiction generally. As laymen we cannot see that the several plans are far apart. At least, we do not discern conflicting fundamental principles. All seem to agree that a more orderly, less complicated, more speedy system is needed; that there should be fewer courts, cognizing similar issues, and provisions for the creation, when necessary, of additional courts cognizing dissimilar issues. All agree that there should be an independent court of appellate jurisdiction and we assume they agree that it should be composed only of the ablest and most honorable jurists available, learned not only in legal precedents but in social custom, and particularly in abstract principles of right and of justice. All seem to agree that there should be no place in any court for the bestowal of rewards for political service, for payment of political obligations, or for personal advantage of any person or group. All seem to agree that as society becomes increasingly complex, its several parts become more highly organized, demanding special juridical training for their study and care, and that justice to be effective must be not only accurate, but speedy.

Why may not the committee of the State Bar Association in charge of the subject there; the Commission who prepared the plan now before you; and a committee representing those lawyers who seek to preserve the distinctive and efficient features of our equity court, appointed by an independent agency, perhaps, by an eminent member of the bench or the bar known to be opposed to the loss of the Chancery Court, be constituted a joint commission to be speedily convened, with determination to have something mutually satisfactory for immediate consideration of the Legislature. In that way, the major conflicting interests might be brought together in a convention with a will to achieve, and with reasonable expectation of speedy success.

There is one recommendation of the Commission, the principle of which we oppose. It is arbitrary retirement of judges at seventy years of age. The idea of compulsory age retirement of anybody so long as they can work efficiently is offensive to us, and we believe to thoughtful persons generally. This is true where the retirement is the result of contract. It is particularly true where it is in consequence of political decrees. Then it becomes despotism.

It cannot be defended as a health measure, since it probably shortens more lives than it prolongs—especially worth while lives —and withal, deprives them of the inestimable happiness of work. It cannot be defended as an economic measure, since it impedes rather than promotes production, and deprives men and society of rightful wealth. Among progressive people there can be no such thing as over production. The evil complained of is not over production but inefficient distribution; and that is intensified through decreased production. It cannot be defended as a scientific measure, since science has not yet found a way to standardize personal energy or to measure or appraise its economic value. Science has found that it is not measured by years of life. It cannot be defended as a beneficent measure, since in making a place for young men it deprives them of the opportunity and the experience of making places for themselves. Success in such cases comes to them as a gift, not as an achievement—and achievement is a divine endowment. Some men, and almost all good judges, are at their best after seventy, possibly not always for as many hours a day, but for even better work. Some are worn out long before seventy. Some never have been of much value. It all depends upon the individual. To make rules, particularly to legislate upon such matters, is to attempt to usurp divine prerogatives. It is only another product of immature, altruistic thinkers who never have learned to distinguish between the boon of work and the bane of overwork—a distinction which speedily must be made if we are to escape economic degeneration and social decay. Let us not incorporate such mischievous ideas in our Constitution. Let us rather strive to remove them from our statutes, and from retirement systems of employers. Compulsory retirement sometimes may be necessary but mere arbitrary retirement never.

Respectfully submitted,

NEW JERSEY FARM BUREAU
H. Earl Probst, Secretary.

NEW JERSEY STATE GRANGE
D. H. Agans, Master.

PUBLIC HEARING

August 5, 1942

Morning Session

on

Proposed Revision of the New Jersey Constitution
Article V. "Judicial"

The Joint Legislative Committee appointed pursuant to Senate Concurrent Resolution No. 19, passed June 15, 1942, convened in the Assembly Chamber in the State House at Trenton on Wednesday, August 5, 1942 at ten-thirty o'clock A. M., for the purpose of holding a Public Hearing in connection with the Proposed Revision of the New Jersey Constitution (1942) pursuant to announcement previously made.

The following members of the Joint Committee were present: Hon. Manfield G. Amlicke (presiding), Hon. John M. Summerill Jr., Hon. Dominic A. Cavicchia, Hon. Vincent S. Haneman and Hon. Mildred A. Preen.

The Chairman opened the Hearing and the Hearing proceeded as follows:

MR. AMLICKE: The public hearing will come to order.

At the time of our last adjournment, Mr. Chance was talking in behalf of the opponents to Article V. I will now call upon Mr. Chance to continue.

MR. CHANCE: Mr. Chairman, members of the Committee: I had just about gotten down to Section IV of the Article at the time of adjournment. As an introduction to what I am about to say, I want to add one more thought to the fact that I feel that the summary, or explanation rather, as given in the report of the Commission and by some of the speakers, overdraws the supposed difficulties and imperfections of the existing system. For instance, I recall one of the speakers having told about how the new proposed court was to do away and consolidate and combine in one place all of these courts, Common Pleas, Oyer and Terminer, Orphans' Court, Quarter Sessions, Special Sessions, and with the appropriate pause after the mention of those, it seemed there was to be some great elimination of a whole lot of judiciary. As you know, all of those courts need one judge and all of the same jurisdiction would have to be carried on under the new system.

Yesterday afternoon I was fortunate enough to receive a copy of a report on the constitutional courts of the State of New Jersey by Ralph R. Temple. I will reserve until September, when you are to have the later meeting about the judicial article the de-

tailed comments which I have to make with regard to that report. I note merely, in passing, that I see that the letter of the Chairman of the Commission suggests that this should be read by all who are sincerely interested in the improvement of our constitutional courts as presently organized and administered, and as I read the report I find also that there is more discussion about what the present courts are than any suggestion with respect to structural change.

With this foreword, I pass directly to the fourth section of the revision, the proposal. The first paragraph of this section provides that:

> "1. There shall be established in the Superior Court at least two appellate divisions. Each appellate division shall consist of three justices of the Superior Court designated by rules of the Supreme Court who shall hear appeals from designated sections of the Superior Court and such additional appeals from inferior courts as may be provided by law. Such justices shall be annually assigned for that purpose by the Chief Justice of the Supreme Court."

In view of the fact that appeals to the Supreme Court will be allowed only in the very few types of cases that I have mentioned, plus the other ones where you can get some judge to agree that you can take it up or have a dissenting opinion, this appellate division would really be the court of last resort in the vast majority of cases, and it seems that perhaps a court which, in all practical purposes, is a court of last resort should consist of more than three judges.

Having been accustomed to the numerous judges of the Court of Errors and Appeals, with an intermediate appeal with three Supreme Court Justices in the Supreme Court on certain matters coming up from the lower courts, the thought of dropping down to an appeal to three judges seems to be a very decided drop. It is to be presumed, within reasonable limitations, that there is more likelihood of a slightly larger court getting a correct understanding of the pertinent issues and law. To many litigants, a case which does not involve any constitutional question, or which is not a capital case, may nevertheless mean much.

I have not made any study as to how any three-judge court such as suggested has made out in corresponding jurisdiction, nor have I had time to do so. Neither does the explanation of the report tell where such a tribunal has been tried out in any State. Perhaps if I were informed as to this, my views might be different but without any further information that I have been able to obtain, I feel that it would be decidedly better to have the appellate division larger than three judges.

The second paragraph of Section IV, allowing appeals from orders, does not suggest any particular comment except that I think it might be well to indicate whether it is intended that the appeal from an order should be directly after the order is made or whether it should await final judgment.

The third paragraph indicates that the appellate division order and judgment shall be final, subject to appeal to the Supreme Court, which may be taken only in the instance previously mentioned. Now, it is my personal view that the right to go to the Supreme Court should not depend on the presence of a dissenting opinion or upon any judge's certification. I mentioned that before.

I trespass upon what I am going to say in September about this report of the constitutional courts to note that it does reveal in there a decided drop in the amount of litigation, not merely as to litigation in the lower courts but in appellate courts. There being this decided drop, it shows that there is not likely to be an overworked appellate division, not likely to be an overworked Supreme Court, if you set up this plan. That being so, it emphasizes in my mind the importance of the thought that I expressed before, that if you are going to give a man an appeal, give it to him as a matter of right, rather than make it conditioned on any dissenting opinion or any consent of the Supreme Court or the consent of the lower court. I know that in New York they have some such provision as is suggested here, but the litigation is so much more frequent in New York perhaps there may be some reason for limiting appeals there which the current history of the trend in litigation in New Jersey does not reveal.

The fourth paragraph allows appellate courts to review the weight of the evidence and determine whether the verdict is excessive or inadequate; and to reverse in appropriate cases. I consider this very desirable. It eliminates one stage of legal manoeuvre, which frequently takes place under present practice. Now when the party who loses the verdict feels that the verdict is against the weight of the evidence or that the verdict is excessive or inadequate, he must first take out what we lawyers call a rule to show cause before the trial judge and then he goes before the trial judge and argues any questions about weight of the evidence or excessiveness or inadequacy of the verdict. In due course this is decided. Then if he is not satisfied he has to start all over again with an appeal on any errors in the record. Sometimes the trial judge, upon being applied to for a rule to show cause, may refuse to reserve the exceptions taken at the trial, and as exceptions are necessary to appeal, counsel is then placed in the position where he has to decide whether the exceptions are worth more than a right to argue weight of the evidence or amount of damages. The provision in the proposal would throw the whole controversy into one appeal, and I think would save time and expense, besides eliminating possible questions of waiver or the necessity to decide upon what course to take.

Coming to Section V, headed Judicial Officers, the first paragraph of this Section prescribes that the Justices of the Supreme Court and Superior Court and courts of inferior jurisdiction, extending to more than one municipality, shall be appointed by the Governor by and with the advice and consent of the Senate, and that the Legislature shall provide by law for a uniform method of appointment of all other judges. I offer no objection to such a provision.

The second paragraph of the Section would require one year's service as a Justice of the Superior Court as a qualification of a Justice of the Supreme Court. It would further require that a Justice of the Superior Court be a counselor at law in good standing of at least ten years. Of course, the provision about being a counselor for ten years means that the man must be a lawyer for at least thirteen years before he can be a Superior Court Judge, since he has to be at least three years an attorney before he can take his counselor's examination. Far be it from me to minimize the value of experience, but experience has different results on different people, and I would not undertake to say whether it should take thirteen years a lawyer, ten years a counselor, or some other time to qualify one to be a judge of the proposed Superior Court.

The other requirement that one must be a Justice of the Superior Court at least one year before he could be eligible for Justice of the Supreme Court does not seem to be of particular value. The theory of course is that the one year in the Superior Court would be a sort of apprenticeship and might make the judge more at home in the judicial atmosphere and better able to handle himself. Perhaps it is thought that he might within a year demonstrate whether he had the proper treatment to hold judicial position. The difficulty that I see about this line of thought is that the Superior Court is to be a different type of tribunal from the Supreme Court. The Superior Court would be primarily a trial court, whereas the Supreme Court would be an appellate court, with its jurisdiction chiefly made up of capital cases and cases involving constitutional law. One can conceive of a man qualified by education, experience and temperament for the duties of a Supreme Court Justice, who would be entirely unsuitable for the presiding officer of a trial court. The Supreme or Appellate Court would permit of deliberation, research and reflection before making a decision. There would be opportunity for conference with associate justices. In a trial court decision must be immediate or nearly so, and there is no opportunity, or scarcely any, for research or reflection. The trial would never end if the judge took time out to look up the answer every time alert and combative counsel made an objection.

I recall one time having spoken with former Governor Silzer,

at that time a judge, as to the qualifications of a trial judge and the qualifications of an appellate judge, and the way in which Judge Silzer, later Governor Silzer, expressed it, the matter is so much in point that I wish to repeat it. I had voiced similiar views to those which I have just expressed here, and Judge Silzer said, "Yes, the trial judge has to hit the ball when she goes over the plate." Of course, the baseball enthusiasts will grasp the significance of that. It means he's got to be right then and there, whereas in an appellate court he can take his time, study the briefs, and reflect and talk with his associates. Moreover, a trial judge has disciplinary problems that never occur in a court of appeals, as anyone knows who has had trial experience. All of these considerations mean that some men would make good appellate court judges who would never be good trial judges. I think this requirement had better be eliminated, and that reliance should be upon the Governor using discretion in the nomination and the Senate using discretion in the confirmation.

The third paragraph allows Supreme Court Justices to hold office during good behavior, gives Superior Court Justices seven-year terms in the first instance, and if reappointed to hold during good behavior, all subject to the concluding sentence that no judge should continue in office after he had attained the age of seventy years. Well, I don't know about that seventy-year requirement. I remember about the fourth of May, I guess it was, I was up in Hunterdon County trying a case, and I was representing a gentleman about seventy years of age. My opponent, feeling he had a very bright idea about how old the gentleman was and that he shouldn't get very much money because he was about ready to pass out anyhow, rather sarcastically said, "Mr. So-and-So, you are seventy years old, aren't you?" I hadn't anticipated the question so I hadn't done any coaching on the thing, but the man didn't need any coaching; he was seventy years old and didn't need any coaching. He said, "Yeah, what of it? Me mother's ninety." So, I don't know what to say about the seventy years. I believe that that is the age in New York at which they do retire the judges. We have heard a lot of recommendation that men should stop being judges at seventy but I have heard a lot of enthusiasm about Justice Holmes, who lived to be considerably older than that and who is supposed to have retained great faculties at a later age. I pass that on to the judgment of others. You know as much about it as I do.

Tenure during good behavior has been deemed desirable in the Federal courts. We have never had it in New Jersey. Of course, it removes any temptation to the justice to allow his judgment to be warped by political considerations or the fear that he might not be reappointed, or any sort of influence of the kind, and on the other hand, sometimes if men think they can't be disposed of they have a tendency to get a little arrogant. I prefer not to express

any opinion on this subject, also. My inclination and the preponderance, I would say, of my view is that I think the good behavior is a good idea. I shall reserve for comment in the discussion of Article VI about impeachment certain other words in this particular paragraph about the issue of good behavior, because I feel the issue of good behavior is somewhat related to impeachment and I would like to pass over until I discuss Article VI what I have to say about that.

No objection particularly is stated by me to the fourth, fifth or sixth paragraphs of the section, but as I indicated earlier in the discussions at the last hearing, I would strike "gainful" out of Paragraph 5. Coming to Section VI, Administration, the only paragraph of the sixth section, Administration, on which I will comment are four, five and six.

One aspect of four has already been mentioned. The paragraph provides that whenever the Supreme Court fails to hear a case within two months after appeal is perfected or fails to decide a case within two months after argument and submission, the Chief Justice shall certify that fact to the Governor and the Governor may thereupon appoint a special term of the Supreme Court from among the Justices of the Superior Court to exercise concurrently the jurisdiction of the court until the delay is cured.

I have already said I think the Chief Justice rather than the Governor should appoint any special term deemed necessary but regardless of who should appoint such special term, it is my belief that circumstances might make a delay of more than two months reasonable and that even if the Governor is to be allowed to appoint such a special term it should be left to the Chief Justice to determine whether, under all the circumstances, there is any need for one.

One of the speakers earlier said he didn't see how it would be possible for a special term which was appointed to take over any case which is pending. I don't see anything in the phraseology here which would limit this special term, that would be called, solely to new cases, and I don't see where he gets the idea it wouldn't be possible for one of these special terms to take over a particular case even though it had already been started.

As to the fifth paragraph of this section about special judges, it is noted that it is only upon request of the Chief Justice that this kind of a judge could be nominated and appointed for not exceeding a year whenever and so long as any court fails to try or hear any case within two months after notice of trial has been filed or an appeal therein perfected or fails to decide any case within two months after it has been argued or submitted. If there are to be any special judges, we think their appointment should be conditioned upon request of the Chief Justice, but we also think this paragraph places too much emphasis upon two months. It may

be noted in passing that in recent years the bulk of litigation has involved a good bit of automobiles cases, and with less automobiles on the road there is likely to be less of this type of litigation, and federal tribunals are taking over many fields formerly deemed State matters. The report that I am to discuss later shows what a decided drop there has been in litigation, so I have very much doubt whether there is now, or will be in the near future, any need for these provisions of Paragraph 5 about this kind of judges.

It is assumed that the report mentioned in the sixth paragraph, which the Chief Justice shall file with the Governor and the Legislature, would be substantially the same document as is mentioned in the second subdivision of the first paragraph of Section VI; that is, the assistant to the Chief Justice would get up some kind of report of substantially the same thing. It seems to me that this is a desirable provision. I think this is a desirable provision, to have a report of that type to show the Governor and the Legislature what the administrative situation is in the courts.

I have said before that I see no good reason why the subject of judicial reform, if desirable, could not properly be submitted to the people separately from other provisions, despite the Commission's recommendation that submission of the revised Constitution shall be in such form that the people will vote for or against the document as a whole. It seems to me it is a separable article and can be separated. A lot of people might want court reform who don't want a lot of the other things mentioned. This could be and should be separated.

This completes the review of the text itself but I should like to note that as early as 1931 the Manufacturers Association of New Jersey recognized the importance of the problem of revision of the judicial system and jury reform in this State. At its annual convention in that year, held in Atlantic City, it had the favor of an address by the Chairman of the Judicial Council of the State of New Jersey. At that convention the Association adopted a resolution which heartily approved the aims and objects of the Judicial Council in respect to the matter mentioned as they were then outlined.

That you may be advised as to what the Judicial Council then thought, I may note that by its report to the Legislature on May 31, 1932, it proposed certain amendments to the Constitution which would provide for an independent Court of Appeals, consisting of a President Justice and six Associate Justices; the Supreme Court as now constituted, except that its original common law jurisdiction in actions of law should be transferred to the Circuit Court; a Circuit Court which would possess the original jurisdiction theretofore vested in the Supreme Court in actions at law and the jurisdiction theretofore vested in the several Circuit Courts; a

Court of Chancery with Vice Chancellors to be appointed by the Chancellor, subject to confirmation by the Senate; and a County Court in each county with all the jurisdiction theretofore vested in the Court of Common Pleas; Orphans' Court; Court of Oyer and Terminer; Court of Quarter Sessions and Court of Special Sessions. The proposed amendments provided that the Prerogative Court be abolished, and that judgments of the Supreme Court, in the exercise of its appellate jurisdiction, should not be appealable, except in cases where the Supreme Court might allow an appeal to the Court of Appeals or where the Court of Appeals might allow an appeal from the Supreme Court.

A lot has taken place since the Judicial Council so reported, and I do not know how our Association would regard a similar proposal if it were made now. Personally, I still maintain that same view that if you are going to allow an appeal, it should be as a matter of right.

The only other related matter that I wish to mention is the importance of providing for judicial review of administrative decisions, if there is to be any revision of the New Jersey Constitution. No one could have foreseen in 1932 the strides which have been made by administrative agencies in this country or the purposes to which so-called administrative law would be directed. At least the Manufacturers Association of New Jersey did not so far foresee.

John Dickinson, professor of law of the University of Pennsylvania, also general solicitor of the Pennsylvania Railroad Company, speaking at an institute on Administrative Law and Procedure under the auspices of the American Bar Association on September 13, 1940, summed up the conceptions and objectives entertained by the devotees of so-called administrative law in the following words:

> " . . . a view is beginning to crystallize, largely among government officials and those more immediately associated with them, to the effect that administrative action in the field of private conduct, and more particularly business and economic conduct, is not, as hitherto has been generally supposed, for the purpose of policing and regulating such conduct so as to make it conform to a standard of legislative requirements, but on the contrary, is for the purpose of superimposing governmental management over, and in substitution for, private management. On this view, the guiding consideration of administrative action is not to secure, through the flexibility incidental to such action, more effective conformity by individuals to lines of conduct prescribed by the Legislature, but is instead the far broader one of making the individuals who are subject to the regulation do from time to time whatever the administrative body regards as conducive to the proper management of their affairs.

Clearly, if such a view is taken, most of the thinking which has hitherto been applied to the scope of administrative action and the relation of that action to its statutory basis becomes irrelevant. A far broader field of discretion opens up before the administrative agency than would be permissible if its functions were regarded as confined within the four corners of particular legislative mandates, no matter how vaguely stated. Clearly, for example, if a body empowered to regulate rates conceives its mandate as not merely to establish rates which are fair as between the utility and its patrons, but rates which in its managerial judgment will accomplish some result that for the time being it regards as for the good of the industry, the type of considerations which it will then be entitled, and indeed required, to apply include little or nothing that can properly be passed upon by a court whose function is to delimit spheres of competing interests in accordance with principles of justice and fair play between man and man.

Associated with this new conception of administrative power, and closely related to it, is a novel and interesting conception of the relation of the administrative agency to the statute from which it derives its authority. The hitherto accepted view upon which all the decisional law has been based is that a statute, no matter how broadly and vaguely expressed, does not merely carve out a field of action for the administrative agency and prescribe a direction or directions for its activity, but also sets an end-limit to those activities beyond which they may not lawfully go. To adhere to the figure, the agency is circumscribed on all sides by a boundary of law, and the courts, in the exercise of their power of review, have the function of defining these boundaries and restraining the agency within them. The newer theory is a different one. To change the figure, it views the statute as an open-end instrument which brings the agency into existence, projects it in a certain direction, and then authorizes it to go as far in that direction as it pleases in its own unfettered discretion. Obviously, if this view is taken there is again little if any function left for judicial review. The only limitation upon the administrative authority is the supposed purpose of the statute, which is so broadly conceived as to lay no basis for judicial reasoning, and to convert all issues into issues of policy which are clearly more proper for decision by the administrative agency itself or by the Legislature than by the courts.

So far these views have attained no wide acceptance either in the profession or among the public generally, which hardly knows of their existence, but they are already

widespread among governmental administrators themselves. Their adoption would render the discussion of judicial review simply irrelevant; but it would at the same time render irrelevant and obsolete, at least in the field of governmental action, most if not all of what has hitherto been understood as law."

And I may note that the report of the Special Committee on Administrative Law of the American Bar Association said of the theories so outlined by Mr. Dickinson:

> "Any such theories of government are simply totalitarianism run riot."

You will find that in Volume 66, Reports of American Bar Association. I think it is just last year's volume.

And do not think that this proposed revision is contrary to the theories which Professor Dickinson thus exposed. As I pointed out when we were considering the third paragraph of Article II, this proposal would allow administrative agencies to effectuate "declared general standards or principles" instead of "defined standards and policies" which the Court of Errors and Appeals now regards as the limit of administrative action, as is shown by 126 New Jersey Law Reports, 314, at page 321. This supposed limitation of general principles, general standards, instead of defined ones, would allow what Mr. Dickinson referred to as "an open-end instrument which brings the agency into existence, projects it in a certain direction, and then authorizes it to go as far in that direction as it pleases in its own unfettered discretion."

Mr. Dickinson also said:

> "The possibility of review suspended over the administrative agency, like the possibility of bringing suit against a party to a contract, operates in actual experience as no other tool which social invention has discovered to restrain the tendency to arbitrary action by keeping vividly before the mind of the administrator the fact that he is supposed to conform to requirements which the courts have laid down in previously decided cases and to confine his activities within the sphere which such decisions have marked out for him. In other words, the effectiveness of review is not so much that it will be applied in the particular case as that it creates an administrative attitude which minimizes the necessity of its being applied."

I am firmly convinced of the importance of guaranteeing effective judicial review of administrative determinations and am also convinced that Article II, Paragraph 3, instead of placing an additional limitation on action by administrative agencies, would

liberate them from the necessity of confining their activity within defined standards, as they now must do.

Daniel Webster once said: "The contest for ages has been to rescue liberty from the grasp of executive power." And one way to aid liberty in this regard is to cut the third paragraph out of Article II of the proposal, and insert in Article V a provision guaranteeing judicial review as to law and fact over administrative determinations.

MR. CAVICCHIA: Mr. Chairman.

MR. AMLICKE: Mr. Cavicchia.

MR. CAVICCHIA: I would like to ask Mr. Chance several questions. I made several notations last week while he was speaking.

MR. AMLICKE: Will you submit, Mr. Chance?

MR. CHANCE: Oh, sure. You know something—I guess I won't say it now—I was going to say something about how much easier it is to ask questions than to answer them.

MR. CAVICCHIA: Mr. Chance, I was very much interested last week in your opening remarks, because it seemed to me that when you spoke at the original hearing what you said was so interpreted, not alone by myself but by others here and, if I might properly judge from general conversation, in the public press, that you were representing interests at these hearings which were opposed to constitutional revision, but last week you were very, very careful to point out that you were not to be taken as opposed to revision, but that anything you might say by way of opposition was merely to afford general discussion at these hearings. I take it, therefore, in a word, whereas in the beginning you started out as a fervent oppositionist to constitutional revision, by last week you had so changed your attitude that it could be construed as one of, shall I say, apostasy or relinquishment of a previously declared position? Am I right in that?

MR. CHANCE: I think perhaps the best way to answer you is to refer you to the very beginning of my statement on the opening day, where, after getting up, I said I was happy and honored to address this Honorable body in behalf of the Manufacturers Association of New Jersey concerning the proposal for a new Constitution of our State. Now then, in the second paragraph of my remarks on the first day I said this:

> "The management of the Association, representing as it does such a large part of the industry and citizenry of this State, have felt that the Association should be represented at the discussion of a matter of such vital importance as a revision of the basic and fundamental law. They have not authorized me to commit the Association finally to any attitude or course of action in advance of the determination of this Committee as to whether you will recommend the sub-

mission of all or parts or none of the proposal to the consideration of the electorate. My position in opposition to the proposal is that I shall, with your premission, explore and review the significant features of the proposal, in the hope of aiding you in your decision as to what action or inaction you will report and recommend."

I guess that is enough of it.

MR. CAVICCHIA: That is enough, Mr. Chance, but if my recollection serves me correctly, that wasn't at the first hearing; that was at the second hearing. I think that is when you were beginning to—

MR. CHANCE: That is the first time I talked.

MR. CAVICCHIA: All right. The reason I bring that up is that last week you said the trouble with some reformers is they pick out of something that which is good for their cause. Now, as a matter of fact—

MR. CHANCE: I don't withdraw that.

MR. CAVICCHIA: You don't withdraw that, but you were guilty last week of the very same thing, and I am trying to connect that up with your position with regard to revision, because when you pointed out that the concurrent resolution gave this Committee the authority to conduct hearings for the purpose of lisfening to public sentiment on the document proposed by the Revision Commission, you only went so far as that point and failed to read further that "the Joint Committee shall . . . report to the Legislature the result thereof, to the end that the Legislature may be informed of the public sentiment of the State as to the various proposals for changes in the fundamental law of the State made in said report of the said Commission." That isn't the thing—I think that is what you quoted up above there.

MR. CHANCE: What I quoted was the title of the resolution.

MR. CAVICCHIA: I think the part I have just read is what you quoted, but you failed to quote that the Legislature should ascertain also the sentiment of the people of this State as to whether or not they desire the fundamental law of this State to be changed. In other words, the function of this Committee is not particularly to collect sentiment with respect to the proposal of the Commission or the proposals of the Commission. The function of this Committee is also to determine whether there is sentiment among the public for any changes in the fundamental law of the State.

MR. CHANCE: Well, I have already told you a lot of ways I think would be improvements.

MR. CAVICCHIA: Now, on the question of revision by amendment, you have indicated that if revision is necessary it could be done by amendment.

MR. CHANCE: I propose to say a lot more about that, too, when we come over to the article that is headed Amendment.

MR. CAVICCHIA: Mr. Chance, do you think it is as easy to change the Constitution by amendment as it is by a thorough revision after comprehensive study, as is being made at the present?

MR. CHANCE: Yes, I think you have a whole lot more chance to get anything over if you submit separately separable propositions. If you submit this whole thing as a whole, everybody who has a kick will have to vote against the whole thing to carry out his kick, and I think that you have much more chance of getting substantial changes if you submit it in sections or articles which are separable, rather than a wholesale business, to say nothing about the legality of the proposed submission which I shall also discuss when we come to Amendments.

MR. CAVICCHIA: Mr. Chance, do you know how many proposals have been made in the past to change the Constitution by amendment?

MR. CHANCE: No, but I know that nobody ever suggested this one before.

MR. CAVICCHIA: Well, would it enlighten you if I tell you about one hundred proposals have been made in the past to amend the Constitution, and that less than twenty of them ever reached the people for vote at only seven separate elections? In other words, I am trying to bring out now what the difficulty has been as against your avowal that it is easier to make the changes by amendment.

MR. CHANCE: I am telling you it isn't easy to make the change any way, and it wasn't designed or intended that it would be easy to change. I don't know—just what is your question, now?

MR. CAVICCHIA: My point is that these changes which are desirable in order to effectuate responsible and efficient government are apparently not understood by the people by employment of the amendment process. That has been the experience of the past.

MR. CHANCE: Well, if we have a government of the people, only those things which are understood and desired by the people should be put into amendments.

MR. CAVICCHIA: Do you think it would be easier for the people to vote on the whole judicial article, which, generally speaking, constitutes a one-third portion of the Constitution, than it would be for them to vote on a thoroughly revised Constitution containing changes in the coordinate branches of the Government?

MR. CHANCE: I think the judicial article is separable from the others. I think that there are many people who feel there is a need for judicial change, and I think that many people, if that

were put up to them, would vote in favor of that particular thing, whereas if you put the whole draft that we have, from start to finish, they would vote against taking it as a whole. They would rather get along with what they have than to have their Senators taken away from them, for instance, by this clause that I spoke about, where the Governor could send the thing in and you had to get the joint resolution repudiating the Governor's action; otherwise, you would have a law without the Legislature agreeing to it. I am firmly of the belief that New York State followed the right procedure when they submitted the last amendments that they made—I think they called it a revision. They submitted not one whole thing but article so-and-so, article so-and-so, and they separated out the separable things and let the people vote on the separable things, and I think apart from any question of legality, that that is the wiser way unless you can say that an existing Constitution is a lot worse than I am prepared to say New Jersey's existing Constitution is.

MR. CAVICCHIA: Mr. Chance, you made a point last week and today in connecton with the provision here about the Governor having the right to appoint a special term.

MR. CHANCE: Yes.

MR. CAVICCHIA: Your point was, "Keep the Governor out of that phase of the Judiciary."

MR. CHANCE: That is right.

MR. CAVICCHIA: Now, then, I take it you are for a complete independence of the judicial branch of the Government as against the executive and administrative.

MR. CHANCE: Well, if you will point to any trespass upon that proposition you have in mind, I will tell you whether I am for that or not.

MR. CAVICCHIA: Well, last week or the week before, when you deplored the provision here for removal from office of incompetent heads by the Governor, saying that removal should be only after trial before a court, and I brought up the question of keeping independent the coordinate branches of the government, you then wanted to intermingle the one with the other. Now today—

MR. CHANCE: How did I do that? I don't recall that.

MR. CAVICCHIA: Because you felt these office heads should be brought in before a court in order to try their cases for removal for incompetency and therefore, in effectuating that, you would have to bring the executive department before the judiciary and make the executive in a sense answerable to the judicial process. Now, you are laying stress on keeping the executive out of the judicial, insofar as appointing special terms of the court is concerned. I mean, I don't reconcile your points, and this goes back to my original observation that you, yourself, are using or picking out those things which are favorable to the case you are trying to present at this hearing.

MR. CHANCE: I will admit I am not trying to prove this thing is a good Constitution you are proposing—I don't deny that at all—but, coming back to what you said about removing an incompetent officer, the trouble with that one is you assume the incompetence. What I say is it has been recognized in the course of our judicial history to be a judicial question as to whether or not the man was in fact incompetent and should be removed, and that I don't concede that because some Governor some time says some man is incompetent it is necessarily true.

MR. CAVICCHIA: Mr. Justice Bodine only yesterday did not agree with the view you now express.

MR. CHANCE: Oh, yes, Justice Bodine agreed with just what I said if you will read back there where I said that the case of *Gaul* vs. *McCran* was not at all inconsistent with my proposition because in that case the Governor was given power to remove, not because it was any executive function to remove, but because the Legislature had vested in the Governor this power to remove, in that case the Commissioner, and just so, as I have read by the newspapers—I haven't Justice Bodine's opinion, but as I read by the newspapers what is supposed to have taken place, whether correctly or not is not for me to say—the Legislature vested in the Governor power to remove certain local officers under certain circumstances, and as I read the newspaper about the opinion, Justice Bodine held that the Governor had done what the Legislature had set up as the thing for him to do and that he had done it in accordance with what the Legislature had said was the way to do it, not because of any supposed inherent executive power, but because he was doing something the Legislature empowered him to do.

MR. CAVICCHIA: Let's conclude this by my asking a pointed question, Mr. Chance. Do you represent a sentiment for revision or do you represent a sentiment against revision?

MR. CHANCE: I would prefer to let my remarks made up to date, plus those I shall make in the future, speak for themselves and be their own interpreter on that.

MR. CAVICCHIA: That is all I have to ask, Mr. Chairman.

MR. AMLICKE: Is there anyone else who wishes to be heard in favor of the proposed Article V? I think Mr. Paul asked for that permission.

MR. PAUL: Mr. Chairman and Members of the Committee, since the last hearing of this Committee, the report on the State Judiciary by Dr. Ralph R. Temple has been published. Had that been available last week, the proponents would have commented on it at length. I have no intention of commenting on it at length today. I would like to make just one very brief observation in connection

with this report and particularly page 9 (p. 1058-1059). I have glanced through it briefly and I am struck by the fact that a great many of the recommendations of Dr. Temple in this most interesting report cannot be effected without Constitutional revision. A great many of the other recommendations can be more effectively accomplished only by Constitutional revision, and it is just with that thought, Mr. Chairman, for the matter of the record, I would like to mention this report at this hearing. I will not take your time any longer.

MR. AMLICKE: Are there any others who wish to be heard in opposition to the proposed Article V? If not, we will now hear from the modificationists. I have before me a list prepared last week, and I will call off the names we had last week. Is Miss Ruth Rappaport, New Jersey League of Women Shoppers, present?

(No response)

The next speaker in favor of modification will therefore be Mr. Manuel Cantor, representing the Communist Party of New Jersey, Mr. Cantor.

MR. CANTOR: The terms "ancient," "archaic" and "outmoded" have been used liberally in describing our present Constitution in its entirety. To no portion of the present Constitution do these terms apply with greater justification than to the section dealing with our court system. From coast to coast in our land, and in many foreign countries, the words Jersey justice are a symbol of the low estate to which judicial power can descend.

Admittedly, State courts generally have lagged behind the times in their interpretations of legal matters involving social and political issues. But New Jersey courts have led all others in their stubborn defense of reactionary vested property interests and in restraint of the interests of the people. The use of the injunction in our State has earned for New Jersey an important place in the annals of anti-labor history. Until recently disorderly persons decisions in New Jersey police courts gave our State a prime rating of highly questionable value. And our appellate courts, in affirming many of these decisions, acquired an equally unenviable reputation. New Jersey stands high in the roster of states whose civil rights decisions have been reversed by the United States Supreme Court.

The Commission on Revision explains that "New Jersey has the most complicated scheme of courts existing in any English speaking state." This is true enough. But more important is the fact that New Jersey courts have been law-makers who have subverted the will of the people by so-called "judicial legislation." New Jersey courts have been reliable agents indeed for curbing and limiting by their "interpretations" the positive benefits and effects of social legislation.

The Communist Party in its appraisal of Article V of the

Revision, dealing with the Judiciary, once again applies this test: Do the proposals provide the means whereby our State Government can better and more completely carry out the will of the people? From the standpoint of improved and simplified court structure we consider the proposals in Article V a real advance. Other speakers have dwelt in greater detail on these distinct improvements. We will attempt to point out wherein the proposals of the Committee fail to meet the needs.

Firstly, they retain the old appointive system of judges, whereas the elective system provides a more alert, more progressive judiciary more likely to reflect the people's view of the law.

Secondly, they are entirely silent on the important problem of correcting the confusing, often harsh and oppressive, police court system.

Thirdly, they curb the right of appeal in criminal cases and in important civil cases.

Let us review the specific sections in greater detail. In Section I provision should be made for the establishment in every municipality of a police court. The judges shall be elected by the people at regular municipal elections. The practice shall be controlled by the Superior Court, with a uniform system of criminal procedure. Right of counsel shall be guaranteed to the accused at preliminary hearings, and competent counsel shall be assigned by the court where accused cannot provide his own. There should also be established a speedy and simplified method of appeal from rulings and decisions of the police court and for a new trial on appeal from any conviction.

Certain police courts today wield tremendous power over which there is little or no control. They are under supervision of local authorities. They may hold accused in excessive bail. No adequate records are kept. There is wide divergence in procedure. A person may be arraigned for a simple offense, like assault and battery. If, through ignorance of his rights, he waives indictment and a jury trial, he is given a hearing at which all types of hearsay evidence and opinions are permitted, and he may be sentenced to one year in jail. In disorderly persons cases, within one hour after the alleged offense is committed persons have been sent to jail for as long as one year. Possible abuses become evident when one remembers that a peaceful picket may be a "disorderly person" in the eyes of some.

Section II and III are generally satisfactory.

We would suggest the following additions under Section IV:

In Paragraph 1, judges in the Appellate Division should not hear appeals from their own decisions, nor should they hear trials of cases during their term of service at the Appellate Division.

In Paragraph 2 preference in appeals should also be given in criminal cases.

In Paragraph 3 appeals should be permitted as a matter of right in any criminal case, and in cases involving interpretation of a statute.

In Paragraph 4 the appellate courts should also be able to set aside and reduce sentences which are excessive.

These additions would provide necessary safeguards for the rights of the individual in addition to the property rights which are adequately protected.

It is on Section V, which contains the provision for nomination and appointment of judges, that we center our principal objections. The Communist Party contends that judges should be elected at state elections for a term of four years. In thirty-six states both the highest court and inferior court judges are elected. In many cases city and police court judges also are elected.

The appointive system is a hold-over from the power exercised by the English King and by his Chancellor. It no longer conforms with democratic practices, nor meets present-day needs. The exhaustive survey made by Judge Seabury in New York drew the conclusion that all the defects supposedly inherent in the elective system are found in the appointive system; plus many others, we contend.

Opponents of the elective system argue that it would involve judges in politics, that is, would make them subject to pressures from political parties and machines. This is a specious argument indeed. What better proof could be desired that the appointive system is the easiest prey to the spoils system than the notorious situation today in our own New Jersey judiciary! If this is not so, why all the clamor, in Congress, in the press and everywhere else, over the recent Meaney appointment? Is there in this chamber, or sitting on your Committee, anyone so politically naive that he does not know the unwritten law in New Jersey that Supreme Court and Chancery Court Judges are selected as near as possible on the basis of an equal proportion between the two major parties?

The New York Bar Association in its report (Vol. LVI, 1933, pages 193-285) stated among other things the following regarding the appointive system then under consideration:

> "It would not result in divorcing the judiciary from politics but would make the appointment of judicial officers part of the scheme and plan of political patronage for the purpose of building up a state-wide political organization."

It is an interesting commentary that New York State with its elective system ranks second to the United States Supreme Court in the weight of its decisions, while New Jersey with its appointive system ranks 41st, according to competent legal opinion. Appointed judges certainly are subject to pressures and influences, but not to pressure from the people, whose interests they are supposed to protect. The elective system would go a long way to make our

judges less arbitrary and more responsible to the people. Whatever weaknesses exist in the elective system could be overcome in part were there a Bar Association, cleansed of bureaucratic and political influence, to advise the public on the qualifications of the candidates for judges.

We would add only one further proposal that the State provide for printing of the record in the case of poor defendants unable to meet the expense. With the major exceptions noted, we repeat that the proposals of the Commission on Revision for the reconstruction of the New Jersey court system constitute a distinct improvement, which we fully endorse.

MR. CAVICCHIA: Mr. Cantor.

MR. AMLICKE: Mr. Cavicchia would like to ask you a question. Will you submit, Mr. Cantor?

MR. CANTOR: Yes.

MR. CAVICCHIA: Is there anything wrong in appointing judges on a bi-partisan basis?

MR. CANTOR: No, I have no inherent objection to that in an appointive system.

MR. CAVICCHIA: The way you asked that question was peculiar. It is not a question of being naive about it; as a matter of fact, our statutes provide that Common Pleas Judges shall be appointed on that basis. In fact, I was author and introducer of a law to appoint District Court Judges on that basis, because I believe the only way you can get non-partisan judges is to appoint them on a bi-partisan basis, so they will be distributed equally among the parties.

MR. CANTOR: I don't agree with the premise that you will get the most competent judges merely by a division of Republicans and Democrats.

MR. CAVICCHIA: It isn't a question of competency. It is a question of picking competent judges from among the parties.

MR. CANTOR: From among the parties?

MR. CAVICCHIA: Yes. Do you think you can take politics out of the judiciary by having elective judges; isn't there a possibility you will get a preponderance of judges of one political party if that political party is stronger in the State or in the county?

MR. CANTOR: Yes, you may, but on the same premise we approach the entire Constitution, we want the Judiciary, along with the Legislature and the Governor, to be responsive to the people, and the elective system much more nearly will accomplish that.

MR. AMLICKE: Does that answer your question, Mr. Cavicchia?

MR. CAVICCHIA: Yes.

MR. AMLICKE: The next registered speaker in favor of modification of the proposed Article V is Mrs. Andrew J. Steelman.

MRS. STEELMAN: Mr. Chairman and members of the Joint Legislative Committee:

Last week when I spoke for the League of Women Voters as a proponent of the revised Constitution, I said we felt that the proposals would set up a simplified and coordinated system, and that it would be a great step forward in providing more efficient and speedy administration of justice.

I want to add here that, contrary to the implications of a speaker last week that all of the proponents were actually against this revision, for the League of Women Voters I want to emphasize that we have interpreted, as Mr. Cavicchia has brought out this morning, the action of the Legislature in setting up this Committee to be for the purpose of hearing all the proposals which students of State Government and those interested in constitutional revision should bring forth, to be considered with the proposed revision of the Commission. Therefore, while the League of Women Voters has made some specific recommendations for changes that they would like to see in this revision, if in its wisdom the Legislature would present to the people this revision of the Constitution as submitted by the Commission, I want to say that the League will work for it heartily. We would like to see some changes made in it, but it is so far in advance of our old Constitution, we certainly are for it, and I wanted to make that very clear for my organization. However, I am going on to some recommendations which we feel should be added to this judicial article.

First, the higher courts in this proposed revision have been very well taken care of, but we feel, and we know, that the large volume of cases come in our lower courts, and we feel also that under the existing conditions in the world there may be a very great increase in the volume of legal actions brought in these courts, and it is in these courts that the man of low income bracket has to bring his case, and to these courts the offender against society is brought. It is seldom that these people can afford the services of a high priced counsel, and therefore we should have them presided over by men with thorough legal training of the highest integrity and social conscience. Because of the way in which the League is organized, in units in all types of municipalities, we believe that we are better qualified to make recommendations concerning these lower courts than on any of the other court divisions. For more than fifteen years we have been studying the functioning of the various types of local courts, and we are convinced there is such a wide variance in the justice administered in these many courts as to create an unfairness in the kind of protection which is received by citizens in different communities. One could almost say there are as many kinds of justice in New Jersey as there are divisions of local government. We therefore

recommend that a third division or section to the court system be added in Paragraph 1, Section I, to read, "The judicial power shall be vested in a Supreme Court and a Superior Court and a District Court. All inferior courts shall be integrated with the Superior Court in any manner and to any extent not inconsistent with this Constitution"—that is, by adding the words "district court" and eliminating certain phrases there.

I am not going to take this up Article by Article; I am going to present just our program which we have evolved through fifteen years of study and most of which was submitted to the Commission for the Revision of the Constitution. We wish to see a provision to authorize an administrative group, and it is practically set forth in the Constitution here, composed of the Chief Justice, the chief judges of the higher courts and of the district court and five associate judges, to promulgate rules for court procedure; to establish districts; to provide for needed rotation of judges, and any other needed authority to provide for the efficient functioning of the court system.

We believe all judges should be appointed by the Governor with the consent of the Senate, and I would like to add in that connection we would like to see set up a commission, if it seems to be wise to put it in connection with Section I, Paragraph 1, composed of the Bar, the judiciary, and members of civic organizations, who will submit to the Governor nominations for judicial positions and from the list submitted the nominations shall be made. I believe that is in use in some other States, and we should like to see it taken up in New Jersey.

All judicial appointments to be made on the basis of qualifications—I am not at all sure that being a counsellor at law for five years does qualify one to become a judicial officer, but it is very difficult indeed to set up standards of qualifications, and perhaps that is one that could well be taken into consideration. We believe also that in judicial appointments consideration should be given to the special training in the particular branch of law, with mental and ethical attitude toward the position to be filled.

The appointment of judges to be made for a term of seven years—or perhaps a better plan would be for the appointment for three years, at the end of which the administration of the particular judge would be reviewed by the Commission which I just suggested and also by the administrative group of the court system, with recommendations to the Governor as to reappointment. The reappointment should be for life.

All judges to serve full time and not allowed to practice privately; a plan of advancement by merit from lower courts to higher courts to be established; no member of the Legislature to be appointed to a judicial position, and I think that is very well taken care of in the legislative section here which said that no

member of the Senate or General Assembly shall, during the term for which he or she has been elected and for one year thereafter, be eligible to hold any appointive office under the authority of this State, including the offices of Treasurer and State Comptroller. I think that covers our desire to see no appointments made directly from the Legislature.

In addition to this Article III, then, if the district court was included in Section I of Article V, we would like to see an additional section setting up this district court, and I will just read here—I am not attempting to put this as I feel it should be accurately worded for this proposed Constitution, and I wish to submit a brief on this particular section, with other recommendations that are being made on the other articles, but the section to which I refer would read something like this: A district court system with civil, criminal, juvenile and domestic relations divisions, this court to be composed of a chief judge who shall have administrative authority over the divisions in the several districts throughout the State, and such number of judges as is needed to carry on the work of the divisions in the several districts. This implies, in our understanding, that all of the lower courts shall be brought into integration in a court system and that in the interests of the large masses of people the functions of the offices of recorder, police court, and justice of the peace court shall be abolished and all of their functions transferred to this district court. Such a court could be set up on a district rather than county lines, the district to be determined on the basis of population and potential needs. In larger area districts, the judge holding the court of the particular division should rotate within the district. This would prevent undue difficulties for litigants and would help to overcome the opposition of home rule. In subdivisions of the district court, officers could be appointed to act in the capacity of a committing magistrate or clerk of the court, to take care of matters to hold over for court action.

The League believes that the district court branch is the most important of the whole court system, because, as I mentioned earlier, it is here that the greatest number of legal actions are brought, with the greatest variance of court procedure and of justice secured. We feel that these courts should be set up and administered with the very highest type of people at their head, because the rank and file of the litigants in the smaller courts are not prepared to have the services of high priced counsel, and as long as we have no system of public defenders in New Jersey, we should have the opportunity in the court itself for equal administration of justice throughout the State. Therefore, we urge the setting up of this district court along the lines I have outlined.

MR. AMLICKE: Mrs. Steelman, do you contemplate filing a brief today?

MRS. STEELMAN: No, we contemplated filing all our recommendations together in one brief.

MR. AMLICKE: May I suggest that when you file your brief, you specify therein each article separately?

MRS. STEELMAN: We will.

MR. AMLICKE: And make them, in effect, separate briefs.

MRS. STEELMAN: Yes, we will do that. We just thought we could file it all at one time, if that is all right; otherwise, I could send them in immediately after the hearing.

MR. AMLICKE: Very good.

The next speaker will be Mr. Kirk Brown.

MR. BROWN: Mr. Chairman, Members of the Committee:

Article V, Section V, Paragraph 1, page 48 of the Report of the Commission for Revision (p. 947) reads, "The Governor shall . . . appoint . . . the Chief Justice and associate justices of the Supreme Court." I suggest the addition of the following, "Provided such appointments shall not number more than a minority of the court during any one term of the Governor except that this prohibition shall not apply to the first Supreme Court established after the ratification of this Constitution. If more vacancies than a minority of the Supreme Court occur during any one term of the Governor, the presiding justice shall designate a justice or justices of the Superior Court to serve until the vacancy or vacancies are filled by gubernatorial appointment."

The appointment of justices of the Superior Court temporarily to the Supreme Court is provided in the Report in two places. On page 49 (p. 948) the Governor is given power to appoint a special term of the Supreme Court from among the justices of the Superior Court, and on page 46 (p. 945), the presiding justice of the Supreme Court to designate a justice of the Superior Court when necessary to constitute a quorum. The purpose of this addition is to hinder, perhaps prevent, the infiltration of the court with appointments made for reasons of state. The Supreme Court, having the interpretation of the Constitution in its purview, is the guardian of the people's sovereignty. In a State where this sovereignty is being mocked every day by a political crew that may come into possession of this appointive power, it is especially incumbent upon the people's representatives, upon whom they have bestowed their trust, to see that that power may not be used to create what James Wilson, a Justice of the Federal Supreme Court, has termed "decisions of courts whetted and guided and impelled by considerations of policy, terrible instruments of arbitrary power that cut with the keenest edge and inflict the deepest and most deadly wounds. Nothing is to be more dreaded than maxims of law and reasons of state blended together by judicial authority."

Encroachments by the three powers of the American system, each upon the other two and all three upon the sovereignty of the people, have grown in frequency of late years and will continue to grow if these powers find their trespass unopposed. It is but three years or so since one such attempt was frustrated by members of the Federal Senate Judiciary Committee, who, in words that should inspire our emulation, said of the attempt to pack the Supreme Court, "It was a direct violation of the spirit of the American Constitution, it would destroy the only shield of individual rights, it violated every sacred tradition of American democracy, and should be so emphatically rejected that its parallel will never again be presented to the free representatives of the free people of America." By the means set up in the report, such a parallel can be possible. By this addition, it may be prevented.

MR. AMLICKE: The next speaker in behalf of modification will be Mr. Morris Isserman, representing the C.I.O. and the American Labor League.

MR. ISSERMAN: Mr. Chairman and Members of the Committee:

Before I discuss Article V, I would like to make a short preliminary statement. I was here at the last hearing when Mr. Chance, representing the Manufacturers Association, which apparently is the only real opponent to revision in this State, tried to impress you with the fact that all the persons who have been appearing at these hearings have offered so many modifications and changes that they add up to a virtual, if not actual, rejection of the present revision. In other words, if I quote Mr. Chance correctly, he said, actually or in substance, "When you figure out all the changes that these people want in this document which has been submitted, you will come to the conclusion that it adds up to a rejection of the revision as prepared by the Commission." Apparently, my most eminent friend and member of the Bar, Mr. Chance, has failed to appraise correctly the sentiment and wishes of the great majority of the people who, like myself, have come here representing a great number of organizations whose membership in the State runs into the hundreds of thousands. I think we have all tried to make it clear to you that we all feel the need for a revision. We all believe, or the great majority of us, that such a revision can and should be accomplished through mature discussion and deliberation and a constitutional convention.

We do feel that these hearings give us an opportunity, limited though it may be, to at least express to you and to the public what we believe a new Constitution should contain, and our paths somewhat diverge and each one of us submits to you what we think ought to be in a new Constitution, but even if a constitutional convention were held, we cannot assume that the delegates at such a convention would finally draft a Constitution which would meet with the approval of all of us, or that such a Constitution would contain all the reforms which all of us, individually and collectively, believe are necessary.

However, we live in a democracy and the democratic processes of consultation and deliberation which would prevail at a constitutional convention, we believe, would lead our delegates there to draft, after a discussion of many other proposals, a document which in the main would be acceptable to most of us. The mere fact that a great number of States have constitutional conventions at periodic times is indicative of the fact that the drafters of the Constitution in those States anticipated that changes would have to be made from time to time, and I don't believe that New Jersey is different from those other States. As a matter of fact, if we are prepared to comment, we can say that New Jersey has about the worst Constitution of any State in the Union at the present time. It is significant that, outside of the New Jersey Manufacturers Association, not a single person has appeared here—perhaps on one occasion there was one person—in outright opposition to the document which has been prepared by the Commission. We have suggested changes and modifications, and I am sure that your Committee will sincerely consider these changes and modifications and then present a document to the people which will have in it not only the good features found in the present document prepared by the Commission, but also some of the recommendations made at these public hearings. And then we find that all of us who have been fighting for modification, or all the proponents of this revision, then meet on a common ground and say to you, "If we can't get anything else, with perhaps one or two important changes, we will take this document, because at its worst, it is such an improvement over the present Constitution that it is a step in the right direction; we should take it." I want to make this clear, because I don't believe it was a fair implication of the sentiment of the people to permit to remain in the record the statement of Mr. Chance, unchallenged.

My remarks with reference to Article V of the Constitution: In evaluating the work done by the Commission on the Revised Constitution, it is our opinion that the most constructive recommendations are those incorporated in Article V, involving the change of procedure and the reorganization of our entire judicial system. I have heard here from the lips of many the difficulties which beset litigants in obtaining a speedy decision in this State. All practicing lawyers can give instance after instance of long, unnecessary delay in the disposition of cases simply because of our archiac system. That system probably worked to satisfaction when New Jersey was merely a rural State, but it cannot give speedy justice in modern times. A simple case in the Court of Chancery, without any ramifications, with the difficulties you might have in some cases, can be dragged out for two years before

final determination, and I have had experience with cases which have taken four or five years before being finally disposed of. In fact, in one particular case by the time the litigation was disposed of, a decision of the Supreme Court of the United States forced the Court of Errors to reverse itself, so that the poor litigant—I did not represent him in that case—who instituted the suit believing that he had a good cause of action found, after five years of litigation, that time and Jersey justice had destroyed his case. If you want the citation, I will be glad to give it to you.

None will seriously argue that there is no necessity for revision and reorganization of our court system. Compared with the procedure of our neighboring States, ours is outmoded and shopworn; it is second-hand, and like second-hand articles at times, it ought to be discarded.

Outside of Delaware, no State has a separate court of equity; no State has as large and unwieldy a Court of Errors and Appeals; and no State requires the judges of the Court of Errors to perform the numerous duties which all of the judges of our highest court are called upon to perform. And I say to you that no practicing lawyer needs read the exhaustive document prepared by Dr. Temple. We know the facts are so. We have had experience and each and every one of us can stand on our feet for ourselves and tell you about our experiences at the present time, and we cannot say that the judges themselves are responsible although in some cases they are. It is the system which is responsible for the delay in litigation, and not necessarily the judges.

The Chancellor is responsible for the entire administration of the Court of Chancery, including the appointment of all members of the Chancery bench. That is a job in itself. In addition he is required to sit as a member of the highest court to determine appeals coming from the Supreme Court and the other law courts. Our Supreme Court Justices, who sit in the trial of cases, are called upon to charge Grand Juries in their respective circuits, sit on appeals coming from the Circuit and District Courts, hear all arguments on certiorari and mandamus and all other prerogative writs, and then again sit in our highest court of appeals to determine and pass upon matters, some of which their colleagues on the Supreme Court bench have already passed upon. I say, there is another inherent bad spot in this system. Here are nine Justices of the Supreme Court, six of them always given an opportunity to pass on the judgment of cases upon which three of their colleagues have sat and which they have heard and ruled on. That is bad because it can create and may create a possibility—well, "If John Smith said it is O.K., why should I reverse John Smith, because the next time he may reverse me."

Furthermore, we believe that in a highly industrial State like New Jersey, the practice of appointing lay judges, not trained in

or familiar with the law, to determine the intricate questions of law which arise and which they must decide is an unsound practice and should be eliminated.

We hereby recommend certain modifications of the provisions of Article V:

Section IV, Paragraph 1 provides that the appellate division shall be composed of judges assigned annually from the Superior Court by the Chief Justice of the Supreme Court. It is our belief that good, sound legal procedure demands that the judges in the appellate division shall be appointed permanently and shall not be rotated. This will undoubtedly improve the efficiency of the court and will eliminate a practice presently existing whereby the judges of the Supreme Court sit in the Court of Appeals and hear appeals on cases decided by their colleagues.

May I, in passing, comment merely on the statement made this morning that there is no precedent for an appeals court of three judges. There is such a precedent right here in New Jersey. The Supreme Court, dividing itself into three parts, sits as an appeals tribunal on cases, and in our Circuit Court of Appeals of the United States the practice generally is that three judges sit on appeals—five may, if they desire, but three judges have a right to, and as a matter of common practice do, sit on cases of appeal.

Section IV, Paragraph 3 should be changed to read that appeals to the Supreme Court may be taken as a matter of right in the first three instances mentioned by the revised Constitution, and that in the fourth instance, which provides for "a certification by the Supreme Court to any court," this should remain in the discretion of the Supreme Court. This is the procedure followed in the United States Supreme Court where application for writs of certiorari and others of like nature are considered by the court, and the court first, in its discretion, determines whether it shall take jurisdiction over any particular case.

Section V, Paragraph 2 is unacceptable as it may, on many occasions, prevent the appointment of men to the Supreme Court who are outstanding, able lawyers.

Section V, Paragraph 3 should be modified, as we believe that a judge should not hold office for life or during good behavior, but rather his work should be reviewed and his reappointment should be considered periodically. We believe good men should be retained, but that those who fail to measure up to standard should be eliminated. And while the practice of good behavior may have worked to some satisfaction in the federal court, I question whether anyone can set up a standard of good behavior. A man may be honest; a man may be willing to do a job; but he may not have the mental facilities and capabilities to act as judge. Once he gets fixed on the bench, then his mere inability, his mere mental incapacity to do a job, would not disqualify him because it would have

to be some specific act of misbehavior, as we understand it, and the net result will be that men will stay on the bench who are no longer fit and able mentally to do the right kind of a job.

While the Commission has done a thorough job in the reorganization of the upper courts, it has overlooked the necessity for reorganizing the district courts and the police courts. We are of the opinion that all courts, including the last two mentioned, should be integrated into the court system of the State, and that such integration should be provided for in a new Constitution.

As far as the police courts are concerned, few people realize that there are almost as many different types of police courts in this State, and almost as many acts for the appointment of recorders and police court judges, as there are boroughs, towns and cities in the State. Each act gives the court different powers and provides for a separate procedure for appealing from its decisions.

While this is procedurally bad, more important, however, the present system does not generally permit the court to act independently. In most cases it is considered a part of the police department and acts as an arm thereof. The presiding judge is appointed by the official having jurisdiction over the police department. His continuance in office is predicated upon his remaining in favor with the appointive power, and the result has been that instead of a free, independent judiciary in the police courts, we find too often that these men are guided by, and carry out the policy of, the head of the police department. This, in our opinion, violates the spirit of the Constitution, which sets up the judiciary as an independent, separate branch of the Government. We advocate it is important that the police courts should have the same independent status as all other courts in the State have.

As far as the district courts are concerned, the district court, which is known to most of us as the poor man's court, should be integrated into the State judicial system and should be under the same administrative control. At the present time each court and each judge makes his own rules of conduct and his own regulations, without regard to, or consideration of, the rules existing in any other district court.

We believe that the integration of the district courts within the judicial system by constitutional provision will do much to raise the efficiency and the standards of these courts.

We believe that the judge in every court should be a full time appointee. You may have to cut down the number of district courts, but the judges should not be permitted to practice law; they should not compete with practicing lawyers. I am now speaking as a lawyer. I believe that they should be paid a salary which will permit them to live and maintain a decent standard of living and properly compensate them for their work, and that they should be prohibited by constitutional provisions from practicing law as long as they are on the bench.

Another provision which should be included in the Constitution is one which will prohibit the use by courts of evidence illegally obtained. At the present time there is a constitutional prohibition in our Bill of Rights (Section VI of the Bill of Rights) which guarantees the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. The courts in this State have made this provision a nullity. It is now only high-sounding language, for by judicial interpretation, approved and affirmed by the highest court in our State, it has been held that the State is permitted to use such evidence in order to prove its case. In other words, by judicial interpretation we countenance and encourage police officers to violate the law. These officers know full well that despite the constitutional prohibition against illegal seizures, the evidence so obtained can be used in the courts. We cannot believe that the framers of our Constitution wished to condone unlawful acts, even by the constituted peace officers of the State. We propose that a constitutional prohibition against such acts be incorporated in the revised Constitution.

Furthermore, there should be a constitutional provision to the effect that no person shall be compelled in any criminal case to testify against himself. I am quite sure that most people believe that is now in the Constitution, or that there is a prohibition against it. While it is true that that is at the present time the law in the State of New Jersey, the Legislature may, if it so desires, abolish, limit or define the privilege. It may by legislative action compel testimony in any particular situation and, as I have stated before, can limit, and if it so desires effectually destroy, the time honored right that "no person can be compelled to testify against himself."

Question of public defenders—We note that there is no longer a constitutional provision for the appointment of prosecutors, and we presume that they will be incorporated into the Department of Law. We believe that the Department of Law, in addition to a public prosecution division, should have a public defender division. This is not a new theory, for in 1908 Dean Wigmore said: "Ultimately we shall have a public defender, appointed and paid by the State, precisely like a prosecutor."

The office of public defender, in our opinion, will substitute competent and experienced official counsel in place of indifferent, uncompensated assigned counsel. We believe that the prime consideration in the trial, especially of criminal cases, is that the truth be ascertained, and it is our opinion that a penniless defendant is unable to present an intelligent and proper defense. This creates a different status between the poor defendant and the rich defendant, for the rich are able to obtain competent counsel, well paid, and have the means and the ability to make the necessary investi-

gations to properly prepare and present their case. This inequality should be eliminated and can be eliminated by the appointment of public defenders.

It is our opinion that the appointment of judges is not for the best interests of the State, and the Commission, in its failure to recommend a change from appointment to election of judges, has ignored the necessity for a fundamental and basic reform. Judges should be elected and not appointed. The elective system has generally justified the confidence in the ability of the people to govern themselves, not only with respect to most matters of public concern, but also in the selection of the judges who administer justice in the courts of our State.

Under our Constitution the three branches of Government, while standing separate and apart, together constitute the ruling authority by which the affairs and conduct of the people are governed. The Legislature enacts the laws, the Governor sees that these laws are faithfully executed, and upon the courts devolves the responsibility for their interpretation and enforcement. To us it is inconsistent to say to the people, "You may elect the Legislature which passes the laws; you may elect the Governor who is charged with the duty of executing the laws; but the judges who interpret the laws—they are holier than the people—and as to those we must deny the right to elect them. You have no jurisdiction over them." This to us expresses a lack of confidence in the judgment of the people, and perhaps the framers of the Constitution of 1844 may have had some reason or cause for it. I believe whatever that reason may have been it does not exist at the present time and the provisions for the appointment of judges should be eliminated in any proposed revision of the Constitution. It is significant to note that the appointment of judges has either never been adopted or has been discarded by thirty-six of the forty-eight States of the Union, and only two, Delaware and Mississippi —we ought to be proud of that—follow New Jersey in this procedure of appointment of judges. I challenge the statement that the appointive system has been successful and I use as my authority the courts of France, Germany and England, because we do follow the English system. "The English system which we follow in the appointment of judges has been criticized because of the opportunity it presents to appoint to high judicial offices barristers without previous judicial experience but rich in the service to their party." It almost sounds like the method of appointing judges in New Jersey. I quote again, "One of the most important differences between the English and the American systems is the life tenure for judges which obtained in the former. It is doubtful what effect this has on the caliber of the judges. It has been said that since under a system of life tenure, as in England, judges are rarely promoted from one court to another, they therefore have no need for seeking re-election and have little chance of securing advancement. Thus two of the most important factors for allowing the political wedge to enter have been removed. The judge liberated from such worries can better devote himself to his duty." The next is rather significant, "On the other hand, this very lack of advancement and competition removes important incentives and may easily lead to judicial stagnation."

None are firmer advocates than we, for removing politics from the courts, if we mean by politics the control of the judiciary by a political leader or by a group of political leaders, but if we talk about politics in the larger sense of things, I wonder if it is so important to remove politics from the courts. In other words, is it so important to remove the judges and put them in a separate niche so they don't have to listen to the will of the people, so that they can disregard it and do anything they please with the full knowledge that they do not have to go to the people to receive approval of their acts? If that is the kind of politics you want to keep out of the courts, I say it is the wrong kind of politics that ought to be taken out of the courts and that kind of politics should stay in the court system. But the claim that the appointment of judges takes politics, in the sense that I have used politics at the beginning, out of the judiciary system has too often been found to be a fallacy. If I am to believe the statements made from time to time by some of the eminent members of the Republican Party in this State—I suppose if I go to some other States perhaps the members of the Democratic Party—we come to the conclusion that the appointment of judges tends more closely to integrate the judiciary in the political system. A judge is not accountable to the people but depends upon the Governor, with the consent of the political leader, perhaps sometimes with the advice and consent of the Senator, for appointment. We must insist that the tendency of the judges so appointed would be to follow the wishes of the appointive power, be it Governor or political leader, rather than the people who have no control over, and no voice in maintaining, a particular judge in office. Judges generally are appointed today not on the basis of qualifications and ability but rather on the basis of political patronage. The charge has been made time and time again that this judge and that judge has been appointed merely in a political deal. Fortunately for some of the members of the Senate, that is a very convenient deal on occasions, and the tendency has been to reward a party worker or some Assemblyman or Senator for services rendered to his party and not necessarily because of his ability as a lawyer and his standing at the Bar.

The election of judges has proven successful in a great many States. A comparison between the judges of the State of New Jersey and those of our adjoining States of New York and Pennsylvania will disclose that we have our share of good, bad, and

indifferent judges. and perhaps more than our share of the latter two classes. It is our opinion that judges who are elected and who must periodically stand for re-election on their record will be more conscious of the welfare and interests of the people and will more readily interpret the law to meet modern conditions than those who are appointed and who look to the political powers that be for reappointment.

In advocating the election of the judiciary we are not recommending at this time any particular method for such election but rather that the people be permitted in the first instance to select the person to be elevated to a judicial office, and in the second instance to continue to pass upon his effectiveness and ability to remain in such high office. A judiciary, free from domination by a political leader, will truly represent an independent judiciary and will help maintain the system of checks and balances. By the creation of such judiciary, the respect of the people for their courts will be recaptured, if not enhanced.

We have an abiding faith in the capacity and judgment of the people to elect their own judges, and we contend that such elections by the people is a free and intelligent exercise of the inherent power vested in them from time immemorial, and should not be denied.

MR. CAVICCHIA: Would you remove entirely from the Legislature control over inferior courts?

MR. ISSERMAN: What do you mean by "control over inferior courts"?

MR. CAVICCHIA: As I understood you, your argument was for integrating the lower courts with the constitutional courts and therefore making the lower courts constitutional courts.

MR. ISSERMAN: That's right.

MR. CAVICCHIA: So that, therefore, the Legislature would have no right as at present to alter or abolish, the same as the public good may require.

MR. ISSERMAN: No, I don't quite mean that. I would suggest that the right to create inferior courts should remain in the Legislature and the abolishment of them, but their operation should come under the same administrative head as the operation of the Supreme and Superior Courts. In other words, once established—I tried to make it clear—once established, the judges come under the direction and control of the Chief Justice of the Supreme Court the same as your Superior Court and judges of the Supreme Court.

MR. CAVICCHIA: But you would still permit the Legislature to have the power to alter or abolish courts?

MR. ISSERMAN: Certainly. As a matter of fact, there is nothing in the proposed revision which provides the number of courts,

as I recall, or that there should be county courts, etc. The proposed revision lumps all the courts into two courts, Supreme and Superior, and doesn't even limit, except in the first instance, the number of judges. I say the Constitution should provide for district courts, should provide for police courts, and then allow their creation and the number of them and the salaries, etc., to be entirely within the hands of the Legislature.

MR. CAVICCHIA: I am sorry; I don't get it. If the Constitution were to provide for police courts, then the Legislature obviously could not have the power to abolish the police courts unless the power was expressly given under the Constitution.

MR. ISSERMAN: That can be easily provided for by saying, where we talk about the inferior courts, that the inferior courts, after they are constituted, shall come under the administration of the Supreme Court. The Legislature can't eliminate the Supreme Court as such but there are no more county courts left, if you set up that; there must be district courts.

MR. CAVICCHIA: Then you are making the district courts constitutional courts?

MR. ISSERMAN: Yes, certainly.

MR. CAVICCHIA: You mean district, civil and criminal district courts?

MR. ISSERMAN: That is right; they should be constitutional courts in that the appointment of judges be handled in the same way and they should come under the control of the State instead of as at the present time under the control of each municipality.

MR. CAVICCHIA: How about the danger of putting constitutional courts locally under the domination of vicious political machines?

MR. ISSERMAN: Well, I don't think it is vicious and I don't think it is under political domination. You are going off on political domination. You will have political domination at all times if it means the judge.or appointive power is going to listen to the will of the people. That is politics.

MR. CAVICCHIA: If you leave the power to create and abolish lower courts to the Legislature, then the Legislature can take cognizance of local conditions and in order to effectuate what the Bill of Rights provides for, which is to protect and secure and benefit the people, then the Legislature can abolish and reform the courts.

MR. ISSERMAN: What would prevent, under my suggestion, having an act which says there shall be a police court created covering the County of Bergen which shall have jurisdiction over the entire county, or saying there shall be a police court created which shall have jurisdiction over the City of Newark only? That can be done within the limits of the Constitution. There would be no objection to the Legislature creating as many inferior courts or

eliminating them as their judgment deems advisable. Do you follow me?

MR. CAVICCHIA: In part.

MR. AMLICKE: Are there any others who wish to be heard in favor of modification of the proposed Article V? There being none, we will now recess until two o'clock, at which time we will consider Article VI.

(Recess)

PUBLIC HEARING

August 5, 1942

Afternoon Session

on

Proposed Revision of the New Jersey Constitution

Article VI. "Public Officers"

The Joint Legislative Committee re-convened in the Assembly Chamber at Trenton on Wednesday, August 5, 1942, at two o'clock P. M., pursuant to announcement previously made.

The Chairman opened the Hearing and the Hearing proceeded as follows:

MR. AMLICKE: I will call the meeting to order. I will call upon Mr. Winston Paul to open for the proponents of Article VI and introduce the following speakers. Mr. Paul.

MR. PAUL: Article VI, Mr. Chairman and Members of the Committee, is concerned with public officers, and I want to speak particularly with reference to the second paragraph of the first section. It is very brief, so if you will pardon me, I will read it to you so that we will know what we are talking about.

> "In the civil service of the State and all of its civil divisions, all offices and positions shall be classified according to duties and responsibilities, salary ranges shall be established for the various classes, and all appointments and promotions shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive."

In 1936 Mr. Bob Johnson was asked to take the job as Relief Administrator of the State of Pennsylvania. Relief administration was then big business and Mr. Johnson had been the vice-president and one of the promoters of Time Magazine. He was an important business executive. As he went down to Philadelphia, Pennsylvania, he wrote me a letter, from which I take an excerpt. He said,

> "What would you think of life guards who can't swim, court clerks who can't read or write English, deputies who draw salary checks who later turn out to be chorus girl friends of certain politicians?"

That was the situation he found in Pennsylvania. As a result of his experience, he became thoroughly devoted to the idea there must be a merit system in public life. He took the job of Chairman of the National Civil Service Reform League, and I am speaking

today in my capacity as Vice-Chairman of the Civil Service Reform League because we are very much interested in this particular provision.

This provision, Mr. Chairman, as written, is the provision from the proposed model State Constitution prepared by the Committee on State Government of the National Municipal League, and the proposition we have in this proposed revision for New Jersey is taken verbatim from their recommendation, so it comes to us first through a disinterested and non-partisan organization which is interested in the principle of civil service. We often get into confusion by not defining what we mean by certain words, and I want to take just a minute to give my own personal definition of what I mean when I talk about civil service. Civil service is the application of the merit system to the selection, the promotion and the retention of qualified public employees, except department heads and those concerned with determining policies. I am not going to take any of the time of this Committee to talk or make a speech on behalf of the merit system. I am going to take it for granted that we are all in favor, in principle, of the merit system. The question involved that we have before us today is the question of whether we should continue as we have in the past with the merit system or civil service based on and dependent upon legislative enactment from time to time or whether we are going to put it in the basic law of the State, namely, the State Constitution. In other words, are we going to have real civil service, fundamental civil service or are we going to have lip service to civil service which may by act of any succeeding Legislature change and vitally alter the whole fabric of civil service as it has been established from time to time by successive Legislatures? We people here who have given a little more than usual study to the State Constitution realize our present Constitution of 1844 contains no provision with reference to civil service, but the average person throughout the State doesn't realize that he is dependent upon legislative will which can be changed from time to time. The lack of any civil service provision in the 1844 Constitution is in my opinion one of the outstanding reasons there has been this wide-spread State demand for constitutional revision. In the past I have frequently talked with legislators who have told me about the requests made to them for the introduction of special bills, a special bill changing this part of civil service; altering some other part; adding this or subtracting something else. They have frequently told me, very confidentially sometimes and other times very definitely, that they wish they weren't subjected to that pressure. They said this: "If we only had it in the State Constitution so we could say, 'We can't change the State Constitution.'" There is no sense in coming and asking for a special bill doing this, that or something else. It ought to be a part of the fundamental law of the State based on merit and

based on the careful selection and promotion of qualified public employees.

There is only one last thing, Mr. Chairman, I want to call to the attention of your Committee. I put myself in the position of your Committee, and I would like to ask myself, if I were in your position, this question: Does this proposed clause that I read to you a moment ago go far enough in establishing the merit system; does it go too far; is it an adequate provision; are we doing the job that I think ninety-nine per cent of us want to have done; is this particular clause an adequate one? I sought to get independent judgment and opinion on that, and I have here with me, Mr. Chairman, a letter dated August 3rd from Mr. Harry W. Marsh, the president of the Civil Service Commission of the City of New York. He is not writing me in his capacity as a Civil Service Commissioner of New York, but as a private individual who has had years of experience in the administration of civil service practice and I wanted to find out from him whether the provision which I read to you a moment ago in this proposed revision here is adequate and a satisfactory one. I will read to you briefly an excerpt from his letter:

> "I have examined . . . the text of the proposed Constitution for the State of New Jersey. I find the general provision that appointments and promotions in the civil service be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive. This is the identical language which has for many years been in the New York State Constitution and which has been interpreted by the New York State Courts as practically self-executing. The Legislature may not under the terms of this constitutional provision enact any law which will be fundamentally contrary to the best principles of the merit system in the public service.
>
> There are a great many people who argue for a very much more detailed constitutional clause and which would limit in specific language the number and the kind of positions which may be exempt from competitive examination. I believe this is a wiser provision than some of those which go into infinite detail in the Constitution.
>
> The draft is also well devised in that it provides specifically for an administrative department of civil service which shall have the power and authority to administer the general provision which is announced in Article VI.
>
> I am also glad to note that in the clause in Article VI specific provision is made for a classification of the civil service of the State and of all its civil divisions according to duties and responsibilities of positions, etc. I believe

you are entirely safe in approving the provisions which ar in this draft so far as they pertain to the merit system."

MR. PAUL: I would like to call next on Mr. Russell Watson.

MR. AMLICKE: Mr. Watson.

MR. WATSON: Gentlemen of the Committee, Article VI is of vital importance to the civil servants of the State, the men and women who in high and low position carry on day by day the business of the State. It has come to our attention that there is widespread misunderstanding on the part of State employees respecting some of the provisions of this revision, and this argument which I am about to present to the Committee in behalf of the State Chamber of Commerce advocating the adoption of Article VI is directed, if I may say so, respectfully, quite as much to the State employees as it is to the members of the Committee. It has come to our attention that the State employees generally as a body misunderstand and are apprehensive about the way in which Article IV—I want to make sure of this—about the way in which Article IV, Section III may work out in so far as they are concerned. Article IV, Section III is the section under which the Governor, subject to the veto of the Legislature, could reallocate State departments and virtually reorganize the State Government. State employees misunderstand that and are apprehensive about its possible effects. This Section III of Article IV—and let's call it Section III to be brief—is directly related to Paragraph 2, the civil service paragraph, and Paragraph 6, the State pension and retirement fund paragraph, of Section I of this Article VI, and it is to those two paragraphs of Article VI to which we desire to address ourselves.

Let me say in passing, gentlemen, the attitude of the State Chamber of Commerce generally is this: We think that what little help we might be able to render to the Committee, if any, can be best rendered by confining our remarks to the sections of the revision which may be controversial, which may be significant, which may effect some change, and purposely we do not comment upon less important sections or those which are re-statements in one form or another of the present constitutional law or other law. So with reference to Article VI, we desire to comment only upon Paragraphs 2, 3, and 6, and by that we mean, although we do not refer particularly to the other sections, we advocate those as well.

To get back to this Article VI and public employees and how it is related to Section III of Article IV, by way of preface I would like to say that I have been told by State employees holding important executive positions, and I am proud to number many of them among my friends, that they have a complete misunderstanding of the recommendation of the Revision Commission expressed on page 11 of the Report (p. 912). It seems that it is generally

understood by them that the Commission recommended to the Legislature that this revision be submitted by the Legislature to the people at a referendum for rejection or adoption, for consideration as a whole, and that has impressed them as an arrogant attitude. And if it were so, the criticism would be justified; but it isn't so. That is a misunderstanding which was also shared by the opposition to this revision. I hope it has been dispelled. What the Commission recommended was that the Legislature submit to the people at a referendum a revised Constitution, not this revised Constitution. I read from page 11 (p. 912) "to submit a revised Constitution." In other words it is the duty and province of the Legislature to determine what revision shall be submitted to the people, and the Commission on Constitutional Revision did not arrogate to itself any such power. Now, the reason for the recommendation that a revised Constitution in the discretion of the Legislature shall be submitted to the people at referendum is that this revision, should this be the one that is submitted, or another revision, as the Legislature may see fit to modify this, adopting it in whole or in part, be presented as a whole—is that this revision, and presumably a thoroughgoing revision drafted by the Legislature, is an integrated document. The rejection of any section would materially weaken the other sections. It is an interrelated, integrated document and therefore it should stand or fall in whole, in toto. That is something that we will argue more extensively when we get to the amendment section, but let me say at this time, anticipating that, that we should not give much weight, we should not give any weight to comparisons between New York procedure and New Jersey procedure because the situations are not comparable; they are entirely different, as will be demonstrated when we get to that article. We will confine ourselves today to Article VI.

Referring again to our friends, the State employees, and their attitude toward this, it is human nature to resist change and maintain the status quo. But still the historical fact is that while all progress isn't improvement; all improvement does come from progress.

State employees complain, and rightly so in my opinion, that they are underpaid, and I have personal knowledge of instances of that in the State service, which are shocking. What is the best way by which to improve their situation? We submit to the Committee and to them that the best way to improve their situation is by the adoption of Section III of Article IV. The object of Article IV, Section III is to better the executive branch of the State Government by clothing the Governor with authority and responsibility for the management of the State's business. He would have it in his power, subject to the veto of the Legislature, to reorganize the State Government so that it would be more efficiently conducted under the supervision of department heads di-

rectly responsible to him. More efficient organization and operation should make it possible to eliminate dupficated and unnecessary services and thereby provide more adequate compensation to those who would carry on the State's business under the new system. This principle is the rule in private business. Why can't it be made to function in public business? It would be beneficial not only to the taxpayer and the general public, but particularly to the State's employees, and herein in our judgment lies their hope of advancement.

True it is, as I have heard some of them say, and I think it is apparent that I have discussed this with several people in this classification—True it is that an unworthy Governor might abuse this power of reorganization. He would be restrained by the veto power of the Legislature in the public interest. He would also be restrained from discriminatory use of that power contrary to the interests of the State employees by Paragraph 2 of Section I of Article VI, which reads: Mr. Paul has read it; may I repeat it?

> "In the civil service of the State and all of its civil divisions, all offices and positions shall be classified according to duties and responsibilities, salary ranges shall be established for the various classes, * * *"

That is something which I understand is absent under present law, at least under present administration.

> "* * * and all appointments and promotions shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive."

So on the one hand—I anticipate myself—the object of this provision is threefold as stated in the report: first, to establish firmly in the basic law of the State the merit system of appointment and promotion of a great mass of public employees; second, to require complete job analysis and classification; and third, to establish uniform pay for similar work, regardless of department.

Mr. Paul has compared this language with that in use in other jurisdictions. We say that if there be any other language which could make this paragraph more specific, more forceful, more comprehensive, by all means adopt it. It seems to us to be comprehensive and applicable.

So, on the one hand, Section III of Article IV would empower the Governor to reorganize the State Government so as to make it more efficient and more economical and thereby enable the State to reward public employees more adequately, while on the other hand this civil service paragraph which I have just read would protect public employees against abuses of gubernatorial power and would assure them fair and equal treatment.

Then, passing along to Paragraph 6,

> "After July first, one thousand nine hundred and forty-three, benefits payable by virtue of membership in any State pension or retirement system shall constitute a contractural relationship and shall not be diminished or impaired."

This would benefit State employees. The State has always recognized its moral obligations in this respect, but the substitution of constitutional status for the moral obligation would eliminate all uncertainty and give security to membership in State pension or retirement systems.

Just by way of caution or precaution, we would like to state for the record what we understand to be the fact, that when the Commission was considering this paragraph there were in existence only two State employment and retirement systems, both of which were actuarily sound, and it was the contemplation of this Commission that this paragraph would refer only to those two systems, but we understand—I haven't looked at the record myself, but we understand that since then, at this last session, another State system was created or recognized or set up which is not actuarily sound, and we second the cautionary note of the Commission in its report that care should be taken that only actuarily sound systems are permitted to come within the purview of Paragraph 6 and appropriate provision in that respect should be made.

In conclusion on this phase of the article, the State Chamber is confident that careful study and reflection will convince public employees that Section III of Article IV, the reorganization section, and Paragraphs 2 and 6 of Section I of this Article VI together hold the promise of more adequate provision, financial and otherwise, for those who are conscientiously and earnestly carrying on the State's business. It is richly deserved and has been too long withheld.

We would like to speak also in a little detail, and I will take only two or three minutes, on this Paragraph 3, Section I, Article VI, which reads:

> "The Legislature or either House thereof may by resolution constitute and empower a committee thereof or any public officer or agency to investigate any and all phases of State and local government, or any part thereof, the fidelity of any public officer or employee, or the performance of any public office, employment or trust."

I shall be very much interested to know whether any responsible public or semi-public body opposes the incorporation of that provision in the Constitution of the State of New Jersey. The power of the New Jersey Legislature to investigate State and local governments and officials for the purpose of obtaining information as a basis of legislative action has been narrowly limited by decisions of the Court of Errors and Appeals, as you

all know. The rule which obtains in New Jersey under these judicial decisions is very much narrower than that which obtains in the federal jurisdiction and in the jurisdiction of every State in which the question has arisen. The latter part of the statement I make with respect to a personal review of all those cases which I made a few years ago, and at that time the rule which our Court of Errors and Appeals adopted was contrary to the rule which was in effect in every other State of the United States within which the question had arisen, and we all know what the authority of the Federal United States Congress is in that respect. Our Court of Errors and Appeals has held, in effect, that the investigatory power of the Legislature is limited to impeachment cases and to cases in which the State is swindled out of its property, and the reasoning is if the conduct or matter being investigated happens to be criminal in nature, it is solely the function of the judicial branch of the Government, and that the investigating power of the Legislature is confined to cases in which the State is directly affected, the kind to which I have just referred. The rule of other jurisdictions is that the Legislature has power to investigate the conduct of public officers and public agencies for the purpose of obtaining information as a basis for legislative action, and that if such conduct be criminal in nature, it is the function of the judicial branch to try the guilty ones criminally, and if convicted, punish them. The two functions are complementary. The Legislature has the power to procure information and ascertain facts as a basis for the exercise of its legislative function. The judiciary has the power to prosecute criminally and to convict and punish if a criminal offense is disclosed.

It is high time that this salutary legislative power be recaptured by the New Jersey State Legislature; be restored to the New Jersey State Legislature. This paragraph would do that and if, in the exercise of this power, the Legislature were to investigate the fidelity of any public officer or employee or the performance of any public office, employment or trust, in the words of the paragraph, a public official found to be possessed of large wealth, with no visible or ascertainable source, would be required to answer the blunt question, "Where did you get it?" or surrender his office. He could not find sanctuary in the exclusive jurisdiction of an inactive judiciary decreeing unto itself an exclusive power which it does not in fact exercise.

The judicial branch would not be deprived of its power to investigate and to punish criminal offenses, which is as it should be.

The legislative branch would be empowered to gather information and to ascertain facts as a basis for the exercise of its legislative function, which also is as it should be. And the public interest would be served.

Paragraph 3 would empower the Legislature to uphold and preserve the integrity of State and local government. No honest official need fear it. We most sincerely, most urgently, advocate the adoption of this paragraph.

As I said at the outset, the other provisions of Article VI are re-statements of the present Constitution, I think, with the exception that Sheriffs and Coroners would be eligible for re-election, which is a desirable change. We advocate the article as proposed.

MR. AMLICKE: Miss Brown, representing the New Jersey Educational Association.

MISS BROWN: Mr. Chairman and Members of the Legislative Committee:

I wish to speak on Article VI, Section I., Paragraph 6, which reads:

> "After July first, one thousand nine hundred and forty-three, benefits payable by virtue of membership in any State pension or retirement system shall constitute a contractual relationship and shall not be diminished or impaired."

Retirement systems for teachers and other public employes are designed to improve the services rendered by such employees by giving them a sense of security against disability and old age. The proposed amendment would make the retirement benefit a contractual relationship guaranteeing the security essential to good public service. The New Jersey Education Association herewith submits its arguments for making this amendment a part of the Constitution. Because the Association is especially concerned with education, the argument is presented from the point of view of New Jersey schools and teachers. Most of the reasons cited are, however, equally valid for other groups of public employees who would be affected.

These reasons are, first, it is an established State policy that teachers be protected against disability and old age. Membership in the fund is compulsory, rather than optional, for New Jersey teachers. The proposed amendment is much like the provision of the New York constitution. It commits the State only to the benefits promised by the Legislature at the time the teacher is employed or thereafter freely offered by the Legislature.

MR. PAUL: Mr. Robert McManus, Editor of the New Jersey Spokesman.

MR. MCMANUS: It seems to us that Mr. Watson's remarks about this being an integrated document are particularly apparent in relation to Article VI and the one preceding, Article V. It seems clear that these two articles were drawn by persons who had in mind the recent scandal which disgraced New Jersey throughout the Nation. I am referring to the scandal surrounding the election of 1937. We know that there were grave charges that the

election of 1937 was stolen. We know that the courts were asked to investigate this election and that they refused to do so. We know that the Legislature attempted to investigate this election and was restrained from doing so by the courts. The result was that the evidence of this theft was permanently withheld from the public view until it was burned. Article V, by seeking to raise the standard of the judiciary, and Article VI, Section III, which empowers the Legislature to do what it was restrained from doing in 1937, obviously would safeguard the State from any repetition of any such thing in the future. Therefore, we favor both articles.

MR. AMLICKE: Are there any others who wish to be heard in favor of the proposed Article VI?

Mrs. Edward Bebout, the League of Women Voters.

MRS. BEBOUT: As we stated at an earlier hearing, the League of Women Voters endorses Section I, Paragraph 2 particularly, because it believes in qualified personnel in government secured through a merit system. We therefore approve the recognition of civil service in the proposed Constitution, provided that it is made an autonomous department or division of the State government, a position which its importance as personnel agency for the "State and all of its civil divisions" requires. The need for this is obvious. Civil service must be independent of all other departments with which and for which it must carry on business, as well as free from political patronage controls or influences.

Paragraph 3. As we stated at the hearing on Article IV, we endorse this paragraph particularly because it provides the Legislature or either of its Houses a legitimate and complete check on all phases of the other branches of State and local Government.

May we call your attention again to our contention that it is impossible for us to see how there can be any claim that the proposed Constitution places undue power in the hands of the executive when it contains this grant of power to the Legislature.

We have a modification for Paragraphs 3, 4, and 5.

MR. AMLICKE: Are there any others who wish to be heard in favor of this article? If not, I will now call upon the opponents of Article VI, and the first speaker is Mr. R. Robinson Chance, representing the Manufacturers Association of New Jersey. Mr. Chance.

MR. CHANCE: Mr. Chairman, Members of the Committee:

I was very much interested to hear one of the speakers say that what the Commission unanimously recommends was a revised Constitution, because I read on in the same line "a revised Constitution for the State of New Jersey, the text of which is set forth in Part II of this report," so I think it was not merely a revised Constitution, but the text of which, etc., that I have just repeated.

I also remember and read that the unanimous recommendation is that the submission of the revised Constitution

"shall be in such form that the people will vote either for or against the document as a whole,"

and I read from the same page 11 (p. 912) "It is impractical to utilize the amending method provided by Article IX of the present Constitution."

Disagreeing most completely, and still disagreeing, with those parts of the Commission's recommendations, as well as some others, and still not believing that one can accurately be said to be a proponent of the Commission's recommendations if he does not advocate the text the Commission recommended, I am again recorded as speaking in opposition to the recommendations of the Commission.

Further, I repeat what I said this morning, that the Manufacturers Association of New Jersey is not to be deemed as committed to any course of action with regard to the proposal in advance of the determination of this Committee as to whether you will recommend the submission of all, or parts, or none of the proposal to the consideration of the electorate. As upon previous occasions, I shall endeavor to bring into the open particular provisions and their probable effects, which appear to be unsound and warranting further consideration.

With this foreword, I pass directly to the text of Article VI of the proposal. It consists of two sections, the first headed "Generally," and the second headed "Impeachments." The first paragraph of Section I merely requires every appointive officer of the State, before entering upon the duties of his office, to subscribe an oath or affirmation to support the Constitution of this State and the United States, and to faithfully, impartially and justly perform the duties of his office to the best of his ability. This is substantially part of the official oath which the Constitution by Article IV, Section I, Paragraph 2 now requires of officers of the Legislature. The present oath of officers of the Legislature contains the further stipulation "that I will carefully preserve all records, papers, writings or property entrusted to me for safekeeping by virtue of my office, and make such disposition of the same as may be required by law." The question suggests itself as to whether it would be an improvement in the proposal to add the words in the present oath of officers of the Legislature.

In passing, it may also be noted that the oath which this paragraph requires I believe is substantially the same oath as that required by statute of practically all municipal officers throughout the State.

The second paragraph relates to civil service and purports to give a constitutional status to a subject which has been recognized

in New Jersey as meritorious, but which has heretofore been regulated solely by statute.

It is interesting to hear a gentleman representing one of the organizations other than civil service employees elucidating this proposition and explaining how the article about administration, that we had up the other day, working together with what we have proposed here, will make a very effective means of preserving the rights of civil service employees, but I also recollect, and you will too, that the representative of the Civil Service Employees Association stood right directly in front of where I am looking now and he said he agreed with me on the administrative article when we were here before.

Coming back to the text of this paragraph, there is one noteworthy change, however, which this paragraph would bring about; that is, not only in the civil service of the State would civil service be mandatory, but also in "all its civil divisions." Just what is meant by civil divisions of the State is not certain from the text of the proposal, but it is assumed that counties and municipalities would fall in that category. The explanation at page 25 of the Report (p. 926) does not seem to regard this as the effect, for it is there stated that this provision "will encourage the legislature to bring more county and municipal employees into the State Civil Service System wherever that is practical. The latter effect has at least been observed in the State of New York." Evidentally, whoever said that didn't think there was so much difference between New York and here. Still, if I am correct in the assumption that civil divisions of the State include counties and municipalities, this provision would certainly apply to them, and by virtue of Article X, Paragraph 1, it would be the duty of the Legislature to make enactments to further that purpose and facilitate the operation of civil service in the municipalities and counties to the extent that the provisions of the proposal were not self-executing. Whether all subdivisions of the State would approve this, or whether it is desirable, I do not attempt to say. I may note, however, that the municipality where I reside voted against placing its civil employees under the State Civil Service System. The governing body evidently felt that it was more in line with municipal home rule for them to retain the control of their civil employees in their own hands. Under the present statutory regulations, they have this right. I do not feel that it is my function to voice for the Manufacturers Association of New Jersey any decided attitude as to how the civil divisions of the State shall handle their affairs in this regard.

Turning now to the provision as it relates to the civil service of the State, it is likewise felt that the subject is one which comes more properly in the province of others than the Association which I represent.

It may be interesting to note that the provisions of the document prepared by the National Municipal League and which it calls a model State Constitution provides, with regard to civil service, as follows:

> "Appointments and promotions in the civil service of this State and of all civil divisions thereof, including counties, cities and villages, shall be made according to fitness, to be determined, so far as practicable, by examination, which, so far as practicable, shall be competitive."

As I read this provision and the provision which constitutes Paragraph 2 of Section I, Article VI of the proposal, attention is rather forcefully struck by the presence upon two occasions of the words "so far as practicable." Now, who is to be the judge of what is practicable in the connections specified? Personally, I think those words "so far as practicable" leave a loop-hole which would enable those in charge of the administration of civil service to nullify the whole spirit of the merit system if they were so disposed. Consequently, I think that any belief that the existence of this provision in the Constitution would offer any guarantee against misapplication of civil service, or against any improper action on the part of an improper Governor if we should have that misfortune some time in the future, is over optimistic.

Probably it is impossible to avoid some provision such as the "so far as practicable" wording. These people who prepared what they called a model State Constitution must have thought so or they would not have left that so-called flexible phraseology in their so-called model. Incidentally, the very thought that there must be some flexibility prompts the observation that civil service is peculiarly a field in which the type of administrator and his sympathy with the spirit of the merit system will count for more than this clause in the Constitution. I do not say this is any objection to the inclusion of such a clause in a change in the Constitution if one is to be made. I merely point out these things so that it may be clear that some, at least, think that perhaps we are chasing rainbows when we think that such phraseology as "so far as practicable" twice in the article would be any absolute guarantee to them.

The third paragraph has to do with investigations of "any and all phases of State and local government, or any part thereof, the fidelity of any public officer or employee, or the performance of any public office, employment or trust." It would allow the Legislature or either House thereof, by resolution, to constitute and empower a committee thereof or any public officer or agency to investigate those matters. It contains this provision:

> "No person shall be privileged from testifying in relation to any such matters and upon so testifying he shall

be immune from criminal prosecution with respect to any matter to which such testimony may relate."

It further would make vacant the office, position or employment of any public officer or employee who shall refuse to testify or to answer any questions relating to any matter properly under investigation, or shall refuse to waive immunity from prosecution with respect to any matter upon which he may testify. Such person so removed from office would be further made ineligible thereafter for any public office, position or employment.

The avowed purpose of this provision as stated at page 26 of the Report (p. 927) is the strengthening of the legislative power of investigation. It is said that it will directly result in approved accountability of public officers and employees for the faithful performance of their trust.

Perhaps a good way to begin the discussion of this paragraph is to note that in 59 Corpus Juris, page 96, Section 78 and the following sections, the power of the Legislature to conduct investigations, the legitimate scope of such investigations, the question of when they amount to exercise of judicial powers, the compelling of attendance of witnesses and production of evidence, the issuance of subpoenaes, arrest or attachment, punishment for contempt, are discussed, with citations of authorities.

In digests having the key number classification, the subject of legislative investigations is treated under the title "States," key numbers 39½ and 40. Also in the annotation of the New Jersey Constitution in New Jersey Statutes Annotated, under Article II, Paragraph 1, note, six cases as to encroachment on the judiciary by legislative investigation are cited, and under Article II, Paragraph 4, note, four are cases as to invasion of personal liberty and security by such investigations. Among the decisions in this State may be mentioned *In re Hague*, 105 New Jersey Equity Reports, p. 134, affirmed 123 New Jersey Equity Reports, p. 475; In re Kelly, 123 New Jersey Equity Reports p. 489, affirmed 124 New Jersey Equity Reports, p. 350; and there are others I won't take the time to mention.

Without reviewing these cases in detail, I think it accurate to say that it is considered a legislative power to investigate any subject respecting which the Legislature may desire information in aid of the proper discharge of its function to legislate or perform any other act delegated to it by the Constitution, and that it may properly delegate the power to make such investigation to public officers or agencies. Under existing law, I would assume that the Legislature or either House thereof now has power to make such an investigation as is mentioned in the first sentence of the third paragraph of Section I, Article VI.

The points on which certain legislative investigations have heretofore foundered are that they have undertaken to pursue

their inquiries in such a manner and to such subjects that they have been deemed an encroachment on the judiciary or an invasion of the rights referred to in the Bill of Rights. The particular encroachment on the judiciary has arisen in attempts to investigate alleged violations of the criminal law which has been held to be strictly judicial in nature. For such investigations Grand Juries exist, and for the trial of them, the criminal courts. The particular invasion of rights guaranteed by the Bill of Rights has consisted of attempts to make inquiry into private affairs of a citizen and the endeavor to extort from him information which might be used as a basis of criminal prosecutions; in other words, to turn the investigation into a grand inquest and compel the party investigated to be a witness against himself.

From what is commonly called the "Second Hague Case" in the Court of Errors and Appeals, I read this quotation from a United States Supreme Court Opinion:

> "Any compulsory discovery by extorting the party's oath to convict him of crime is contrary to the principles of a free government. It is abhorrent to the instincts of an American. It may suit the purposes of despotic power; but it cannot abide the pure atmosphere of political liberty and personal freedom."

It is to be remembered that Article VI, Clause II of the Federal Constitution provides:

> "This Constitution, and the Laws of the United States, which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

It is further noted that the 14th Amendment to the United States Constitution forbids any State to make any law which shall abridge the privileges and immunities of citizens of the United States or which shall deprive any person of life, liberty or property without due process of law. Against this background, let us look at the last two sentences of this paragraph. Very obviously, what they undertake to do is to coerce the public officer or employee into testifying and waiving immunity from criminal prosecution by vacating his office and disqualifying him from future eligibility for any public office, position or employment if he does not so waive immunity and testify. In other words, what these sentences try to do, if it be assumed that a responsive answer to a question would tend to convict him of a crime, is to compel discovery of a character which the Supreme Court has indicated to be contrary to the principles of a free government, etc., as stated in the above

quotation. I have not pursued an investigation far enough to ascertain if there are any adjudicated cases in the United States Supreme Court directly in point or reasonably analogous, but on general principle it would seem that these last two sentences would run foul of the 14th Amendment of the United States Constitution. For example, regulation that requires the relinquishment of a constitutional right is a denial of due process of law. Since the latter is the supreme law of the land, these sentences might be deemed nugatory in the case of one who claimed that he could not be compelled to answer because the answer might be used to convict him of crime. A State Constitution can no more stand against the Federal Constitution than could a State statute.

Looking at the matter apart from any possible application of the Federal Constitution, it would seem that these last two sentences of Paragraph 3 would result in making the proposal inconsistent in certain provisions. For example, the proposed Bill of Rights carries over the same provisions as to security which are in the present Constitution, and the judicial article vests the judicial power in the courts. To the extent that the provisions in the proposal would authorize investigation in the matters previously held judicial in nature or invasion of civil rights, those provisions would provide one thing and Paragraph 3 would provide another. Which would prevail? If the rights mentioned in the proposed Bill of Rights are as asserted thereby "natural and unalienable," it would seem that they should prevail over what is said in the third paragraph. On the other hand, it might be said that the paragraphs should all be read together and that the rights previously declared to be unalienable could not be deemed so as against legislative investigation.

While it would seem that the State should be able to prescribe the qualifications of its office holders and employees, it probably could not do by indirection what it could not do directly, and there seems ample room for argument that this is an indirect attempt to get around the immunity which one has from giving evidence against himself which might incriminate him.

Turning to the sentence:

> "No person shall be privileged from testifying in relation to any such matters and upon so testifying he shall be immune from criminal prosecution with respect to any matter to which such testimony may relate."

It is believed that if a person claimed that his giving of testimony might incriminate him under the Federal Criminal Law, he would still have the privilege of refusing to testify. While the State might make immunity against prosecution under State law, it could not create immunity as against Federal prosecutions. It accordingly seems clear that this sentence would not furnish an absolute "immunity" to one who would testify in reliance upon it if any phase of his activities were in violation of Federal criminal law.

It would seem that any person could be subpoenaed and could be required to testify as to any of the matters mentioned in the first sentence up to the point where he insisted that his rights of privacy were unconstitutionally invaded or that his answer might tend to incriminate him, all of which can be accomplished under the existing Constitution. I doubt if the proposal would produce any evidence not now obtainable. While there are some people, and I am one of them, who feel that if we were officers, we should answer any question the legislature asked, the power to compel such answer is not absolute. To say the least, the paragraph should have careful consideration before putting it in the Constitution. We should be sure that we do not have recommended a change which might violate the Federal Constitution, and it must not be forgotten that it is the function of the Grand Jury to investigate violation of the criminal law. If it be said the parties who choose Grand Juries may be in a political ring, my answer is that Elisor drawn Grand Juries can be obtained to indict if there is any legal basis for such action as Justice Kalisch demonstrated some years ago when certain politicians visited Trenton on more than a temporary stay.

The fourth paragraph requires the election of county clerks and surrogates at a general election, prescribes a five-year term and would allow the Governor to fill vacancies in those offices by appointment to expire when a successor is elected and qualified. In substance this is no change from the provisions in the present Constitution, Article VII, Section II, Paragraph 5, and Article V, Paragraph 12. The only difference is that the election is referred to in the present Constitution as annual election, whereas it is referred to as general election in the proposal.

The fifth section, that sheriffs and coroners shall be elected by the people of their respective counties at a general election is the same in substance as the first part of Article VII, Section II, Paragraph 6 of the present Constitution. The proposal, however, eliminates the provision of the Constitution which now prohibits a sheriff from succeeding himself. In this case, as in the case of the Governor, we cannot see that it is either efficient or desirable to prevent the official from succeeding himself if the people see fit to elect him.

The sixth paragraph of this article reads:

> "After July first, one thousand nine hundred and forty-three, benefits payable by virtue of membership in any State pension or retirement system shall constitute a contractual relationship and shall not be diminshed or impaired."

I see no reason why benefits payable to employees under State pension or retirement systems should not be a contractual obligation on the part of the State. All that I wish to suggest is that along with this paragraph, it would seem desirable to incorporate some provision which would require all State pension or retirement systems to be kept on a sound actuarial basis, in order to avoid the possibility of having to look to other places than the pension funds in order to meet the contractual obligation which this paragraph would impose.

The seventh paragraph requires that civil officers be commissioned by the Governor and is in precisely the same words as Article VII, Section II, Paragraph 9 of the present Constitution.

The eighth paragraph says that the term of office of all officers elected or appointed pursuant to the provisions of this Constitution, except when herein otherwise directed, shall commence on the day of the date of their respective commissions; but no commission for any office shall bear date prior to the expiration of the term of the incumbent of the said office. This paragraph is precisely the same as Article VII, Section II, Paragraph 10 of the present Constitution.

Even though the seventh and eighth paragraphs of the proposal make no change, the thought occurs that an interesting situation might develop if a Governor declined or failed to issue a commission on time. Would these provisions mean that the Governor could keep out of office a person entitled to the office of State Treasurer or State Comptroller by declining or failing to sign a commission? The speculated event is believed unlikely to happen. Neither the framers of the present Constitution nor the Commission who drafted the proposal seem to have been disturbed by it.

Section II, the second section of this article of the proposal, captioned "Impeachments" omits the provision of the present Constitution that a judicial officer impeached shall be suspended from exercising his office until his acquittal, and another, that the Secretary of State shall be Clerk. Otherwise, the second section of the proposal allows precisely the same procedure as to impeachments as that specified in the present Constitution with one exception to be presently stated.

The third paragraph of the section prescribing that the judgment in case of impeachment shall not extend further than to removal from office and to disqualification to hold or enjoy any office of honor, profit or trust under this State; but the party convicted shall nevertheless be liable to indictment, trial and punishment according to law, is taken verbatim from Article VI of the present Constitution.

So far as I observe, the only substantial difference between Section II of the proposal and the present Constitution arises from the wording in the proposal in Paragraph 2 "except as otherwise provided by this Constitution with respect to judicial officers." This exception leads to a reference to Article V, Section V on page 48 of the Report of the Commission (p. 947). It will be there observed that after providing that the Supreme Court Justices shall be appointed to hold office during good behavior and that Justices of the Superior Court, if reappointed after holding office for a term of seven years, shall thereafter hold office during good behavior, the paragraph then says:

> "The issue of good behavior shall, with respect to Justices of the Supreme Court, be triable by the Senate, and with respect to all other Justices or Judges of any court shall be triable by the Supreme Court."

It is noted that this third paragraph of Section V of Article V does not indicate how the issue of good behavior to be tried in the manner mentioned, may originate. The question arises as to whether it is meant that judges can be thrown out of office in some way other than by impeachment. Is this lack of specification of how the issue of good behavior can arise so framed with the intent that some substitute for impeachment may be provided by statute to raise the issue? I think the obscurity here deserves to be cleared up. If it is the intention that there should be some other way than impeachment to dispose of judges, let the suggestion be clearly made.

In connection with the subject of impeachments, it is noted that the ground for impeachment is indicated to be "misdemeanor in office." Without attempting to define that term, I doubt if it would be precisely synonymous with a breach of "good behavior" as used in Section V, Paragraph 3 of Article V. If not, then the provision that the Assembly shall have the "sole power of impeaching" might not be deemed to mean the sole power of raising the issue as to good behavior.

As a way to remove any room for doubt as to what is meant in this connection, I suggest that instead of stating in the section relating to impeachments (Article VI, Section II, Paragraph 2) "except as otherwise provided by this Constitution with respect to judicial officers" that the particulars of the proviso be specified in detail, or as an alternative that Article V, Section V, Paragraph 3 be amplified so as to specify how the issue of good behavior is to be presented and by whom.

As related to this subject of impeachment, I refer again to Article IV, Secton II, Paragraph 6 relating to removal of officers by the Governor. While we were discussing that paragraph, I suggested that the questions and certain comments of one member of your Committee might force me to the view that the Governor should not be given the judicial power of removal, because of the Governor's immunity from judicial process. The removal power

in Paragraph 6 only relates to the case of State officers. The thought occurs that it might avoid possible conflict between the executive power and the judicial power, if the Governor were only given power to investigate, and if the investigation elicited enough information, to suspend the State officer in question and submit the evidence to the Speaker of the House of Assembly to the end that that body might impeach if it deemed that the proper thing to do, and also that the Governor might submit the evidence to the Prosecutor of the Pleas for the consideration of a Grand Jury.

I do not see that anything is to be gained by attempting to summarize these comments I have made. I close as I began with the thought that there is nothing in Article VI which makes necessary the recommendation of the Commission, of submission of the revised Constitution in such form that the people will either vote for or against the document as a whole and nothing which supports the statement at page 11 of the Report (p. 912) that it is impracticable to utilize the amending method, provided by Article IX of the present Constitution.

MR. CAVICCHIA: Mr. Chance, how can you, in all conscience, permit yourself to urge that the vagaries of the English language fritter away the obvious sense of the Commission's recommendation with respect to the Constitution which it has formulated? Let me explain this before you answer. We come back to what I said earlier today. You, yourself, picked from these unanimous proposals of the Commission those which are favorable to your case, but if you will read the entire text of the Commission's proposals, you must admit that the Commission meant that the Legislature should ask the people for authority to agree on a revised Constitution, not to submit this proposal to the electorate.

MR. CHANCE: Well, I have no powers of mental telepathy. All I know how to do, to find recommendations of the Commission, is to read what they say, and I read, "The Commission unanimously recommends a revised Constitution for the State of New Jersey, the text of which is set forth in Part II of this report," and I read further down there another one "that submission of the revised Constitution shall be in such form that the people will vote either for or against the document as a whole"; and I read further down, "It is impractical to utilize the amending method provided by Article IX of the present Constitution." Now, I would like you to point out to me, or anybody else to point out to me, any place where the Commission says they don't recommend the text which is annexed to this thing, or to point to any place where the Commission says they do not recommend that it be submitted so the people will vote for or against the document as a whole, or any place where the Commission said they denied what they previously said "It is impractical to utilize the amending method provided by Article IX of the present Constitution."

MR. CAVICCHIA: You are going beyond the point. Why do you skip the second recommendation of the Commission "that through suitable enabling legislation, the Legislature at the primary election in September next shall request authority from the people to submit a revised Constitution . . ." not the within Constitution.

MR. CHANCE: I will tell you another little point.

MR. CAVICCHIA: Why don't you answer that?

MR. CHANCE: I am going to answer that right now. It is a familiar principle of the construction of documents that where the same words are used in the same docu ent, it is assumed they are used in the same sense, and when the first paragraph says "A revised Constitution of the State of New Jersey, the text of which is set forth in Part II of this report," you have a revised Constitution, and when you come to the next one and it says "a revised Constitution" again, it is to be assumed it was used in the same sense, namely, the text of which is hereto annexed.

MR. CAVICCHIA: When you read a case in order to get the sense of the case, you read the whole case, don't you?

MR. CHANCE: I read the whole case but if there is one unequivocal statement in it where there is a determination of a specific thing which is without exception or qualification of any kind, such as this is, "A revised Constitution for the State of New Jersey, the text of which is set forth in Part II of this report," and the other ones I read before, I don't have to read anything else to find out the case holds that particular point, and I don't have to read anything else to find that what this Commission recommends is that they submit something as a whole, and what they recommend is the text of which is set forth here, and I don't have to read anywhere else to find that they say it is impracticable to utilize the amending method provided by Article IX of the present Constitution, all of which I deny.

MR. CAVICCHIA: Mr. Chance, you are for some revision of the present Constitution, are you not?

MR. CHANCE: Now, do I have to read that again?

MR. CAVICCHIA: Can't you answer this question? This Committee is trying to get some intelligent answers here. We want to know, after all, just what is your position. Are you for some revision of the present Constitution, or are you not?

MR. CHANCE: If you will look at the very second paragraph of the first day in which I addressed this Committee, you will find out what I said and if it is going to help you any, I can say it again.

MR. CAVICCHIA: Let me ask you this: Let's summarize a portion of your position. You are for increased salaries for legislators, which would mean a revision—right?

MR. CHANCE: No, it doesn't mean any revision at all. You can do that easily enough under this Article IX, if you get enough votes.

MR. CAVICCHIA: That certainly must mean revision of the Constitution, no matter by what methods.

MR. CHANCE: Not the way the people who are talking about this thing are talking about revision.

MR. CAVICCHIA: I am talking about revision in the abstract.

MR. CHANCE: They undertake to say that amendment is one thing, and if you come along and make a thousand amendments and call it revision, you are not making amendments. I don't agree with that one, either.

MR. CAVICCHIA: Revision can be by either amendment or any other process that may be decided upon. I say this: From your testimony here throughout these hearings, you have definitely put yourself on record for some revision, and among the things which you have recommended for revision are increased salaries for legislators and increased terms for members of the Legislature, is that right?

MR. CHANCE: No, that isn't right. I haven't put myself on record representing the Manufacturers Association for anything different from what I said on the first day, the very first day, in the second paragraph.

> "The management of that Association, representing as it does such a large part of the industry and citizenry of this State, have felt that the Association should be represented at the discussion of a matter of such vital importance as the revision of the basic and fundamental law. They have not authorized me to commit the Association finally to any attitude or course of action in advance of the determination of this Committee as to whether you will recommend the submission of all or parts or none of the proposal to the consideration of the electorate. My position in opposition to the proposal is that I shall, with your permission, explore and review the significant features of the proposal, in the hope of aiding you in your decision as to what action or inaction you will report and recommend."

I might add this—and I am saying this myself; I haven't talked to my superiors—that when they see whatever comes out as the final document which is going to be either recommended or not recommended, then they will take a position, but they won't take any position on something until they know what that something is.

MR. MCMANUS: Mr. Chance.

MR. AMLICKE: Do you wish to ask a question of Mr. Chance?

MR. MCMANUS: Yes, sir.

MR. AMLICKE: Mr. Chance, will you submit to a question?

MR. CHANCE: Didn't I say a little while ago that if I was an officer I would answer any question? Although I am not an officer, I will try to answer.

MR. AMLICKE: Please make it in question and answer form.

MR. MCMANUS: As I understand it, the New Jersey Manufacturers Association is here in an exploratory capacity, is that right?

MR. CHANCE: Well, now, you heard what I read before and my answer is that what I said before still stands.

MR. MCMANUS: The word "exploratory" was in what you said.

MR. CHANCE: "Exploratory" wasn't in there, but I stand on what I said, anyhow.

MR. MCMANUS: Why is it then, that you are on record in this hearing as being opposed to every article of the proposed Constitution so far, and also the method of submitting—

MR. AMLICKE: May I suggest we limit our questions to the particular article, because time is getting on and it is quite valuable. We would like to give you another chance, but we have only one day.

MR. MCMANUS: All right, sir.

MR. AMLICKE: Are there any others who wish to be heard in opposition to the proposed Article VI? If not, we will hear those in favor of modification.

MR. WATSON: May I speak as a modifier?

MR. AMLICKE: After the regular list is exhausted and if time is still with us.

The first speaker to be called upon is Mr. Manuel Cantor, representing the Communist Party of New Jersey.

MR. CANTOR: Mr. Chairman, there are several paragraphs in Article VI of the proposed revision which we would like to discuss. There are several additional proposals we wish to make.

We already are on record in these hearings for the complete elimination in all employment of discrimination on account of race, color or creed. We favor also the application of civil service to the broadest section of Government employees. Accordingly the provisions in Paragraph 2 that "all appointments and promotions shall be made according to merit and fitness to be ascertained by competitive examinations" meets with our approval. But we cannot help but express some concern at the inclusion of the phrase "so far as practicable" as a qualification in two places in the above clause. While we recognize that not every job lends itself to the testing of applicants by examination, the provision appears drawn almost deliberately to provide loop-holes for evasion. We would

suggest such re-drafting as would make evasion much more difficult.

We are in favor of the inclusion in the Constitution of provisions for investigating and eliminating fraud graft and corruption in the administration of any phase of State and local Government. Recent history has created need for a special subject for investigation in addition—what is popularly known as "fifth column," subversive or un-American activities amongst State and local officers and employees. But great care must be exercised not to permit the creation and perpetuation in this State of a vehicle for legal persecutions, star chamber proceedings and witch-hunts. Two examples are ready to hand of the evils that can result: the Dies Committee of the U. S. House of Representatives and the Coudert Committee of the New York Legislature. Both these committees have engaged primarily in a sort of legalized blackmail which has intimidated even their own colleagues into repeated appropriations against the public will and interest. Secret hearings are held; no records need be kept; witnesses are not qualified; all kinds of immaterial evidence are permitted. Every liberal or progressive, every political opponent may become the victim of a smear attack from such a committee's so-called "investigation."

We must insist that a proposal for investigating committees provide for a fair hearing and proper protection of the individual's rights. The particular clause in the proposed revision should not be incorporated unless the following safeguards are provided:

The investigation shall be limited to sworn testimony following rules of evidence observed in the courts of law.

Hearings shall at all times be open to the public and complete stenographic records shall be kept.

Every witness shall be entitled to counsel.

Testimony must be limited to the immediate subject of inquiry.

Witness shall be entitled to answer under oath the testimony of other witnesses and to produce additional witnesses in his behalf.

The investigation shall not discriminate because of race, color, political belief or membership or activity in or on behalf of a labor union or organization.

We would also deem it more advisable that refusal to answer questions not be ground for removal unless such refusal is found by a court to be unjustified and in contempt of the committee. The clause with respect to waiver of immunity from prosecution seems meaningless and contradictory to the preceding clause which specifically grants such immunity.

It may appear that the following proposal regarding the office of sheriff could be met by proper legislation, but the abuse in question is so widespread in our opinion as to warrant inclusion as general policy in the Constitution. We would propose that no sheriff or deputy shall be permitted to receive payment or emolument other than his salary or fees provided by law for service in behalf of any person or corporation, nor shall he serve in behalf of any employer during a labor dispute. Instances have come to light recently in Essex and other counties, and there are numerous others not exposed to public view, where sheriffs have accepted "fees" for "assistance" given to employers in the course of labor disputes.

The principle established by Paragraph 6 that benefits payable under a pension or retirement system constitute a contractural relationship and are not to be impaired is a proper safeguard.

In an earlier hearing, we proposed that the Attorney-General be included in Article IV, Section III, Paragraph 6 as an exception to the Governor's appointive power. We would include here under Section I of Article VI provision that the Attorney General be elected every two years. He is much too important a public officer not to be held accountable to the electorate directly. There have been too many instances where the Attorney General becomes an antagonist instead of a servant of the people.

Section II dealing with impeachment appears satisfactory. We propose the addition of a Section III, to deal with recall. Every elected officer in the State shall be subject to recall by the people. The process can be initiated by petition of ten per cent of the electors of the district from which the officer was elected. The petition must be filed with the Secretary of State and a special election must be ordered within thirty days. There are now twelve States that have recall of public officers. There is some variation as to the precise method for the election of the new officer, but any of several alternative methods would be satisfactory. Certainly the recall is a democratic measure fully in harmony with the desires expressed by all speakers at these hearings to protect the power and the rights of the people.

MR. AMLICKE: Does anyone else present desire to be heard in favor of modification of Article VI?

MR. ISSERMAN: Mr. Chairman, I would like to make a few remarks.

MR. AMLICKE: Mr. Isserman, representing the C. I. O. and the American Labor League.

MR. ISSERMAN: In the main we are in substantial accord with the provisions of Article VI, and my only reason for getting on my feet and discussing modification is some difficulty that I have with Section I, subdivision 3. I think I am in accord that legislative committees must have powers to investigate. With that nobody can really quarrel unless you have a specific axe to grind. But I wonder if there shouldn't be some limitation, because occasionally even legislative investigating committees have the temerity to overstep the bounds of what is proper and what is decent. My difficulty, as I see it, is determining where we should draw the

line as to what they should or shouldn't do. I think perhaps a very careful study of the powers granted other investigating committees with certain limitations on that power included in the Constitution, so that the rights of private citizens and the conduct of their affairs be not interfered with by legislative investigating committees—I believe the distinction ought to be adopted and approved. It will be a healthy condition when legislative bodies appointed by the Legislature, which after all are supposed to represent the will of the people, can freely without any difficulty carry on proper investigations.

MR. AMLICKE: Is there anyone else who wishes to be heard in favor of modification? Mrs. Bebout.

MRS. BEBOUT: On Paragraphs 4 and 5 the League recommended to the Commission on Revision that county clerks, surrogates, sheriffs, and coroners be eliminated from the Constitution. We believe those offices should not be constitutional for several reasons. Various forms of more efficient county government are being used with satisfaction in other States. Freezing highly paid county officials with accompanying patronage in the form of appointments to be made by them into the Constitution, makes its impossible for any county in New Jersey to effect the savings which might be secured by adopting a modern type of county government. County governments spend a great deal of money and should be run in a businesslike and economical way. The Princeton Surveys showed vividly the unnecessary costs entailed by overlapping functions in this State. The new Constitution should permit those counties which desire to do so to adopt forms of county organization better suited to present needs. The Commission recognized the fact of changed conditions when it stated, as the reason for permitting sheriffs to succeed themselves, that: "Since the reason for originally prohibiting sheriffs from succeeding themselves—that is, their former extensive powers—has long since disappeared, this restriction is removed from the Constitution." We say, let the requirement that counties must elect sheriffs and all the others be removed from the Constitution. We think that surrogates should be considered a part of the judicial system and appointed in the same manner.

If, unfortunately, those offices are retained in the Constitution, the League is opposed to keeping the old terms of three and five years. By providing two- and four-year terms for members of the Legislature and the Governor, along with the provision that those elections shall occur in odd years, the proposed Constitution seemed to be giving the State a "system of elections." The lack of a system of elections in New Jersey has long been recognized by students of Government. Professor Ralph S. Boots in his study entitled "Direct Primary in New Jersey" says: "System of elections is a misnomer in New Jersey. Nominations for all officers whose terms are the same in length of course recur in a fixed relation to one another. For example, if, in a certain county, State senator, sheriff and coroners are nominated in the same year, they will continue to be nominated in the same year at three-year intervals, but the nominations of surrogate and county clerk, officers having five-year terms, will necessarily come sometimes with the nomination of certain three-year officials, and sometimes separate from it, and the nominations of national officers occurring every two years will increase the confusion, not to mention the municipal officers at all. The result is an electoral feast in certain years, if not electoral famine in others—an arrangement of menus which is not conducive to the voter's political digestion."

We ask, therefore, that the new Constitution have the merit of providing a real sytem of elections unmarred by inconsistencies.

MR. AMLICKE: Now, Mr. Watson you can have a few minutes.

MR. WATSON: I can say what I have to say, Mr. Chairman, in less than five minutes. Speaking as a modificationist, we said at the outset if different language would strengthen Paragraph 2, the civil service section, we would favor it. Particular reference has been made to the words "so far as practicable." If it would strengthen this provision to eliminate the words "so far as practicable," by all means eliminate them, but we direct the attention of the Committee to the fact that those words "so far as practicable" might have definite meaning. For instance, it might not be practicable to hold an examination for the employment of unskilled manual laborers. Those words "so far as practicable" have a very definite meaning in civil service law and have been adjudicated by the courts, and there is no danger whatever of their abuse. They mean just what they say. For instance, the State Treasurer has a confidential employee who has custody of securities and moneys for which the State Treasurer is responsible. You can't hold an examination to determine who would enjoy the confidence of the State Treasurer; it wouldn't be practicable to hold an examination. There the words have definite meaning.

Then, again, just a minute or two on this Section III: It has been said the effect of this Section III might be to extort information as a basis of criminal prosecution. I wrote the words down. Certain cases were cited. Let me remind the Committee that in the cases cited the respondents never once claimed constitutional privilege; the respondent never said, "The answer to that question might subject me to criminal prosecution." If he had, the Constitution would have intervened and that might have been the end of it, but no constitutional privilege was ever claimed, and there is a good deal of smoke screen about this paragraph.

It's said that where the legislative investigation also tends to reveal criminal conduct, let the Grand Jury act, or if the Grand Jury doesn't act, impanel an elisor drawn Grand Jury, as Judge

Kalisch did in Atlantic County, but the members of the Committee know—apparently the spokesman doesn't know the meaning of it—that an elisor drawn Grand Jury may be obtained only where the sheriff can't intervene. The reason there was an elisor drawn Grand Jury there was that the sheriff was a defendant. Otherwise, there wouldn't have been any elisor drawn Grand Jury; it wouldn't suffice.

Also, it has been said that the lines should be drawn so that private citizens wouldn't be the subject of this kind of investigation, but this language does it. The Legislature may investigate Government or any public officer or agency, all phases of State and local Government, the fidelity of any public officer or employee, or the performance of any public office, employment or trust.

May I go back just once more, before I sit down, to this much controverted page 11 (p. 912). If this Commission had been addressing itself to immature intelligence, it would have numbered its recommendations and its first recommendation, number one, would have been a revised Constitution for the State of New Jersey, the Commission recommends a revised Constitution for the State of New Jersey, the text of which is set forth in Part II of the Report. That would have been one recommendation. What else could the Commission say? This is their handiwork. They wouldn't submit it without a recommendation.

Their second recommendation would have been, if they had numbered them, two: that through enabling legislation the Legislature at primary election shall request authority from the people to submit a revised Constitution. That is a separate recommendation.

Its third recommendation would have been upon favorable vote of the people on this question at the primary election, a Revised Constitution shall be incorporated in a legislative bill, the one submitted by the Legislature.

So, we don't apply the rule of construction that the same language is used throughout in the same document, but here the same language is used throughout in three different recommendations and the words "a revised Constitution" have a different meaning and a different reference in each of the three different recommendations.

Thank you, Mr. Chairman.

MR. CHANCE: I congratulate him on his ability to read into the people's words what they didn't say.

MR. AMLICKE: Ladies and gentlemen, I wish to announce that the next hearing will take place in this chamber on August 19th, at which time the Committee will consider Articles VII and VIII.

The Chair wishes to announce also it regrets that Miss Preen, a member of the Committee, was obliged to leave because of the sudden illness of her father.

(Adjournment.)

BRIEFS AND COMMUNICATIONS SUBMITTED AT THIS SESSION.

Montclair, N. J., August 3, 1942.

Joint Legislative Committee to Conduct Hearings on the Revision of the New Jersey Constitution,
Hon. Lloyd L. Schroeder, Chairman,
State Capitol, Trenton, N. J.

Madam and Gentlemen:

Re: Art. VI (Public Affairs) Section I, Paragraph 2 of Proposed Revision.

I earnestly recommend that the foregoing paragraph be amended by inserting after the words: "according to merit and fitness" the words: "regardless of race, creed or color" so that Paragraph 2 will read:

> "2. In the civil service of the State and all its civil divisions, all offices and positions shall be classified according to duties and responsibilities, salary ranges shall be established for the various classes, and all appointments and promotions shall be made according to merit and fitness, *regardless of race, creed or color;* to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive."

The purpose of the recommended amendment is to make certain that the prohibition against discrimination "on account of his religious principles," in Article I, Paragraph 4 will also be made effective with respect to "race, creed or color" in all civil service appointments. The words suggested are adapted from the familiar ones in the XVth Amendment to the United States Constitution as employed in New Jersey Revised Statutes, Section 10:1-6.

Existing instances of racial discrimination, which have been investigated and verified, in political subdivisions of the State, make appropriate and necessary my advocacy of this addition.

Respectfully,

ARTHUR J. EDWARDS

PUBLIC HEARING

August 19, 1942

Morning Session

on

Proposed Revision of the New Jersey Constitution
Article VII. "Finance"

The Joint Legislative Committee appointed pursuant to Senate Concurrent Resolution No. 19, passed June 15, 1942, convened in the Assembly Chamber in the State House at Trenton on Wednesday, August 19, 1942 at ten-thirty o'clock A. M., for the purpose of holding a Public Hearing in connection with the Proposed Revision of the New Jersey Constitution (1942) pursuant to announcement previously made.

The following members of the Joint Committee were present: Hon. Manfield G. Amlicke (presiding), Hon. H. Rivington Pyne, Hon. Edward J. O'Mara, Hon. Dominic A. Cavicchia and Hon. Mildred A. Preen.

The Chairman opened the Hearing and the Hearing proceeded as follows:

MR. AMLICKE: Will the public hearing come to order now please. The article under discussion today is Article VII on Finance. We will proceed with the usual order, first hearing the proponents, then those in favor of modification and those against it. I will now call upon Mr. Winston Paul to introduce the speakers in behalf of the adoption of Article VII as proposed by the Committee. Mr. Paul.

MR. PAUL: Thank you, Mr. Chairman. The first speaker is Mr. Spencer Miller Jr.

MR. MILLER: Gentlemen of the Committee: Two basic principles of democratic government—namely popular suffrage and the control of the purse by the peoples' representatives are scheduled for discussion today in the articles in the proposed revision of our Constitution. These two principles are as well two of the most fundamental tools of constitutional government. As Chairman of the New Jersey Committee on Constitutional Convention, it may not be amiss to point out that public control over Government has been attained largely through popular elections and through legislative and administrative controls over public finances. One needs only to recall the successive steps by which a more and more representative Parliament gained more and more effective control over, first, the revenues, and later, the expenditures of the King's gov-

ernment to realize that the suffrage, the system of elections, and the system of fiscal control, are related and essential factors in the development and maintenance of any system of responsible government. Our own colonial forebears were well aware of this, as the struggles over money between colonial assemblies and royal governors attest. The results of those struggles are evident in the provisions in our early constitutions, designed to protect the right of the Legislature, not only to determine the sources and amounts of public funds, but also to control by appropriation the objects of their expenditure.

New Jersey has long enjoyed universal suffrage and we have already dealt in earlier hearings with provisions designed to secure the election at more appropriate intervals than those provided in the present Constitution of more responsible public agents in the legislative branches of the State Government. It will be unnecessary, therefore, to discuss the subject of elections and suffrage at this hearing. I trust that the minor modifications proposed in Article VII of the draft before us will be given careful scrutiny to make sure that the sovereign right of the people to speak through the ballot box is fully protected.

Article VII concerns State finances. The new provisions incorporated in this article directly affect the administration of the State Highway Department of which I happen, at present, to be head. But what I shall say as Highway Commissioner will be in no way inconsistent with what I should say as a citizen attempting to represent the common thinking of the thousands of citizens associated with the New Jersey Committee on Constitutional Convention and its affiliated organizations. This is as it should be, because the notion that there can be any distinction between a legitimate departmental point of view and a sound citizens' point of view concerning any public question is inconsistent with the basic assumption of democratic government. That assumption is that Government exists to serve the people in accordance with their will, and that public officers and employees have only the duty to perform that service according to their best understanding and ability.

In an exhaustive study and report on the "Organization and Administration of the New Jersey State Highway Department," prepared by Sidney Goldmann and Thomas J. Graves, and recently published, it is stated that the highway department has for much of the time in the past "dedicated itself to the proposition of maintaining its indefensibly independent position in the State Government—a position that carries great power in State affairs." It is the contention of these two investigators that a great part at least of the effort which has been spent in attempting to maintain this position has been due to sincere conviction that the highway department was different from all other departments, and should

be so treated. My study of administration, both in public and in private business has convinced me that such a belief is not uncommon. It has certainly not been confined to the New Jersey Highway Department. While I recognize that there is an honest difference of opinion about the finances of the department as to the unique character of the work of the department, it is nevertheless the considered opinion of most students of public administration that "The State Highway Department should be considered as a regular agency and integral part of the State Government, and should be subject to the same set of overhead controls of budgeting, finances, purchasing and personnel as are provided for the other agencies of the Government."—to quote the words of Messrs. Goldmann and Graves.

As a citizen of New Jersey, I am in agreement with this general proposition and as State Highway Commissioner I am bound to give due weight to the logic of their conclusions. The great merit of Article VII, as written by the Revision Commission, in the opinion of our Citizens Committee, is that it writes the most important of these implications into our basic law. It should be observed that this principle and these implications apply equally to other executive agencies of the State Government.

In colonial times the essential objective of the struggle for popular control of public spending was to gain for the Legislature effective control of the purse through the taxing and appropriating powers. Independence changed the problem somewhat. American executives were now just as truly the people's representatives as were the legislators themselves. But the old suspicion of the executive lingered on, and led, almost, to what Thomas Jefferson called an "elective despotism" by legislators representing minor and local interests rather than the interests of the State as a whole. This "despotism" found expression in various forms of fiscal extravagance and resulted in the virtual bankruptcy of some States. Constitutional curbs began to be put upon the borrowing and spending proclivities of State Legislatures. The limitation imposed on the power of the State to create a debt in excess of $100,000, incorporated in our Constitution of 1844, is a case in point. Unfortunately, the possibility of securing a more responsible administration of public finances through implementation of the powers of the Governor as chief executive was until recent years almost completely ignored.

The spectacular increase in public budgets following the industrial revolution and the growth and concentration of population has, however, made it evident that democratic control of public spending requires something more active, continuous and responsible than the enactment of occasional laws to raise money and direct the expenditure thereof. Since the beginning of this century, therefore, there has been a definite trend toward executive control of the making and execution of public budgets and toward

improved methods of handling public business. New Jersey has done some excellent pioneer work in this field. The recent local government and bond and budget acts are examples.

Unfortunately, we are now lagging behind in the application to State Government of principles which we ourselves have helped to discover and to teach. Article VII of the Proposed Constitution would bring the State back again near the head of the procession. The significant changes which this article would require in our fiscal practices are these:

(1) All appropriations for support of State Government would be made in a single budget appropriation bill every two years.

(2) No supplementary appropriation could be made except by the approval of two-thirds of each House of the Legislature of a bill restricted to a single object.

(3) All dedicated funds except the State school fund and funds protected by contractural obligations would be abolished.

(4) All State departments would operate on a uniform fiscal year.

(5) State borrowing would be limited to serial bonds.

To state these propositions should be to make almost all the necessary argument in support of them. The State has long recognized in laws governing local finances the soundness of the single comprehensive budget, unencumbered by continuing dedicated revenues or appropriations, and of serial bonds as distinct from sinking fund bonds. If this is sound business for local Government, it is certainly sound business for State Government.

Report after report has declared that the present complicated system of dedicated revenues, continuing appropriations, diverse and overlapping administrative controls, together with the two fiscal years which prevail in the State Government, make it utterly impossible either to get a true picture of the financial condition of the State or to secure sound planning and responsible administration of public spending. Among the by-products of this condition have been wasting of public funds, inadequate support of essential public functions, and doubt among our citizens about the propriety and even the honesty of much of our public spending. I regret to say that some of this doubt has been directed toward the activities of the highway department in the past. This fact alone makes it important that this and all other departments of the State Government be put on the same footing as to their source of revenue, the control of their expenditures, and accountability for their actions.

There will be minor inconveniences in making a change from the present system to any new system which may be adopted. But

those inconveniences will cease when the change has been effected, and they are insignificant in comparison with the continuing inconveniences resulting from the present system. Take for example the need for the uniform fiscal year. Admittedly, there will be a period of adjustment, during which both the highway department itself and county and municipal officials responsible for administering State aid will have to become used to new ways of doing things. Is it unreasonable to assert that New Jersey could and would adjust to a system that has been found feasible in twenty-one other States of the Union? This is especially so when we reflect that under the present system the highway appropriations act is seldom passed until near the middle of the year for which it provides. With a biennial budget there would necessarily be one whole year in which there could be no doubt about what a county or municipality would have to spend. It is the conclusion of Goldmann and Graves, that it would be perfectly feasible to make appropriations for State aid to counties and municipalities half a year ahead and to finance local activities during the next two full calendar years.

The most serious objection to a dedicated revenue in the judgment of students of Government is that it tends to create a vested interest in continuing arrangements, which experience and lapse of time may prove to be contrary to the public interest. Even if there be at first a proper relation between the proceeds of a given tax and the need for expenditure for a given service, there is no reason to assume that that relationship will continue to exist. Experience demonstrates that once a dedicated fund has been set up, it is extremely difficult to deal with it on its merits. If a revenue proves to be greater than is needed, it is likely to encourage improvident expenditure for the particular function, merely because of the supposedly equitable connection between the revenue and the function. This may mean either that an inordinate tax is perpetuated or that some public services languish while others flourish in extravagance. On the other hand, the purpose for which the fund is dedicated may not be fulfilled if revenue fails to keep pace with need.

The people of New Jersey are no longer confronted with the problem of wresting control of the purse from a king or royal governor. Their problem is the immensely more difficult one of finding out how to manage in an economical and satisfactory manner the big business of the State and local Governments. Not only the prosperity of New Jersey but also the essential democracy of New Jersey are involved in the solution of this problem. The present system, or lack of it, tends to put the public purse, and consequently the performance of vital public and social services, at the mercy of competing special interests which do not necessarily have the welfare of the State at heart. The proposed revision of the

Constitution is obviously designed to help the people to get control of their own affairs. To this end, as we have seen, it provides for a Governor charged with the full responsibility to execute the public business, subject to the constant scrutiny of a Legislature unembarrassed by the power or the duty to participate directly in the administrative process. Article VII would make important additional contributions to this reform by implementing the executive power of the governor, by prescribing sound conditions and procedures for the conduct of our public business, and by making it more difficult for vested interests to stand in the way of salutary readjustments in the State's fiscal program.

MR. PAUL: Mr. Chairman, I would like next to introduce Mr. Alexander Summer, President of the New Jersey Association of Real Estate Boards.

MR. SUMMER: I am here as President of the New Jersey Association of Real Estate Boards to say on behalf of my group that we are very strongly in favor of a revision of the State Constitution and we are particularly interested in that provision of Article VII under discussion here today, which provides for the elimination of the so-called dedicated funds, the restriction of supplemental appropriations and the provision that all appropriations for the support of the State Government should be made in a single budget appropriation bill.

In 1928 our Association made a rather elaborate survey of the tax situation in this State and in our endeavor to learn something about the revenue picture in New Jersey, we ran head-on into this dedicated fund evil. It was then that we first raised our voice for a Constitutional Convention, as our survey at that time indicated that one of the main reasons for some of the evils which have grown into our State and municipal Governments was the fact that we were attempting to meet the complex needs of a great industrial State, with a fundamental law designed to meet the simple needs of an agricultural community of one hundred years ago.

Since that time, year in and year out, our Association has advocated the calling of a Constitutional Convention for the purpose of a revision that would make that Constitution more effectively applicable to present day needs.

As this is the first opportunity I have had as the President of our group, to appear at these hearings, I wish to record with your Committee our approval, in principle, of this revised Constitution proposed by this Special Revision Commission. We recognize, of course, that it is not a perfect document. We think the Commission has done a good job and if it accomplishes nothing else than to provide for more business-like sessions of the Legislature, a more business-like supervision by the Executive Department over the various departments of government and re-

organizes the complex machinery of the judicial system, it will have accomplished far-reaching reforms of inestimable benefit to the people of the State.

My purpose here is merely to make that general statement of approval to you in order that you may know that our organization is in favor of the Legislature presenting to the people a revision of the Constitution, in order that the people may be afforded an opportunity of passing upon the proposals to revise their fundamental law.

There is one section of this Article VII, however, in connection with which we are not in agreement and that is the proposal to carry into the new Constitution the property tax provision of the old Constitution. Our position on this particular provision will be presented by John F. O'Brien later in the day. While our position on this particular provision is strong and emphatic, our objection to it must not be construed as an opposition to the general principle of the revision, our desire being to offer constructive criticism, in order that a very vital part of this proposed Constitution may not carry with it a provision of the old Constitution, which in the light of present day needs, seems to be totally inadequate to meet the needs of Government conditions as they exist today.

To summarize, my word to you is that the New Jersey Association of Real Estate Boards, comprised of all the local Boards throughout the State and representing the real estate interests of the State, gives its approval, in principle, to this revision report and to ask that such suggestions as may be made with reference to the property tax provision be given due consideration in the report your committee is to make to the Legislature. Thank you.

MR. PAUL: Mr. Russell Watson of New Brunswick, Vice-Chairman of the New Jersey State Chamber of Commerce, will speak in behalf of that organization.

MR. WATSON: Members of the Committee, the State Chamber regards Article VII, which I will speak about first, as one of the major features of the proposed revision because the Chamber has long advocated the abolition of dedicated funds, which would be accomplished by Paragraph 4; and one all-inclusive appropriation bill which would be accomplished by Paragraph 5.

May I speak first of Paragraph 4 which provides that all revenues of the State Government, from whatever source derived, with certain exceptions, shall be paid into a single fund to be known as the General State Fund, subject to appropriation for any public purpose. The exceptions are that separate funds might be maintained for revenues realized from any tax levied specifically for the purpose of obtaining free public schools, for the proceeds of bond issues, earnings of self-liquidating public improvements, revenues of restricted use under or in compliance with

Federal law, and revenues held in trust for retirement of the public debt, for benefit of State or local officers or employees or for a specific public purpose required by a private donation. These exceptions may be classified as public school funds, which is justifiable because of the paramount importance of free education; trust funds for the proper application of money borrowed for specific purposes; revenues of restricted use under Federal law; and trust funds for the payment of public debt or for the payment of pensions or for the administration of a private donation. These exceptions are all self-explanatory and seem to us to be obviously proper and necessary.

The vice of the system of dedicated funds as it has obtained in New Jersey for a long, long while is that certain revenues are dedicated to certain specific purposes, regardless of the State's resources and regardless of its needs and requirements. Under this system the State might have more money than is needed in a particular dedicated fund and yet be rather hard put to it for money for essential governmental services. No private business practices such a system, or could long survive under it. It seems to us that the sound principle is that all of the State's revenues and resources should be pooled in one fund and dedicated according to the supply and according to the need. The system of dedicated funds has created a State fiscal situation—and I think the members of the Committee will bear with us that we have tried to be at these hearings conservative in our statements—but with respect to this system of dedicated funds against which our organization has been for so long, it seems to us that the present situation as it has existed for the last few years, is nothing short of scandalous, and that is one of the strongest terms we have used.

The Annual Report of the Comptroller for the year ended June 30, 1941, at pages 96 and 97, lists 37 dedicated funds, which at July 1, 1940, had aggregate balances of $44,000,000. I use round figures. These 37 funds had receipts during the fiscal year ended June 30, 1941, of $123,500,000; a total at the end of the year of $167,000,000, of which, during the year, were expended $129,500,000, leaving aggregate balances at June 30, 1941, of $38,000,000. These figures indicate how large a piece of the State's financial pie dedicated funds have come to be.

An expert researcher in this subject, who recently studied the subject of dedicated funds, found that if the professional boards were separately listed and if certain revolving and certain State-Federal funds were included, which are not among these 37, the number of dedicated funds would be 58. Whether the correct number be 37 or 58, the principle and the vice are the same. The viciousness of this system is self-evident.

Linked with the abolition of dedicated funds is the proposal of Paragraph 5, which has been summarized by Commissioner

Miller, that there be one all-inclusive appropriation bill from which the Legislature would make appropriations for public purposes; and the further proposal that any supplemental appropriation bill must be for a single purpose or object, must have a two-thirds' vote of each house in order to pass, and must not exceed the available revenues. The dedicated fund and the supplemental appropriation bill are the twin miscreants of New Jersey finance, which have left behind them a trail of waste, extravagance and confusion. An appropriation committee works seriously and earnestly for several months and reports to the Legislature an appropriation bill, and then sees its work partly undone, oftentimes certainly very much impaired, by a series of supplemental appropriation bills passed as we all know in many cases by political logrolling.

Paragraph 5, as I said, would limit appropriation bills in effect, we think, to desirable and necessary objects, in that these provisions would require careful scrutiny by the Legislature and would certainly fix responsibility for them. These twin bad boys in New Jersey finance, the dedicated fund and the supplemental appropriation bill, are not new arrivals on the political scene. They have been here with us and for a long while. They were denounced ten years ago by the Princeton Survey under the direction of Dr. Harold W. Dodds, President of Princeton University, and I would like to read to you what Dr. Dodds said about them at that time. It will take two or three minutes, but I think the time is well spent. The quotation shows so graphically that the situation hasn't changed. Dr. Dodds said:

> "The traditional methods by which State departments are financed in New Jersey make retrenchment exceedingly difficult. No clear picture of the State's financial operations is possible. With the cooperation of the State accounting and auditing department, we have estimated that the total expenditures for the fiscal year 1931-32 aggregate $105,263,079, of which $94,573,576 came from current revenues, and $10,689,503 from borrowed funds. But no living person knows what expenditures have been authorized for the current year. The best that can be done is to make a guess. This is because of the iniquitous practice of dedicated funds, reappropriations of unexpended balances, and appropriations of departmental receipts. The employment of the emergency fund and the historic practice of supplementary appropriations further becloud the picture.
>
> "As stated above, the appropriation acts represent only a fraction of the monies which the State spends. * * *"

The Comptroller's reports in the last years show that that situation has become aggravated.

> "The complex system of dedicated funds breaks the financial resources of the State into numerous self-contained compartments. As long as they exist, it is impossible for the State to mass its fiscal resources and direct them to the points at which they are most needed. We recommend in the strongest terms possible a complete abandonment of this policy. We are familiar with the arguments for dedicated funds. We do not believe, however, that a single one is valid in the face of the acute financial emergency."

There seems to me to be a pregnant explanation of the unsoundness of the situation.

> "It is not proper that any unit of the government should live to itself alone. Each one is a part of a vast machine operating for the benefit of the people as a whole. It is unthinkable that any agency should be allowed to spend all it can collect, while another agency, relying upon special appropriations, starves its essential services. Only by the merest accident can the needful expenditures of a department coincide with its receipts from particular fees or taxes. The single factor in determining what a department is to be allowed to spend should be the public value of its services."

This disgraceful picture has not changed. Only about two years ago, I think it was, we witnessed the unattractive spectacle here in this very room when the State Commissioner of Finance, the State Comptroller and the State Treasurer were requested by the House of Assembly to submit a statement of the State's financial resources and revenues, of having each of these officials present three reports which were conflicting and irreconcilable, and that is the result of this system of dedicated funds, reappropriated balances and the like. It wasn't the fault of these three officers. They were the victims of an unsound and unmanageable system. A gentleman whose name I shall not mention, but who knows New Jersey finance thoroughly, said to me just the other day: "Our present haphazard system of public budgeting and accounting is absolutely indefensible. Neither the Legislature nor the Executive has any real control of a large part of State expenditures. Not until nearly a year after most of the money is spent can any one even find out how much has been spent."

It would be difficult, if not impossible, to eradicate the evil of dedicated funds and supplemental bills by legislation because, in the first place, no Legislature could bind its successors. It should be said that this entire system of dedicated funds and supplemental appropriation bills rests upon legislative act, and the Legislature could create it by legislation if they choose to do so, but the fact is, they have not chosen to do so. As Commissioner Miller has said, vested interests grow; political pressures are very strong; and,

therefore, the State Chamber submits that this fundamental reform should be embodied in the fundamental law of the State.

We have heard—it may not be so, but we have heard—that the State League of Municipalities is opposed to Paragraph 4, which would abolish dedicated funds, because it understands that gross receipts taxes presently collected by the State and allocated to the municipalities would be subject to the paragraph and therefore the municipalities might lose this revenue. The exact language is: "All revenues of the State Government from whatever source derived—" Whether that phrase would encompass gross receipts taxes levied in lieu of personal property taxes and allocated by the same statutes under which the State is a mere conduit through which the taxes pass from the utility corporations to the municipalities is questionable. However, we understand—and I think there is no objection to saying that I was given this information by Mr. Charles Erdman, the Secretary of the Commission—that it was not the intention of the Revision Commission that this Paragraph 4 should include gross receipts taxes; that it wasn't considered that such taxes, where the State is merely a collecting and allocating agency, would be within that phrase "all revenues of the State Government." But, in order that there should be no misapprehension about it, no misunderstanding about it, if the Committee and the Legislature are of the view that the paragraph should not include gross receipts taxes, as is the State Chamber of Commerce, the phrase should be clarified and redrafted in that respect.

Another important change in Article VII is the requirement that State obligations, State borrowings, be repaid in the form of serial bonds instead of sinking fund bonds as heretofore. That is the practice under the local government acts. It has proven sound and we think that it should be applied to State borrowings.

Still another important change in this article is the elimination of the present provisions that a law authorizing a State debt shall provide the ways and means of payment and shall be irrepealable. Paragraph 9 of this article provides that the law shall provide the ways and means of payment, but it shall not be irrepealable; the Legislature may repeal it. But there is the imperative language that in such case, the Legislature shall make adequate provision for the payment of the debt, and in case of default in doing so, the State Treasurer shall apply the first revenues coming to hand to the payment of it. So the change is that under the present Constitution the law authorizing the debt and creating it is irrepealable, while under the new Constitution it might be repealed, subject to these safeguards. As we understand it, the reason for that change recommended by the Commission is that under the present practice a statute providing ways and means might appropriate to the payment of a debt or subject to the lien of a debt

certain revenues, and in the course of time, thirty-five years, those revenues might diminish or might disappear. For other reasons in the course of time it might be desirable to repeal the law. The Legislature by this provision would be authorized to do it, provided that it made adequate provision for the payment of the debt and with the additional safeguard that the Treasurer shall apply the first monies coming to his hand to the payment of the debt in case the Legislature should fail, which to us seems unthinkable. Perhaps it is not a change of major importance, but it seems to us to be desirable. Those, we think, are the three important changes in the article, and with that clarifying change the State Chamber urges its adoption.

MR. PAUL: We would like to call next on Mr. Walter S. Gray, Director of the Essex County Board of Freeholders.

MR. GRAY: Mr. Chairman and Members of the Committee:

To the so-called system of dedication of State funds, Essex County is and for years has been unalterably opposed. As Director of the Essex Board of Freeholders, it is my privilege to speak for the citizens of this county, which is the largest taxpaying unit in the State. Through the Legislature the State appropriates money to operate the State Government and it is most paradoxical, in recognition of that fact, not to permit the State to have a voice in its expenditures. The authority which raises the money should be also the authority charged with the distribution. All public funds which are raised by the State belong to the State for State purposes and it is childish prattle to maintain that they can be used only for particular purposes.

Information discloses that there are no less than sixty dedicated funds in New Jersey. Not only is it our wish to erase such warts, but to prevent the growth of additional ones. Under the present setup each one of the sixty operating agencies not only try, but almost all succeed, in expending for their particular purposes almost every cent received by them under the present fiscal system.

What is the finarcial condition of New Jersey today? No man in the State knows. Mr. Watson just made allu ion to that in a similar assertion, and I challenge any State official—and I make that statement in the presence of Mr. Zink—this morning to give a correct answer to that question, and that challenge implies no criticism of any State official, but it is a criticism directed at the present State Government setup. If the State of New Jersey were a private concern subject to the Federal regulations governing private concerns, no State official could conscientiously take an affidavit that any statement prepared on its finances was correct. Essex County is concerned greatly over the financial debacle which has grown up in the many past years and feels very definitely that the abolition of dedicated revenues and the proposed change

whereby all income is placed in a single State fund will result in an actual benefit to the taxpayers.

There is but one argument which can be advanced in opposition to this progressive movement. That argument is based on motives of pure selfishness on the part of those who fear curtailment of funds now dedicated to some pet project. Let us resolve to abandon such a selfish and petty attitude and adopt a policy in New Jersey that will restyle its outmoded financial setup to conform to the necessities of the present day, and remove the cause of our present wasteful and uncontrollable financial condition.

If it is argued that the Legislature now has power to exercise greater control over expenditures of dedicated funds, the fact remains that it has not been done and that it will not be done. Expending agencies continue to exercise independent control over State revenues.

The Essex Board of Freeholders could not undertake detailed examination of State finances for the purpose of bringing out all the existing evils and disadvantages. It has, however, sufficient information and experience to feel obligated to the citizens and taxpayers to advocate publicly the inclusion of Article VII in the proposed Constitution for the State of New Jersey.

MR. PAUL: Mr. Paul Volcker, City Manager of Teaneck—

MR. VOLCKER: Mr. Chairman, I venture to speak, not as a representative of any organization, but only as a municipal official with seventeen years of experience in New Jersey.

Unquestionably the control of public finance is one of the most important of all governmental functions or trusts. If the financial structure of a State collapses, the resulting ruin and confusion seriously affects all of the people.

The State has during the past few years thoroughly overhauled the laws governing municipal finance. It has locked the municipal stable before all of the horses were gone. Very few, if any, municipal officials will question the necessity, the propriety and the beneficial results of those stringent laws that were passed by the Legislature. The question then naturally arises why, if control of public finances at the municipal level is good, is it not also good at the State level? If the children, the municipalities, are required to observe strict laws of conduct, why should not the parent, the State, set them a proper example?

If anything, I believe the proposed Constitution does not go far enough in setting forth the manner and method of conducting the State finances. I realize, of course, that the Constitution is not the place for details of administration. At least the proposed Constitution does provide for a general appropriation bill, the abolition of dedicated funds, regulation of supplementary appropriation bills, and the elimination of sinking funds. These alone

are great advances and justify the inclusion of Article VII in the new Constitution.

MR. PAUL: I would like to ask to speak next, the State Comptroller, Mr. Homer Zink.

MR. ZINK: Mr. Chairman and Members of the Committee:

I shall not take much of your time. I will try to deal with a few facts and not with generalities. For many years the State Comptroller's Office—this will go back long before my time—has advocated one fiscal period for all State departments. The present Comptroller has long urged the abolition of dedicated funds and development of a single appropriations bill, as contemplated by Article VII.

From an accounting point of view, it is difficult for the fiscal officers to prepare financial statements showing, in clear and concise form, the fiscal operations of the State over a single fiscal period. Actually, to get one set of financial facts, the Comptroller's Office must deal with three separate fiscal periods.

Obviously, if complete information is requested for a fiscal year, it is necessary to add to the figures of the General State Fund for that fiscal year (a) figures for the last six months of the State Highway calendar year preceding said fiscal year, and (b) figures for the first six months of the next succeeding Highway Fund calendar year. This is true, too, of the Municipal Aid or Relief Fund, which is also on a calendar year basis. This brings about the result mentioned by Mr. Watson, the fact it is impossible for any fiscal officer of this State at any time to tell the exact financial condition of the State at that time, absolutely impossible.

While the objection just cited is important to the Comptroller, it is slight as compared with objections to dedicated funds based on principles of economy and efficiency in government. The Highway Fund, being dedicated, is not subject to the same degree of legislative scrutiny as the General State Fund. Appropriation acts governing this fund are not broken down in as fine detail as appropriation acts covering the General State Fund. This is a very serious objection and has been for years.

As to dedicated funds like those of the Fish and Game Commission, various professional boards, and others, it is difficult for the Legislature making appropriations for these bodies to impose upon them the same sort of control which is imposed on departments not having dedicated funds. Efforts to cut the cost of conducting these departments or boards are met by the argument that there is little use in keeping costs down because unexpended balances of the funds do not go into the State treasury.

Spokesmen for these specially favored groups say, in effect: "This is not the State's money we are spending, but our money. We collect it in fees, fines, etc., and it is ours to do with as we please." As a result, the cost of maintaining such departments and

groups is often greater than it would be if the funds were not dedicated. The whole theory of dedicated funds is wrong and cannot be defended on any logical grounds.

Speaking generally, the provisions of Article VII are sound and beneficial. All the safeguards of the old Constitution are retained and others are added, as already indicated. The suggestion of biennial appropriations bills is subject to some question, especially in these days of fluctuating revenues.

The provisions relating to supplemental appropriations are especially important. The requirement that spending bills must receive the votes of two-thirds of the members of each House will discourage logrolling. Above all, the provision that no supplemental appropriation bill may be passed, if the amount thereof, added to all prior appropriatons for the same period, exceeds the total amount of revenue available therefor, is important. It will tend to put the State on a cash basis, a basis on which the Legislature has for some time compelled the municipalities to do business. Everyone knows that the position of the municipalities has improved immeasurably since this cash basis requirement was put into effect.

In the Summary of the Constitution prepared by the Commission on Revision, at page 26, (p. 927) this paragraph appears:

> "So long as the State's left hand is not permitted to know what its right hand is doing in a fiscal sense, the State's financial management is obviously under a severe handicap. The provision abolishing so-called dedicated funds will remedy this situation by preventing separate little treasuries for favored projects from being established, regardless of the demands of pressure groups."

The figure of speech "separate little treasuries for favored projects" describes the situation so graphically as to leave nothing unsaid.

For the benefit of the members of the Committee only, I would like to point out one thing that disturbs me. Paragraph 5 provides that no money shall be drawn from the State Treasury, but for appropriations made by law. Then it goes on and speaks of these supplemental bills. It all has to do with the appropriation of money that is actually on hand to be spent. Then we have Paragraph 6 which has nothing to do with that case. Then we have Paragraph 7, which is what troubles me.

> "Except for purposes of war, or to repel invasion or to suppress insurrection, no debt or liability shall be contracted by or on behalf of the State in an amount which singly or in the aggregate with any previous debts or liabilities, shall at any time exceed one hundred thousand dollars, unless authorized by a law which shall, at a general election, have been submitted to the people, and have received the sanction of a majority of all the votes cast for and against it."

Clearly that has to do with the incurring of an obligation to be paid in the future, no money being on hand. But I think if I were an ornery lawyer representing someone who didn't like the Commissioner of Institutions and Agencies perhaps, and if I wanted to object to an appropriation that would come to more than one hundred thousand dollars to Institutions and Agencies, under Paragraph 5, I might say and might get a court to listen to me, "You can't get more than one hundred thousand dollars." I think it would be safer if Paragraph 7 contained a little clarifying clause "except for as set forth in Paragraph 5 and except for purposes of war, etc., no obligations may be incurred." Maybe I am going a little too far afield, but it does disturb me.

MR. PAUL: Mr. Donald Waesche, President, New Jersey State Board of Tax Appeals—

MR. WAESCHE: Mr. Chairman and Members of the Committee:

Directing our attention to Article VII dealing with the finances of the State, a lot of discussion has centered around Sections 4 and 5 of Article VII and it is to those two sections that I am going to direct my few remarks. The other sections, all of them, seem to me to have a debatable question, but the real important sections of vital importance, it seems to me, to the efficiency of the State Government are Sections 4 and 5; and to those sections, around which a lot of debate is centering, it seems to me there is no debate.

In all of our experiences, whether it be in charitable work or in civic work, fraternal organizations, business organizations or political organizations, we have one treasury into which all money goes, and out of that treasury all bills are paid by the treasurer, with one exception, the State of New Jersey. If we organize any kind of a business organization, no matter how large it may be, under our laws passed by the Legislature of New Jersey, under the efficient system of management that every corporation must set up, we have one treasurer. Under our smaller organizations and groups we have one treasurer and it's the best system unquestionably. It is done every place except by the State of New Jersey, and why it should be a debatable question as to why the State of New Jersey should have a treasury into which all funds should be paid, I can't understand.

The section says that all revenues of the State Government should be paid into the treasury. I think that that means the revenues of the State Government and does not include revenues of municipalities or of counties. Under the laws we have treasurers of municipalities and counties; and under our theory of home rule,

monies that are raised for municipal or county government should go to those treasurers and not to the treasurer of the State of New Jersey to be paid out from the State treasury to the local treasurers. If there is any question about the meaning of that section, I think it should be clarified.

It seems to me that in our political life we make the obvious immensely difficult, weird and confusing. Why we should do that has always been a question which I have never been able to understand. However, it does have its effect on the public mind. But in a matter of this kind, so important, where a committee of the Legislature is listening to these arguments, it doesn't seem to me that we should have to deal with the public mind; and questions which hardly bear of any dispute ought not to be given the time and attention that is given to these sections. I was riding home on the train, by way of illustration, yesterday afternoon with a candidate for office in Bergen County where they are having a primary election and he said that his opponents say that they believe in milk and therefore he doesn't, that milk has fourteen different elements of food so that milk makes a perfect diet and they are in favor of it, and therefore their opponents are not. He said, believe it or not, "We are having trouble proving that we also believe in milk." I think that illustrates the position I have taken with regard to Sections 4 and 5 of Article VII. It is so obvious that into the treasury of the State of New Jersey all revenues of the State Government should be paid, the time we give to that problem is almost a waste of effort when in every other activity we engage in we have such a principle and apply it.

MR. PAUL: Mrs. Alloway, President of the Trenton League of Women Voters.

MRS. ALLOWAY: I am not speaking as President of the Trenton League; I am speaking as a member of the State Board of the New Jersey League of Women Voters.

The League of Women Voters is pleased to be able to endorse Article VII as it stands in the proposed revision. It includes the recommendations made by the League to the Commission. The League has for many years advocated that all dedicated funds be abolished and that the State should have a single treasury as is provided in the proposed General State Fund. We asked for and are happy to see the provision for a single appropriation bill and the restrictions on supplementary appropriations.

We especially endorse the provision limiting borrowing to serial bonds to be paid annually and making debt charges the first demand on State revenue, with the reservation to the State of the privilege of paying any part of its debt at any time.

The League has long advocated that all State departments operate on the same fiscal year as the proposed revision provides. We believe that adoption of the proposed Constitution will enable the State to operate its financial affairs in an efficient, open and economical way.

MR. PAUL: Mr. Joseph Paul, former Assemblyman from Essex County.

MR. PAUL: Mr. Chairman and Members of the Committee: I come here as an individual in reference to this part of the proposed Constitution. I have always been a proponent of the idea of the abolition of dedicated funds. As a former member of the House of Assembly I have sponsored bills each year for three years trying to get that idea over, but each time opposition came from a few individual groups, particularly the sportsmen and fishermen and the professional boards. It is my thought that all money, no matter how derived, either from fees or fines, belongs to the State. Even the sportsman who pays a fee for a license to shoot duck or to fish in our ponds is using State property for that benefit and that money should go into the State treasury, and their expenses should come out by appropriation bill the same as any other department of Government. It is unfair to other members of the State who don't fish or want to gun for ducks because our money supports some of those functions. The State Dental Society has its own funds and they are supposed to account every year to the Attorney-General. I understand some years ago they turned in a balance of $1.50 with no explanation of where it went.

We as a State have a right to know where the money comes from and where it goes. As Mr. Zink has properly said, at no time is any fiscal officer able to give a complete picture of our finances. I trust this part of the State Constitution will be adopted.

MR. PAUL: The New Jersey Education Association, represented by its president, Miss Lelia Brown.

MISS BROWN: The New Jersey Education Association definitely believes that the Constitution of our State should be revised in many particulars. The Association is willing to cooperate in a study of proposed changes in our fundamental law.

In relation to Article VII, which is being discussed this morning, the Association is in accord with the general recommendations as set forth in Article VII of the Commission's Report.

MR. PAUL: Mr. Harry W. Wolkstein, certified public accountant of Newark, New Jersey.

MR. WOLKSTEIN: Mr. Chairman and Members of the Joint Legislative Committee: One of the outstanding characteristics of modern State governments is the increment in the number of its functions and services. Matters that were formerly left to private initiative have been transferred to the sphere of State Government. This increasing demand upon Government has been accompanied by sharp increases in governmental costs and budgets, and enlargement in the complexity of the problems of public finance

and taxation. With the attainment of representative government, taxation came to be covered by exact provisions in the Constitutions of many modern States, with the result that the science of finance and constitutional law have become closer.

The Constitution of the State of New Jersey has not kept pace with the changes in social and economic conditions, nor has it kept pace with the ever-increasing problems of public finance. The financial structure of our State Government is in many respects as archaic and scrambled as the Constitution itself, having grown up over a number of years, with the assistance of statute added to statute, so that part of our present fiscal structure is constitutional and part statutory. The need for constitutional revision of our fiscal structure is apparent, for constitutional reform must precede administrative reorganization.

Article IV of the Constitution proposed by the Commission, dealing with governmental administration, was discussed at a preceding hearing. But the problems of administration and finance, as you know, are interrelated.

The financial functions of our State Government have been administered by too large a number of officials and boards including the Governor, the State Comptroller, the State Treasurer, the Attorney-General, the State House Commission, the State Purchasing Agent, the Civil Service Commission, the State Budget Commissioner, the State Tax Commissioner, the State Commissioner of Finance, and the Department of Local Government. There has been a diffusion of responsibility in the administration of State finance. Under our present Constitution we realize that the Governor has very little control over the actual administration of State finance.

Provision must be made so that the chief executive can maintain close contact with the finances of the State through the Department of Finance. One of the functions of the Finance Department should be to see that a comprehensive budget is framed and that it is properly carried out after its approval by the Legislature. Monthly reports should be submitted to the chief executive and department heads, indicating the status of their appropriations, allotments and encumbrances. By reporting monthly revenues and expenditures, these reports will serve as a basis for continuous budgetary control over current items. The chief executive would thus be assured that the State is not making improper expenditures, and that the administrative work is being carried on efficiently and economically. As late as December 1932, the Princeton Survey reported that "No living person knows what expenditures have been authorized for the current year. The best that can be done is to make a guess."

Our present Constitution regulates public expenditures with the brief provision that, "No money shall be drawn from the treasury but for appropriations made by law." The Constitution as proposed by the Commission is certainly an improvement inasmuch as it provides that all appropriations for the support of the State Government shall be made in a single budget appropriation bill. The new provisions will serve to compel better budgetary planning, and to reduce continuing re-appropriations, and will enable fiscal officers to prepare simple accurate financial statements exhibiting the cost of operations of the State for any given fiscal period. Furthermore, in providing that no supplementary appropriations may be made unless restricted to a single purpose, and approved by a two-thirds vote of each House of the Legislature when funds are available, the proposed Constitution will serve to eliminate extravagances and inefficiencies.

New Jersey's financial matters are conducted through a large number of dedicated funds as well as general funds, a practice that has been carried to extremes. These State funds are accounted for on two different fiscal years. The extended use of dedicated funds in our financial structure is to be severely criticized. The complex system of dedicated funds running on two fiscal years has resulted in numerous independent departments and agencies, and prevents our State from properly directing her financial resources.

The State Highway Fund is maintained on the calendar year basis. At present, departments under the highway fund frequently operate for a period of from one month to six months before the Legislature passes its appropriation bill. This is certainly bad public finance and should not be condoned. The policy of permitting numerous independent agencies and dedicated funds must be abandoned if we are to attain a cooperative governmental structure.

The proposed Constitution, in Article VII, Paragraph 4, abolishes all dedicated funds, and stipulates that all State revenues, with the exception of income of the fund for the support of free schools, shall be paid into a single fund to be known as the General State Fund.

The State Treasurer is a constitutional officer appointed by the Senate and General Assembly for a term of three years. His proper duties are to receive and disburse the moneys of the State, maintain records of receipts and disbursements of public money and of State debts. At present, many cash funds are not controlled by the Treasurer. Where practicable, all State moneys should be collected by the State Treasurer. Where impracticable, the moneys collected should be carefully controlled and deposited in a State depository to the credit of the State Treasurer immediately.

At the present time the State Comptroller maintains the central accounting system of the State, controlling the expenditure of State funds and auditing the accounts and records. Under the existing

Constitution, the Comptroller is elected by the Senate and General Assembly for a term of three years. His administraitve duties include examining and settling all amounts due or presented against the State, superintending the collecting of all revenue, paying all moneys directed by law to be paid out of the Treasury, and registering all receipts for money paid to the Treasurer. In addition to his administrative duties, the Comptroller is a member of a number of boards and departments.

Our ninety-eight-year-old Constitution reflects a general lack of appreciation of the character and advantages of the independent auditor in controlling fiscal matters. The present Constitution provides that, "the Secretary of State shall be ex officio an auditor of the accounts of the Treasurer, and as such it shall be his duty to assist the Legislature in the annual examination and settlement of said accounts until otherwise provided by law." In 1933 the Legislature attempted to correct prevailing defects by creating the office of the State Auditor, his duties to include the post-auditing of the accounts of the State and all State departments, institutions, agencies and political subdivisions. At the same time, the office of State Commissioner of Finance was created to satisfy the need for a financial manager. In recent years, the need for more adequate supervision of municipal affairs became acute, so that in 1938, under the Local Government Acts, a Department of Local Government was established for the purpose of auditing and supervising the financial operations of municipalities.

This very morning I visited the offices of the State Auditor and the State Library and requested a copy of the most recent report by the State Auditor. I was informed that it was not customary for the Auditor to prepare an annual comprehensive audit report.

The addition of statute upon statute through the years has resulted in greater confusion instead of simplification of the State fiscal structure. There is no proper balance between the Legislature and the chief executive in managing the State's finances. The function of post-auditing touches upon the financial relationship of the Legislature and the Governor so greatly that in my opinion it should be permanently incorporated within the revised Constitution. We cannot over-emphasize the importance of auditing in any sound system of budgetary control, yet the value of this function has been more or less neglected in New Jersey.

In the past, there has been no clear line of demarcation between the administrative functions of the Comptroller, and the functions of post-auditing. In preparing a revised Constitution, it is my belief that we must distinguish carefully between pre-auditing and post-auditing. If the Comptroller is to have the administrative duties of an executive, then he should be appointed by the Governor and should be responsible to him. The post-audit of State finances should be conducted periodically by an independent state auditor appointed by and responsible to the Legislature. On the other hand, if the Comptroller is to be appointed by and responsible to the Legislature, then he would be the official post-auditor and accordingly should be removed from all executive duties including pre-auditing.

The post-audit of State finances should be a broad panoramic survey of the State's financial activities, and the methods employed therein during a fiscal period, an audit of the expenditures as to their legality and regularity. Such a comprehensive survey would determine the following:

1. How efficiently and economically legislative appropriations have been carried out by various departments.
2. How effectively the revenue system has been administered.
3. Where the weaknesses of the State's general fiscal policy exist.
4. On the basis of this survey, the auditor would be enabled to make valuable recommendations toward promoting economy and efficiency in the future handling of State finances.

In reply to those persons who fear that reorganization of the State fiscal structure would centralize responsibility and power in the chief executive and a few other officials, I say that proper emphasis upon the position of the post-auditor would provide the Legislature with the desired means of a check upon the executive and his subordinates in financial matters.

The present revenue system in New Jersey may be criticized as being inequitable and outmoded. Taken as a whole, the revenue system is not sufficiently flexible. Because of existing exorbitant taxes on real estate, many property owners have lost their properties to mortgagees or municipalities. Real property bears a greater share of the tax burden than it does in other comparable States. Many of the municipalities in our State are in serious condition, because of exorbitant realty taxes, and are finding it more difficult to collect these taxes each year. In 1941 the State Planning Board reported that our municipalities were burdened with $200,000,000 worth of book assets whose present and future value is debatable.

Not only are we faced with irresponsible administration of many local governments, but we are also confronted with a confused mass of legislation that cries out for clarification. The result has been that in New Jersey the property tax is $62. per capita, whereas the average in thirty other States is $38. per capita.

Our old Constitution provides in Article IV, Section VII, that "property shall be assessed for taxes under general laws and by uniform rules according to its true value." We all know that this constitutional law is being grossly disregarded, since not all property legally taxable is being taxed. Some real property and much personal property are not being listed. Property is being assessed

neither at its true value nor at any uniform percentage of true value. We are faced with a serious condition of inequality in the assessment of property throughout the State. Careful consideration must be given to the problems involved.

State supervision over municipal governments has been ineffective and inadequate until a recent date. To improve the situation the Local Government Act was passed in 1938. It is interesting to note that this was the first act in the history of New Jersey to require every municipality to make an independent verification of delinquent taxes. The immediate result was the voluntary admission of irregularities and shortages by a number of tax collectors. These shortages were largely in smaller municipalities where there existed no external check upon the collectors' accounts.

If we are to improve the revenue and tax system of New Jersey, we must centralize and concentrate supervising authority in the State fiscal structure. If we hope to reduce and control local expenditures, then the State Government must recognize its moral obligations as the controlling entity. One of our gravest problems is the improvement of the financial condition of municipal governments and their administration of fiscal affairs. It is urgent that the State Government initiate an active control over all expenditures for the purpose of equalizing taxes and reducing the total tax burden by: of equalizing standards of service and costs; of thorough budgetary reforms; of adequate debt and finance control; of proper supervision and equalization of assessments and tax rates; of reallocation of certain services; of eliminating the patronage system; of simplification of local government structure; of periodic and comprehensive audits of municipal governments; of supervision over tax delinquencies; of reorganization of local assessment and collection districts; and of uniform administration of all local pension funds.

Throughout our State and municipal governments, the fiscal problems have become more numerous, more complicated, and more urgent. Prompt revision of our outmoded State Constitution is undoubtedly the only logical approach to the solution of these fiscal problems.

MR. AMLICKE: The next speaker in favor of the proposed Article VII will the Honorable Alfred Driscoll, Commissioner of Alcoholic Beverage Control.

MR. DRISCOLL: Mr. Chairman and Members of the Committee: I would like to say at the very outset that I, along with every other citizen of the State, must of necessity be deeply grateful to the Chairman and to the members of this Committee for the time which they are devoting to perhaps the most important piece of business now before the State and, of course, the Legislature and the Governor. As an individual citizen, I wish to convey that personal appreciation on my part.

Secondly, as the head of a State department I should like to say that while there has been some inference that State department heads would naturally and normally be in the opposition, I am quite sure that all State department heads are deeply interested in this particular movement and that none of them would permit alleged selfish interests to stand in the way of what must be their desire that due consideration be given to the modernization of our fundamental law. Certainly, that is my personal position. The importance of modernization and the improvement of our fundamental law far outweighs any individual consideration that any State department head might have or desire.

With regard to Article VII, may I say that I speak from a background of eight or nine years of intensive State and municipal financial study, and as a result of those years of study of the State and municipal financial picture, I am convinced that it is imperative that we modernize and improve and perhaps streamline our system. I am further convinced that Article VII as proposed is a long step in that direction, particularly with regard to dedicated funds.

Along with some of the members of the Committee, I served in the Legislature during one part and as Director of Revenue and Finance of a municipality during another part of the period when we had tremendous relief loads, and the unpleasant picture of a municipality or State corporation which had plenty of money in one pocket with which to operate Cadillac cars on the highways and a pocket which was empty when it came to feeding and clothing unfortunate relief patients convinced me we should have only one pocket out of which the funds of the State should be allocated judicially and fairly with due regard to all interests.

So, I most heartily concur in the suggestion that we should have an end to dedicated funds, with the exception indicated, that there should be but one pocket from which all funds, with rare exceptions, those which have been referred to as coming to us from the Federal Government with strings, should be allocated. By the same token, good business management would seem to indicate the desirability of having but one budget and one budget year. The biggest business in the State of New Jersey is the business of the State and of Government, and if we are to face the facts frankly, it seems to me we must recognize our Government must be operated on a business basis, and, at least to me, a business basis would indicate one fiscal year with one overall budget and preferably, if possible, a budget which would contemplate not only a current year but a year to come, so that long-term plans might be developed.

There are, of course, arguments that have been, and logically may be, advanced in opposition to this elimination of dedicated funds and to Section IV. I am not unmindful of them but I am

also mindful of the fact that the total expenditure, for example, for highway purposes by our local municipalities, by our counties and by the State exceed by perhaps twenty-five to thirty million dollars the total moneys received from gasoline taxes and motor vehicle revenues, and that that ought to be taken into consideration. The paving of important streets or highways within a municipality is today of equal importance with the paving of highways in the rural areas. The problem has changed in the past few years from a farm to market problem to a problem of getting people in and out of our large cities. We need only refer you to Mr. Moses and what he has done in New York as indicative of what can be done under wise planning. It would be perhaps just as logical to say that the receipts from the alcoholic beverage control tax should be dedicated solely to the welfare of the licensees of our State rather than that they should go into the common pocket of the treasury, as it is to say that the tax which I pay as a real estate owner should be dedicated only to schools because I happen to have three children in school or that my gasoline tax should be devoted only to the State highway system.

In conclusion, I am perfectly willing to concede that some sentences may have too many words and some commas may be left out. Your Committee is well armed with talent to insert lost commas or to break up long sentences, but I feel that the best interest of the State would be served by an article in our Constitution which would incorporate the principles expressed in the proposed article.

MR. AMLICKE: We will now hear from Mr. John Bebout, who will speak in favor of Article VII, in place of Mr. Farrell.

MR. BEBOUT: I have been asked to read this statement by Mr. George Farrell, Chairman of the Finance Committee of the Camden County Board of Freeholders. He is very sorry he couldn't get here this morning because unexpectedly one of the members of his family was taken to the hospital.

The need for a consistent and understandable financial system in New Jersey's Government to replace the existing bewildering hodge-podge long has been apparent. This need includes a uniform fiscal year, with all agencies operating as units in one orderly system, instead of as separate entities frequently operating at expensive cross-purposes.

It is not surprising that a progressive step like revision of the State's archaic Constitution draws fire from groups with special interests which have benefited under the status quo. I have examined these criticisms carefully, particularly as they relate to county government, and I find no validity in their opposition. The sooner government on every plane gets away from emphasis on individual phases and approaches problems from the standpoint of what is best for the common good the sooner we shall reach the twin goals

of governmental efficiency and lower taxes. The two go hand in hand.

Criticism of the proposed new State Constitution has been largely based on a "practice economy on the other fellow but leave me alone" philosophy. Obviously, this selfish and unsound principle victimizes the great majority of taxpayers who have no special axes to grind and hope only that their governmental representatives will approach government problems with their courses set for the goal of economical administration, ignoring detours of special interests and pressure groups. Only in this way can their tax burdens be lightened. Particularly in these days of colossal costs necessary to win the war is taxation relief in State, county and municipal government needed.

The Proposal to revise New Jersey's Constitution stems from a sincere desire by sincere leaders to end government by pressure groups and return it to the people whose taxes finance that government. No one can challenge the merit in this objective except, of course, the pressure groups.

As part of the general program to cure New Jersey's many governmental ills, the new constitution would provide for a manageable administrative system and a uniform and effective system of fiscal control, something now lacking, with approximately one hundred boards, departments, bureaus and agencies operating each unto its own laws and customs.

Imagine a business, however small, in which the operator didn't know how much money he spent! Even an ordinary household couldn't survive on that basis. And yet the great State of New Jersey, spending millions of dollars every year, is so involved in a maze of financial spider-webs that no one knows exactly how much of the taxpayers' money is spent—an unthinkable condition, and yet it exists.

As a member of Camden County's governing body, I am naturally vitally interested in anything that will cure this unhealthy and expensive ailment. The proposed Constitution supplies the answer, I am convinced, in its fiscal procedure. It places all agencies and departments in a single budget appropriation bill, where they belong. It sets up a uniform budget year. It places restrictions on special legislation and mandatory local spending. It limits borrowing power with a resultant enforced saving in tax-consuming interest charges. It restricts supplementary appropriations, the invariable joker in artificially reduced budgets, and so a contributor to dishonest budget-making. And, of tremendous importance, it abolishes the evil of dedicated funds. Coming from a freeholder, this last may sound like heresy, simply because some of the funds are dedicated to county use. But what is the true picture? We have the spectacle in New Jersey of departments finding themselves unable to cut expenses, even if they want to,

because revenues from certain fees or taxes are specifically dedicated to them. If those revenues increase, the expenses must keep pace.

It is illogical to say that because, for example, the use of automobiles has increased greatly in the past decade and receipts from motor vehicle license fees and gasoline taxes have exceeded all expectations, their use should be restricted to highway projects. Where would the municipalities of this State and the taxpayers who support them be now if the fallacious theory, sacredness of dedicated funds, had not been set aside long enough to permit diversion of highway funds for relief? Why shouldn't these taxes, the same as liquor taxes and all other State revenues, be put into a single fund for use wherever needed?

The argument has been advanced that such a move would jeopardize funds now paid by the State Highway Department to counties and municipalities. Actually, the effect would be just the opposite. Through savings made possible by an end to the dedicated fund racket, the State Treasury would have more money available for aiding home-owners.

There are States in this country—Florida is one—which have a homestead exemption law, limiting or eliminating entirely ad valorum taxation on small properties. This is made possible by an excess of State revenues over expenses of State Government. When New Jersey reaches that stage where State revenues—from license fees, liquor taxes, and all other sources—are ample enough to permit it to be done, it will not be a difficult matter to convince our legislative representatives that more money, not less, must be diverted to relief of the overburdened real estate taxpayer.

MR. AMLICKE: Are there any others who wish to be heard in favor of the proposed Article VII? If not, we will proceed with those who are in favor of modification. The first on the list is Mr. John F. O'Brien of the New Jersey Association of Real Estate Boards.

MR. O'BRIEN: Gentlemen of the Committee, I hope you will pardon this personal reference, but I wish to make my status here clear. I speak to you not only as a representative of the New Jersey Association of Real Estate Boards and as a Realtor with thirty years' experience in selling and developing real estate, but as a taxing official charged with the duty of assessing that real estate for taxation. Eight years ago I was engaged by the Village of South Orange to re-assess and equalize the assessments of all the property in that village, and since that time I have been the President of its Board of Assessors and mainly responsible for the assessments levied annually in that municipality. Because of the experience gained in that dual capacity of a salesman and assessor of real estate, I claim to speak with a certain

degree of authority on that provision of the old and the new Constitution having to do with property taxation.

Let it be understood that anything I may have to say on this subject is in no way to be construed as an evidence of opposition on the part of real estate interests to the submission of this proposed new Constitution to the people of the State. We are for that. We say to you as a joint committee of that body, that we consider it the duty of the Legislature, at this time, to present to the people of this State an opportunity to vote on a new Constitution, either this proposed Constitution, with or without changes, or a Constitution drawn up by duly elected delegates to a Constitutional Convention. While we still feel that the truly democratic way of revising our fundamental law is by the convention method, we also recognize the fact that this proposed Constitution is a great advance over the present Constitution, and that these hearings being held by your Committee afford some measure of the democratic process. So we say to you, we are in favor of a new Constitution, a better one than this proposed one we hope, but at the very least, this one,—and unweakened.

It is my purpose today to register opposition to Paragraph 6 of Article VII of the proposed Constitution, which reads as follows:

> "Property shall be assessed for taxes under general laws and by uniform rules, according to its true value."

The basis of my objection is that this provision is the exact same provision as is contained in the old Constitution, carried into the new without the change of a letter, and that today, it is a meaningless phrase, because experience and actual practice proves beyond the shadow of a doubt, that that provision for years, has not been, and is not now, to a great extent being enforced, and that by legislative edict, it is unenforceable. I submit, that to carry into the new Constitution unchanged, that particular provision of the old Constitution, is not only to give tacit approval to a system of taxation which for years has been recognized as unenforceable and perpetuates a system which in practice absolves one class of property owner and places a penalty tax on another class, but defeats the very purpose, in one of its most important parts, for which the constitutional revision is sought, as stated by the Revision Commission itself.

In its letter of transmittal, in acknowledging that the proposed Constitution is not a model document, the Commission says this:

> "It sets forth instead, what your Commission believes to be the requirements to secure to New Jersey the benefits of experience in public affairs extending over a century and a half."

Again, the Commission says:

> "The citizens of this State look to their Constitution

for the embodiment of principles designed to produce a well-ordered community. These principles are interpreted to the individual . . . in guarantees of unprejudiced administration of all public affairs. He expresses his acceptance of constituted authority by contributing to its support. . . These benefits, in terms of rights and obligations, are the things that a good Constitution secures to every one, without favor or privilege."

Again, the Commission says:

"Changes in personal habits, economic pursuits, social needs, and political horizons are the marks of a progressive people. The Constitution must keep pace with these changes, if it is to establish the conditions of order and stability which makes progress possible. It becomes, therefore, a reflection of experience of the past, knowledge of the present, and a program for the future."

And finally, the Commission says this:

"New Jersey's particular needs controlled the construction of the revised Constitution. Where existing requirements were consonant with need, they were retained. Where provisions had become obsolete through practice, they were deleted. And where developments needed constitutional recognition to give them a formalized status, they were added."

And then the Commission, despite the lofty principles set forth in these paragraphs, completely ignores the most archaic and unsuited of all the provisions of the old Constitution, as proven by experience and practice, and carries into the new Constitution, to meet the complex needs of this great industrial State of 1942, the same method of taxation set up in the old Constitution, to meet the simple needs of the farming community of one hundred years ago. Now the fundamental reason for re-writing our old Constitution is that it was written to meet the needs of New Jersey in 1844, and is totally inadequate to meet the needs of New Jersey in 1942. We agree with that reason, and particularly as regards the tax provision of the old Constitution. That provision was written when the farm, and farm implements, and cattle, were practically the only forms of property in existence in this State, and the farmer, through his ownership, was deemed to have the best ability to pay taxes and he was taxed according to his ownership. Such property was easy to find. It could be assessed with uniformity and with a reasonable degree of accuracy, at full value, and the community tax burden spread with almost complete equity, among those most able to pay as determined by their property ownership. Land, then, was the property contemplated by that 1844 tax provision, and rightly, the owner of that property was called upon to pay the full cost of community needs.

Today, one hundred years later, land represents possibly not more than 25% of the total property wealth in this State, but as a relic of the past, the great bulk of the taxes in this State are still exacted from the owners of that 25%, and by a system of assessment in which there is completely absent the elements of equity, uniformity, or the ability to pay. And it is that relic of the past which this new Constitution presumes to approve, maintain and carry into the future unchanged.

We agree with the Revision Commission that the new Constitution should contain what "we believe to be the requirements to secure for New Jersey the benefits of experience in public affairs"; that it should contain "guarantees of unprejudiced administration of all public affairs without favor or privilege"; that "it shall keep pace with changes in personal habits, economic pursuits, social needs"; that it should be a "reflection of the past, knowledge of the present and a program for the future"; and finally, that "where provisions have become obsolete through practice", they should be deleted. And in carrying unchanged into the revision the tax provision of the old Constitution, we contend that the Commission has ignored every one of these maxims, because all of them cry out for recognition in any consideration of the tax provision, based on experience, practice, equity, or the demand for a competent government administered without favor or privilege.

We contend that in actual practice, the administration of our tax system today is directly opposed to that constitutional provision. Not only is property not assessed by uniform rules, but billions of dollars worth of property are not assessed at all. We contend that favored classes of taxpayers have been created in this State, and their tax obligations, as contemplated in that constitutional provision, have been greatly lessened or completely eliminated, and the tax obligation of less favored taxpayers correspondingly increased because of that fact. We contend that, in actual practice, that constitutional provision has been nullified and made largely unenforceable by the many legislative amendments to the general tax act, through which amendments billions of dollars worth of personal property, and many millions of dollars worth of real property, are either partially or completely exempt from the obligation of being assessed for taxes. The irony of the fact is that that process of nullification has been carried on to a disquieting degree during the last ten years of depression. Now, if what I say is true, it becomes clearly self-evident that, unless the Legislature elects to make that tax-provision enforceable within the intent with which it was placed in the 1844 Constitution, it should be radically changed or completely deleted from the new Constitution.

Now, of course, I realize that there are men in this State and probably in this room who will say that what I have said is sheer nonsense; that if there is anything the matter with the tax system, it is with its administration and not with the constitutional provision. As to that, all I can say is that I am a taxing official, charged with its administration, and I can tell you that I cannot, either legally or practically, enforce that constitutional provision. Every time the annual tax duplicate is prepared there is a penalty tax imposed upon every home-owner in my town because I cannot enforce it, and that same penalty tax is present in the tax duplicate of each of the 565 taxing districts of the State, a penalty imposed because of the great bulk of property in the State, not assessed because it cannot be found, inadequately assessed because of changed methods of assessment or not assessable at all because of legislative exemptions.

I further realize that a person making such statements as I have made must stand ready to prove them. I appreciate that you do not wish, nor do I, that this hearing shall develop into a forum on taxation. We are discussing the question of including the tax provision of the old Constitution in the proposed revision; and what I have said has merely been general statements intended to question the justification for doing so in the light of past experience, and to direct your attention to this particular provision of the proposed revision. But, I am quite sure that I can prove them, for the proof is extensive, far too extensive for me to present in the time allotted me here today. With your permission, it is my intention to file a brief with you outlining in detail the basis for the position I take on this matter. Included in that basis, of course, are many things, the least of which, I assure you, is any desire to see real estate relieved from just taxation. Included, however, is the great expansion in governmental services with the consequent tremendous increase in the cost of government during the last fifty years; the creation of a vast new type of property wealth since the 1844 Constitution was written, and the escape of that wealth from property taxation; the outright exemption of both real and personal property from taxation by the Legislature; the partial exemption granted through changed methods of assessment and so-called "in-lieu taxes" instituted by the Legislature; the shifting to municipalities by the State of obligations which properly belong to the State, such as the State School Tax; the shifting to the State of revenue properly belonging to municipalities, such as the direct personal property tax on motor vehicles; the ever-increasing local tax rates; the impact of all of this on the home-owner and the owner of real estate generally; the abominable system of assessment, under which the owner is assessed not only on the property he owns, which is his equity, but on what he owes, which is his mortgage; the upward

curve of tax delinquency; the wave of foreclosures; the inadequate tax appeal machinery; the injurious tax raids on intangible personal property; and last, but not least, the transfer to institutional ownership of over 20% of the privately owned real estate in New Jersey.

Yes, gentlemen, I think the proof is quite extensive that something is wrong with the taxation process in this State; and much of the proof is contained in the reports of the numerous special tax commissions appointed by your own legislative body, the last of which made its report only three years ago.

Now, I appreciate that such criticism as I have offered may be deemed without merit unless the criticism is accompanied by a constructive suggestion for betterment. As to this, I must confess that I am no tax expert, and I do not feel qualified to say with any degree of authority what this proposed Constitution should contain with reference to taxation. I know that real property constitutes possibly less than 30% of the total property wealth in this State, and from that 30% is exacted close to 80% of the total taxes paid in the State. Such a tax is not only unjust and confiscatory, but it is dangerous because it involves home-ownership and the private ownership of real estate generally. With every prospect that public revenue will decrease because of the war emergency, as witness the decrease in gasoline and motor vehicle revenue, it becomes increasingly necessary to protect this basic commodity from the expedient of raising local tax rates to make up for other decreasing revenue. I know that the property of public utilities, of certain corporations, certain types of personal property, and by the recent tax compromise, the property of railroads, are taxed at different rates and by different methods of assessment; that being so, we have what amounts to a classification of property for tax purposes, and I see no reason why the proposed Constitution should not recognize that fact and, in the words of the Revision Commission, give them "formalized status."

My suggestion is that the new Constitution classify all property for tax purposes; such classification could be at rates commensurate with the type of property, its earning capacity, the services it receives from the Government, and its general relationship to the security, the welfare and the stability of the State and its subdivisions.

Such classification would put equity, honesty and common sense into an assessment system from which all three are missing today. Certainly it would prevent a 4½% rate on the capital value of an investment which returns only 3% to the owner. It should solve the intangible personal property problem, and thus remove from business and industry the perpetual threat which constantly hangs over the sources of New Jersey payrolls. If properly done, it should bring an end to the growing evil of so-

called "tax-compromises" now being practiced by our larger cities, which in effect is an invitation to property owners not to pay their taxes. And finally, it should bring some measure of justice and equity to the small home-owner who today produces the major part of the taxes collected in this State.

To accomplish its full benefits, however, the Legislature, either by constitutional restriction or otherwise, must not only discontinue the granting of unwarranted exemptions, but must return to the tax rolls all unwarranted exemptions already granted, and this refers to both real and personal property.

To the claim that all of this is a matter of administration and really a function of the Legislature, and has no part in a Constitution, I can only say quite frankly that in my judgment the experience of the past, which has produced the "hodge-podge" which is today's New Jersey's tax system, indicates rather clearly that a Legislature is not equipped to steer an unchartered course on the troublesome sea of State and local taxation.

We can solve this problem and there is no more opportune time to make the attempt than in this Revision of the State Constitution. All we need is the will to do it. If properly undertaken I am quite sure that public opinion will support it. It is a task to which all the taxpaying interests of the State could profitably lend a hand, with benefit to themselves and to the cause of good government as well.

In conclusion, let me remind you, that I speak not only as a real estate man but as a taxing official.

MR. AMLICKE: The next speaker in favor of modification is James J. Smith, Executive Secretary of the New Jersey League of Municipalities. Mr. Smith—

MR. SMITH: Mr. Chairman and Members of the Committee: I have filed with the Committee a statement from our President of the League of Municipalities. That statement refers directly to the modification of Section IV. That is the only section in which we are interested.

Three of the speakers this morning, proponents of Article VII, have referred to that section and to the fact that perhaps this section does not include the utility franchise and gross receipts taxes, the railroad taxes and local bus taxes, which are now allocated and dedicated directly to the municipalities. The fact that these gentlemen felt called upon to refer to it clearly indicates that our position is quite correct in requesting this Committee to consider a modification of Section IV to the effect that the revenues now dedicated and allocated to the municipalities shall not be considered as coming under that statement which says, "All revenues of the State Government from whatever source derived, . . . shall be paid into a single fund, to be known as the General State Fund, subject to appropriation for any public purpose. . ."

We feel that inasmuch as these revenues have been from their inception dedicated to municipalities and since that provision has definite exceptions, we should not leave it in the air and questionable and doubtful that municipalities will be protected. We, therefore, advocate and suggest that in order to safeguard the right of the municipalities to this revenue, the exceptions should include a reservation of all revenues now dedicated by statute to municipalities.

MR. AMLICKE: Are there any others who wish to be heard in favor of modification? Former Senator Arthur Pierson.

MR. PIERSON: Mr. Chairman, I would like to endorse what Mr. Smith has said and the recommendation that he has made, especially as to the gross receipts and the franchise taxes, because there is a historical background in these taxes that certainly justifies their original dedication back to the municipalities. They were necessary, because of their peculiar nature, to be levied as State taxes, and, consequently, I would assume would be classified as State revenues. But, nevertheless, the historic background of these taxes is such that they do make them, their revenues, distinctly the rightful property of the municipalities.

Take, for example, the utility franchise tax. Way back in 1900 the Voorhees' Act was the act in which a fixed charge, a fixed percentage of gross receipts, was exacted for the municipalities for the use of the streets in the municipalities. The utilities were obliged to pay a tax. It was in lieu of the old method that prevailed prior to 1900, that each municipality should make its own arrangements with the utilities for the privilege to occupy their streets with their lines and mains. In all the revisions and amendments of that act up to the present time, the dedication of those revenues to the municipalities, for their use, so properly recognized in the original enactment of the bill, has been preserved and it obtains until the present day.

As to the gross receipts tax, it was clearly set up apart as a percent tax upon the gross receipts of the utilities that come under that tax, and it was in lieu of the property tax which theretofore, prior to 1919, was a part of the assessment rolls of the individual municipalities where the property was found. And this too was in the original act and in all the amendments and obtains to the present day as dedicated to the municipalities and paid to them under a prescribed formula named in the act.

The same is also true of the second-class railroad tax. It was so clearly in the 1941 revision, so clearly in lieu of the treatment of the second-class railroad properties, which were theretofore made a part of the assessed property in a municipality. It was excluded from the rolls of the local municipality, and in lieu thereof, there was dedicated the revenues derived from the fixed

rate tax upon second-class railroad property, and added thereto was one-half of the franchise tax, which was in lieu, so clearly in lieu, of the values taken away from the local tax roll that I think they have a fundamental and moral right in those revenues and they should be secured to them without a peradventure by some amendment that should be made to make them secure and not be made a part of the revenues of the State. I think there is a question under the language of Section IV of Article VII, that the courts would construe that the revenues resulting from any State tax are initially State revenues. It must necessarily be so, that the Legislature may have the right to dedicate them to a specific purpose. Consequently, the anxiety expressed by Mr. Smith on behalf of the municipalities, I think, is perfectly justified, and I have too, and would like to appear in response to a like situation on behalf of the Association of the Board of Chosen Freeholders of this State.

From the inception of the taxes or the fees levied upon automobiles for their annual registration in 1906, the revenues derived therefrom were dedicated in the act that set out the processes and requirements for registration. It was dedicated to the contribution to counties for the maintenance and construction of improved roads and that dedication carried on to the 1917 Highway Act and was continued in that act, that dedication of those revenues. At that time it amounted to about $1,900,000, and the Legislature, I believe, very properly in their wisdom retained that dedication of those funds to the counties, because, after all, these were revenues derived from the registration of automobiles, and as we carried on through the years, the gasoline tax was added, which was likewise imposed upon automobilists in the use of motor fuels. Now these taxes are paid by the automobile users, the motor vehicle users, entirely. The whole State Highway Fund is entirely paid by the automobile users. It was in 1930 when I was a member of the Legislature and was appointed by the Senate to confer with the auto users and the Boards of Freeholders when we increased the 2c gasoline tax to 3c by the consent and support of the auto users so long as we would dedicate those funds to some manner of use for highway purposes, and we pledged them that they would be so dedicated and it was so written and the dedications to counties and municipalities was included in the Highway Budget Act of 1933 that they should be set apart first from the receipts of those funds. So there is a historical background, that cannot be ignored and has not by all preceding legislation, that there is a fundamental and priority right of the counties and municipalities in these funds because, after all, 75% of the travel of automobiles in this State is not over State highways; it is over municipal and over county roads. There seems to be very moral obligation upon

even the revisers of this Constitution that they should preserve without a question the dedication of those funds to the counties as now obtains.

I would likewise question, as Mr. Smith has done, whether the language of Section IV may not become construed, if brought to a court, that any State taxes or the revenues derived from the State taxes are initially State revenues and might be swept into that constitutional provision there that says, "all revenues of the State." It seems to me that that point is further supported by the fact that the language of Section IV exempts from those revenues a certain revenue from the income of the Riparian Fund called the School Fund. Then it says the State may set up a separate fund for any taxes levied for the support and maintenance of free public schools. My schooling in law has been that when you except from a group any one particular tax or one particular thing, you leave restricted by the group all others. Consequently, we feel that the revenues dedicated from the State Highway Fund should be treated under an exception the same as Mr. Smith has requested that the revenues dedicated to municipalities by statute should be excepted as well.

One other thing on behalf of the Associated Boards of Freeholders in connection with a single budget, there is much history back of this. Mr. Watson read the letter from President Dodds of Princeton. I was around the Legislature when that was going on and out of that criticism very properly, which was mostly directed to the then procedure in connection with the State Highway Funds, which were growing in rather large proportions, came the fact that there was no budget to control those funds and they were entirely left to the discretion or decision of the State Highway Commission. Consequently, the calendar year was fixed in the Highway Budget Act for two distinct purposes: one, by a very emphatic demand of the then State Highway Department that we should preserve the annual basis upon which they were conducting the highway affairs prior to the passage of the Budget Act; and they should continue the calendar year fiscal period because their work, the activities of that department, are entirely seasonal. From probably March to November or the early part of December of each year is when the entire activities of that department are going on, and for that reason, the Highway Department wished to retain that calendar year period; further, county and municipal budgets are required to be passed prior to the first of March and the provisions that are now provided in connection with the Highway Budget as it relates to the dedicated funds going to counties should be determined prior to the time when the municipalities and the counties have to determine their budgets. Otherwise, they would not know, except in the odd

year, what monies they could rely upon in order to protect the expenditures of their budgets.

I do not get as excited as some of these people do about having two budgets. The fact of it is, as I looked over the last budget, the last Highway Budget and the last General Budget, I saw something there that I was very glad to see. There were set out in absolutely bold figures where funds were taken from the Highway Road Fund for general purpose use and for all other non-highway uses. I have never had any trouble finding out what has been going on down here at Trenton; possibly because I have had a background of intimate knowledge of things for years. But I don't think it is as bad as many of the previous speakers have urged. The fact of it is, you can't cure by constitutional law a delinquency on the part of administrators and you may write what you please in your law or your Constitution, you are only going to have as good government as the men who administer it and the men who make your laws. It is the man behind the gun rather than the gun that brings home the game.

I feel that we can't avoid recognizing these fundamental rights, property rights, realty rights, of the municipalities and the counties in these funds which have heretofore been dedicated to their use, taking only a small percentage of the Highway Fund for county and municipal use. Yet their costs have gone up just as fast and just as hard as the State's have in connection with keeping the motor vehicle transportation going and they have got to have some relief, at least the relief that is now prescribed in our statute. I certainly hope that the Committee in considering this phase of the thing will make sure that the dedications that now obtain in connection with Highway Funds shall be vouchsafed to the counties.

MR. AMLICKE: Senator, the reason I didn't call upon you as one in favor of modification was that you were listed as one of those in opposition, so will you accept our apologies?

We shall now recess until two o'clock promptly.

(Recess.)

PUBLIC HEARING

August 19, 1942.

Afternoon Session

on

Proposed Revision of the New Jersey Constitution
Article VII. "Finance."

The Joint Legislative Committee re-convened in the Assembly Chamber at Trenton on Wednesday, August 19, 1942, at two o'clock P. M., pursuant to announcement previously made.

The Chairman opened the Hearing and the Hearing proceeded as follows:

MR. AMLICKE: The meeting will come to order.

Is there anyone else who wishes to be heard in favor of modification? What is your name please?

MR. DIANA: Salvador Diana, Corporation Counsel, City of Plainfield.

I hesitate very much to get up to speak. I think one point, although mentioned, has not been sufficiently brought forth in these discussions. I am in favor certainly of the attempt of Article VII to do away with dedicated funds, but it appears to me that the whole article centers in protecting State Department budgetary matters, and overlooks the need for the general tax revision in this State. Mr. O'Brien mentioned that point, and in the discussions which preceded the preparation of this constitutional revision one of the arguments that was used in favor of the necessity for revision was that the whole tax setup should be revised. I maintain that this particular article requires what I might call a bill of rights, and I say that this tax provision, because that is what in a sense it is,—it is the only place specifically where taxes are mentioned under our proposed new Constitution—should have a bill of rights annexed thereto, limiting certain rights, limiting certain things which the Legislature shall not do, for instance, exemptions that should not be hereafter granted even though we have said now, for instance, that Section IV of Article VII does not intend to deprive the municipalities of those gross receipts and franchise taxes. Nevertheless we appreciate that there is nothing under this Constitution or even under the present Constitution to prevent the Legislature from enacting laws which would so create that fund as a State fund and to go into the State treasury and deprive the municipalities of that source of revenue. And the bill of rights, setting up such limita-

tions beyond which the Legislature should not go and beyond which exemptions should not be granted and making some definition and distinction between those matters which the State shall tax and those matters which the municipalities shall have the right to tax, ought to be stated in general principles.

MR. AMLICKE: Mr. Joseph F. Clark, President of the Municipal Finance Officers' Association of New Jersey.

MR. CLARK: Mr. Chairman, representing the Municipal Finance Officers' Association of New Jersey, I desire to point out that we do not like the language used in Section IV of Article VII. We do not like it because it does not specifically preserve to municipalities of the State of New Jersey, the same preservation that is granted to the income of the funds for the support of the public schools.

I think it may be interesting to this Commission to tell you that in my travels throughout the State in talking to municipal finance officers, they are generally concerned about this thing and I think this language really ought to be clarified as to the exact intent and meaning. Mr. Watson this morning spoke about the fact that it was not the intent of this language to take away from the municipalities what they now enjoy in the way of gross receipts and franchise taxes. Nonetheless, we would feel far more comfortable if this thing could be clarified in words.

I am also authorized to say this: I have spoken to former Senator Hendrickson who was chairman of this Committee, and in a discussion of the problems he said that when the Committee acted it was undertaking merely to lay down a set of principles; so far as he was concerned, there ought to perhaps be some clarification of this thing.

That is about all I have to say, except that I would like to be absolutely on record that our Association does not like the language of this section and would like to see preserved all the rights we now possess.

MR. AMLICKE: Are there any others who wish to be heard in favor of modification of the proposed Article VII? If not, we will now hear those who are opposed to the proposed Article VII. The first on the list is Mr. R. Robinson Chance, representing the Manufacturers Association of New Jersey.

MR. CHANCE: Mr. Chairman and Members of the Committee: In the course of the morning I have observed that one or two or maybe more of the speakers said that dedicated funds lead to confusion, and I must confess that as I have heard some of the remarks on this subject, I have joined the procession of those who are in confusion if all I listen to or all I think about is what I have heard here this morning. The first confusion that I have is that while dedicated funds have been pointed out by the generic classification, dedicated funds—something terrible!—there

has been very little specification of what these dedicated funds are. Perhaps it would eliminate some of the confusion if they had been pointed to more specifically.

I was also very much confused when I heard a gentleman from Essex County speaking against the idea that there should be some dedicated funds, because I looked over in the book that the State Budget Department puts out and I saw that State Aid to Counties and Municipalities for the year ending June 30, 1940, included to the County of Essex and its municipalities some $2,784,049.02, of which from the Motor Vehicle Aid to counties came $539,780.00, and other items that I won't take the trouble or the time to go over. And I wondered if the gentleman from Essex County felt that the county and its municipalities ought not to have taken that money out of this dedicated fund or whether his constituents would still feel that it was such a terrible thing.

I was also confused about how there ought to be one State treasury. I almost got the idea that perhaps some of these dedicated fund gentlemen were running around the State of New Jersey with the dedicated funds in their vest pockets or their hip pockets or some other place. Then I recalled that the Legislature by Chapter 153 of the Laws of 1918, which in its amended form is Revised Statutes 52:18-29, has required that all monies received by any State agency be paid to the State Treasurer and that various other acts of the Legislature have required a separate fund to be created by the Treasurer for the purpose of reporting each dedicated fund. I was still more confused when I saw that the Legislature had passed that kind of a law in the face of the things that I was hearing here.

Another thing that occurred to me, I was somewhat confused as to just why it would be necessary to have a constitutional amendment to accomplish various of the things which have been pointed out here as supposedly highly desirable. I think that most of these dedicated funds were created by act of the Legislature and if that is so, why can't an act of the Legislature handle the question of dedicated funds in the future? The same thing is true with a great many of the things which we have heard mentioned in the discussions.

With these general observations with respect to the things which I have heard here today, I now turn to the consideration of Article VII, captioned "Finance," in the Proposal, and may I say that now as in the past the Manufacturers Association of New Jersey is for good government, and that all the lofty principles of good government which we hear announced from time to time find no dissent on our part. The difficulty that we have, however, is sometimes in bridging the yawning gap between the lofty principle and the document which is supposed to accom-

plish the lofty principle. I was very glad to hear the gentleman over there say that the Chairman of the Revision Commission had told him that he thought that there was some need for clarification in some of the provisions of this text, because that is what I have been saying all along here, and I am glad to see the Chairman coming to that point of view if he hasn't always had it.

The nine short paragraphs that make up this Article probably will not receive very much study on the part of very many people throughout the State; nevertheless, they affect the welfare of the public in a marked degree. The so-called explanation at the beginning of the Article at page 26 of the Report (p. 927), doesn't seem to furnish a great deal of help, although to those gentlemen who were talking on behalf of municipalities and wondering as to whether the intent of Section IV was to sort of by-pass and skip and overlook those funds dedicated for municipalities, I may say that at page 26 of the Report (p. 927), I noticed in the summary, all dedicated funds shall be abolished. If all dedicated funds are to be abolished, I don't see how there is any hope for the municipal gentlemen to think that they are not within the category of all dedicated funds. So if you take the summary at the beginning here on page 26 (p. 927), as the explanation as to what is meant, they can see where they fall within that "all-dedicated funds" category. I do not think further that most of this explanation that appears at page 26 (p. 927), and page 27 (p. 928), even approaches a portrayal of the situation regarding the finances of the State. I shall not attempt any general dissertation on State finance, but shall comment upon the text of the Proposal, contrast it with the present Constitution, and along with my interpretations and sentiments in the foregoing regard, shall have something further to say with regard to this explanation appearing in the Commission's Report.

The first paragraph of the Proposal that the credit of the State shall not be directly or indirectly loaned in any case is taken verbatim from the present Constitution, Article IV, Section VI, Paragraph 3. Be the old Constitution good or bad, the same words are no better or no worse in the Proposal.

The second paragraph forbidding political subdivision or special districts from giving any money or property or loaning its money or credit to or in aid of any individual, association or corporation, and prohibiting it from giving security for or being directly or indirectly the owner of any stock or bonds of any association or corporation, is substantially to the same effect as Article I, Paragraph 19 of the present Constitution, and again, be it good or be it bad, it is the same in one place or the other.

The third paragraph forbidding the State or any municipal corporation from making any donation of land or appropriation of money to or for the use of any society, association or corporation, merely changes the sequence of the words in Article I, Paragraph 20 of the present Constitution. In this connection, however, it is noted that the prohibition made by the third paragraph is upon the State and "any municipal corporation." Following directly after the second paragraph which makes prohibitions applicable to all political subdivisions or special districts of the State, the thought occurs that perhaps it would be better if the same scope were given to the prohibition in the third paragraph, that is that the term political subdivision or "special district" be substituted in the place of the words municipal corporation.

I pass for the moment the fourth paragraph which seems to deserve some detailed discussion, and observe that the first sentence of the fifth paragraph is taken verbatim from Article IV, Section VI, Paragraph 2, of the present Constitution, forbidding the drawing of money from the treasury but for appropriations made by law. Being no change, there is no improvement; neither is it any worse.

The sixth paragraph requiring the assessment of property for taxes under general laws and by uniform rules according to its true value, is in the same words as Article IV, Section VII, paragraph 12, of the present Constitution. Be it good, be it bad, it is the same.

The seventh, eighth and ninth paragraphs I think deserve to be discussed together as they would supersede Article IV, Section VI, Paragraph 4 of the present Constitution, and should be contrasted with it.

By this elimination we have left for discussion the fourth paragraph, all of the fifth paragraph, except the first sentence, and the seventh, eighth and ninth, collectively. The fourth paragraph would regulate the handling of the revenues of the State Government, and in this connection deals with funds which may or must be maintained and the extent to which public revenues are to be subject to appropriation for any public purpose. The first suggestion that I have to offer with respect to this paragraph is that it should be redrafted so as to state clearly and unequivocally what is intended. Examination of the paragraph reveals that it consists of one sentence containing 130 or 131 words, depending upon whether you call "self-liquidating" one word or two. In the course of that rambling 130 word sentence, there are two exceptions more or less obscure and the word "may" is used in such a way that it is by no means clear whether it is permissive or mandatory in law. It would have been much clearer if several short sentences had been used to convey what is intended. However, I shall try to figure out the intent of the draftsman.

The first thought that I think I see expressed is that, with an exception presently to be noted, all revenues of the State Government except the income of the fund for the support of free schools,

shall be paid into a General State Fund subject to appropriation for any public purpose. Of course, the fund for the support of free schools could not have its income paid into that General Fund if there was an acceptance of Paragraph 8 of Section VII, Article III of the Proposal, which lifts verbatim out of the present Constitution Article IV, Section VII, Paragraph 6, and thereby provides for the fund for the support of free schools. The other exception above-mentioned arises from the latter part of the paragraph beginning with the words "except that separate funds may be maintained for revenues realized from," and here follows an enumeration of seven types of revenues. I claim there is ambiguity presented by this exception. Does the exception mean that permission is given to maintain the seven additional types of funds indicated? Is the word "may" here used in a mandatory sense so that the seven types of account must be maintained? Is the exception to the clause "subject to appropriation for any public purpose," so that the seven types of revenues and funds following the word "except" would not be subject to such general appropriation; or is the exception merely to the requirement that all revenues be kept in a single fund so that while separate funds might be maintained, the revenue would be still subject to appropriation for any public purpose? These are some of the questions that occur in examining this paragraph.

Little help is obtained from the Summary at page 26 of the Report (p. 927), because that says that all dedicated funds shall be abolished, which obviously is not so in the case of the fund for the support of free schools, nor would it be so if the word "may" in this sentence has a mandatory implication and if the exception relates to the clause "subject to appropriation for any public purpose." In other words, if the two last-mentioned interpretations were accepted by the courts, the seven types of revenue which follow the words "except that separate funds may be maintained" etc., would be in substance dedicated funds not subject to appropriation for general expenditures.

Further examination of the paragraph shows that the seven types of revenue referred to in the last exception of the paragraph, for which it is said that separate funds may be maintained, are the following; and I will give them numbers, although there are no numbers in the text as it is written:

1. Revenues realized from any tax levied specially for the purpose of maintaining free public schools;

2. Proceeds of bond issues;

3. Earnings of self-liquidating public improvements;

4. Revenues of restricted use under and in compliance with Federal law;

5. Revenues held in trust for the retirement of public debt;

6. For the benefit of State or local public officers or employees;

7. For a specific public purpose required by a private donation.

With respect to items six and seven above, it is assumed that the words "in trust" appearing at the top of page 52 of the Report (p. 951), might apply. In other words, it is " in trust" before one of them and then the other two come along and I am inclined to think that the "in trust" applies to them too.

When one considers the several types of revenues mentioned in the exception, as specified in items one to seven above, it seems that it would make the paragraph self-contradictory to say that such revenues could be subject to appropriation for any public purpose. Just for illustration, how could revenues of restricted use under and in compliance with Federal law ever be devoted to other than the restricted use required by the Federal law? And similar considerations apply to some of the other items.

When one considers the type of revenues mentioned in the exceptions, there is, to say the least, reasonable ground to argue that "may" as used in the exception is mandatory rather than permissive. Taken in its ordinary colloquial sense, the word "may" implies no mandate, but in certain classes of cases where the public interest and rights are concerned and where the public or third persons have a claim de jure that the right shall be exercised, "may" is construed as mandatory. As authorities on that I might cite *Macdonald* v. *Freeholders of Hudson*, 99 N. J. L. 170, 172; Key Number Digest Title Statutes, Key Number 227 and 39 Corpus Juris 1393. The significance of this is that the clause may mean that not only may the seven types of accounts be maintained, but that they must be maintained. Also the types of revenue are such that the rule against giving words an unreasonable interpretation might require a construction to the effect that the moneys in such seven additional funds are excepted from being subject to appropriation for any other public purpose. If that view were adopted, it would certainly be at variance with the purpose avowed at page 26 of the Report (p. 927), that all dedicated funds shall be abolished, but it is not believed that Paragraph one of the Summary would be sufficient to override the considerations above mentioned. Regardless of the correctness of the foregoing views, it is believed that enough has been said to demonstrate that this particular paragraph needs redrafting.

Whatever can be said on the subject of dedicated funds, and I shall say more on that a little later, it suffices for present purposes to say that the seven types of revenue referred to in the last exception to this paragraph are types of revenue which I believe should be maintained as dedicated funds. And that there may be no misapprehension arising from differences of terminology, by dedicated fund I mean one pre-dedicated by law to a particular purpose.

In passing, I venture to suggest that I believe there is much

misapprehension as to the names and natures of the dedicated funds entering into the fiscal operations of New Jersey. They are enumerated and explained in the book "New Jersey State Government" prepared by the State Budget Department and issued as a supplement to the Governor's Budget Message, the last publication being, I believe, as a supplement to the Budget Message for the fiscal year ending June 30, 1942. The status of those dedicated funds as well as other accounts are set forth in the statistical summaries attached to the Budget Message of the Governor, copies of which, I assume, were received by the members of this Committee.

That there may be efforts at times to have certain funds dedicated at the behest of pressure groups, I suppose, is probable. But it is not believed, by me at least, that the number of such funds as shown by the book which I have mentioned or the identity of which can be established in other ways would indicate that the Legislature has been unduly overwhelmed in this regard in any such a way as one would believe from some of the remarks that we have heard here today; and, of course, the Governor has a veto too when a law is brought up for the sort of legislation which would dedicate funds. There is another consideration, namely, that sometimes dedicated funds may come out of a special class of taxpayers who want some special service for which they are willing to pay a tax. The fact that the tax comes from a special class is some reason why the revenue thus produced should be dedicated to the uses of such class. For example, I have in mind the Public Shooting and Fishing Grounds Fund set up by R. S. 23:3-1 and following. This is a fund made up of one-third of the fees paid by hunters and fishers for licenses. Such one-third is placed in a separate fund to be used, speaking generally, for the acquisition of shooting and fishing grounds and the stocking of the same, and not subject to general appropriation. Now, if the hunters and fishers put up some money for such purpose, no good reason appears to me why other classes of the inhabitants should say that the fund thus created should be used for other purposes. And similar considerations are urged by many in support of other dedicated funds. For instance, we have heard the argument advanced here today and heard it elsewhere that the money being extracted from the motorists should properly be dedicated to use on the highways or what is the same, to payment of obligations incurred for highway improvements and maintenance. I do not propose to argue the merits of these contentions. The reason I do not is that the matter seems to me to be that no constitutional straightjacket should be set up by constitutional provision, but that it be left for the Legislature from time to time to determine on the merits whether a certain fund be dedicated to a particular purpose or not, except in the case of bonded indebtedness which is a

subject involved in the discussion of Paragraphs 7, 8, and 9 that I shall speak about later. I adhere to the same position that I have adhered to throughout these discussions. I am still opposed to legislative insignificance.

Turning to the part of the fifth paragraph which is not now in the Constitution, one finds a provision to the effect that one general appropriation bill enacted for each biennium shall be required; and that in such appropriation bill, all appropriations for the support of the State Government and for the several public purposes for which appropriations are made shall be included. Such bill would have to specify the amounts appropriated for each fiscal period together with the several public purposes for which the appropriations were made. It is further provided that no other bill appropriating public money shall be enacted for any purpose unless it provide for a single object, receive two-thirds' vote in each House and, together with all prior appropriations for the same fiscal period, shall not exceed the total amount of revenue available therefor.

While this is new so far as constitutional provision is concerned, it is not very much different from the present budget practice prescribed by statute. Speaking generally, I observe no particular objection to any of the Provisions in this paragraph, but it will be recalled that Article IV, Section II of the Proposal would permit the Governor to veto an appropriation bill or items in it and would require a two-thirds' vote of the membership of each House to override the veto.

The fact that the Governor's veto could be overcome only by such a two-thirds' vote presents the question as to whether a two-thirds' vote in each house should be required in all cases of a supplementary appropriation bill such as the paragraph under consideration would require. The only difference is that the requiring of a two-thirds' vote to pass the bill in the first instance would enable the Governor to avoid any responsibility for the rejection of the appropriation unless the two-thirds' vote were first obtained, whereas if a majority were sufficient to pass the measure, the Governor would have to go on record as against it in order to make the two-thirds in each house requirement apply. It might be just as well to eliminate the two-thirds' requirement in the first instance; then the public could place the responsibility as between the Governor and the Legislature. The provision that would keep appropriation within available revenue seems desirable.

Whether there is any need for putting this provision in the Constitution, I am not prepared to say. I think it is generally admitted that a budget system is highly desirable in controlling the finances of State Government and I would print alongside of Gladstone's statement about the American Constitution his other statement:

"Budgets are not merely affairs of arithmetic, but in a thousand ways go to the root of prosperity of individuals, the relation of classes, and the strength of kingdoms."

As I have observed the great silence with respect to our present budgetary proceeding in the State of New Jersey, I have wondered whether some of the speakers agreed with that sentiment of Gladstone or whether their idea of the present budgetary system or budget was more in line with the little boy I read about, who went to school. They had an elementary class in civics there and the teacher wanted to know of the little boys and girls what a budget was, what was the meaning of a budget. Well, the kids were kind of puzzled, didn't know what to say, and finally one fellow raised his hand and said, "I know, Teacher." She said, "What is it, Johnny?" And he said, "A budget is a family quarrel. We have one in our house." And they must have been talking about the family budget at their place.

But I think it is generally agreed that only the bare essentials of budgetary procedure should ever be incorporated in a Constitution. I think if you look through the supposed authorities, you will find they are quite unanimous on that. And it is my belief that the New Jersey statutory provisions and New Jersey budgetary procedure are such that it may be unnecessary to include any constitutional provision on the subject.

Under present budgetary procedure, every State agency desiring an appropriation for the next ensuing fiscal year is now required to file with the State Budget Commissioner on or before October 15th of each year a request for any desired appropriation, signed by the executive officer of such agency. Such request must specify and itemize all the expenditures of every name and nature proposed to be made.

The Budget Commissioner now submits the request, together with his findings, comments and recommendations, to the Governor, and along with his report he includes another previously received from the State Comptroller, setting forth the financial conditions and operations of the State for the preceding fiscal year, together with a statement of revenues and expenditures of all funds for the current year and the next ensuing fiscal year.

The State Highway Department is also required to submit on or before October 15th of each year a report of the work and operations and financial condition of that department for the calendar year, together with an estimate of revenues and requested expenditures for the ensuing calendar year.

There has been some expression as to the high desirability of having the Highway Department and general State fiscal operations conducted on a simultaneous period, either for the same calendar year or the same fiscal year. Whether that is desirable or not, it is unnecessary for me to decide, because if it is desirable, all that is needed to accomplish it is an act of the Legislature. It doesn't take any constitutional amendment to bring that about.

After the Governor has examined these reports, he transmits them to the Legislature, with his budget message, including his budget recommendations and various financial statements, revealing the financial situation of the State. As you know, the Governor submits his recommendations respecting the Highway Department, as well as the others, as you will see in the back of your budget book, as you have already probably seen before.

Under R. S. 52:22-13 applications for appropriations not included in the budget message must first be made to the Commissioner of the budget, who certifies and transmits the same to the Governor, together with his findings, comments and recommendations. The Governor then transmits to the Chairman of the Joint Appropriations Committee such application as he approves in whole or in part, but the statute says the Governor shall not approve and recommend appropriations in excess of the total anticipated and available revenues of the State as certified by the Comptroller in his report. So that when we have this proposal to put into the Constitution a provision that would keep the appropriations within available revenue, we have substantially the same requirement by statute now.

Transfers between appropriations and allotments from the State Emergency Fund cannot take place until the Budget Commissioner has had an opportunity to submit his recommendations in respect thereof to the State House Commission. Furthermore, the Budget Act, R. S. 52:22-21, gives the Governor very broad investigatory powers and the Budget Act indicates a purpose to afford legislative control over the expenditure of dedicated funds as well as free treasury funds, and to provide a comprehensive budget of all State funds.

In some of our earlier hearings we have discussed how much investigatory power the Governor ought to have. Well, take a look at that Section, 52:22-21 of the Revised Statutes, and you will see he has a lot of investigatory powers right now.

It seems clear to me that the insertion of this new provision in the Constitution will not necessitate any more careful planning or any greater economy or efficiency in present budgetary practices except insofar as those results might follow from the requirement of a two-thirds vote in each House.

Coming now to the consideration of Paragraphs seven, eight and nine, it is observed that by Paragraph seven there would be carried over the provision now made by Article IV, Section VI, Paragraph 4 of the present Constitution to the general effect that with certain exceptions a majority vote at a referendum conducted at a general election would be necessary to authorize the creation of a debt or liability which alone or with previous liabilities exceeded $100,000. That is substantially the same.

The eighth paragraph which would require the law authorizing such indebtedness to be for some single object or work, to be distinctly specified therein, likewise follows a wording of Article IV, Section VI, Paragraph 4 of the present Constitution. Then comes an entirely new provision. It is expressed in these words:

> "Any such law shall provide . . . for the payment of the debt or liability thereby authorized in equal annual installments, the first of which shall be payable not more than one year and the last of which shall be payable not more than thirty-five years after such debt or liability or any portion thereof, shall have been contracted."

This means that only serial bonds would be issued. They could not run beyond thirty-five years. The present Constitution would require a provision for payment within thirty-five years, but does not make it mandatory that serial bonds be issued.

The eighth paragraph also contains a sentence to the effect that the law authorizing the creation of the liability may provide for reserving to the State the privilege of paying all or part of the indebtedness prior to maturity. While there is no express clause to this effect in the present Constitution, it would seem offhand that the present Constitution does not forbid the insertion of such a reservation. Up to this point, the only difference observed is that serial bonds would be made mandatory.

Now, there is something to be said in favor of serial bonds, of course, and the Commission has said it in a sense because what they say is to be the great advantage of this is that it is to eliminate the need for State sinking funds, but there is also much to be said, as I have been saying before on previous occasions, that we should not have legislative insignificance and it cannot be said, at least I cannot believe that it can be said, that in every possible circumstance that may arise in the changing financial situation that is going to follow this war, it might not be that the money market was such and the State's revenues were such that perhaps a term bond rather than a serial bond would be desirable. The proposition I have to offer with respect to this is that much can be said in favor of reliance upon the Legislature at the time of the issuance of the bond. Rather than put the Legislature in a straight-jacket, leave it to their discretion as the time arises.

By the ninth paragraph, however, a complete departure is made from the present constitutional provision. By the present Constitution, it is provided that any such law authorizing the creation of such a debt or liability "shall provide the ways and means exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within thirty-five years of the time of contracting thereof," and here is the distinctive feature, "and shall be irrepealable until such debt or liability and the interest thereon are fully paid and discharged."

While the Proposal, by its first and second sentences of paragraph nine, starts out with the same language about stating the specific object or work, and that the money raised by law authorizing such debt is to be applied only as stated in the law, by its last sentence it proceeds to tell what shall happen if the law is repealed prior to payment or discharge of such debt or liability, and the minute that it begins to talk about what happens when the repeal takes place, then it begins to change the nature of the original obligation, and what the Proposal there says is that the Legislature shall make adequate provision for payment of the remaining instalments but it does not even stop with saying that they shall make adequate provision; it still goes on with another—if it fails to do so, which contemplates the possibility of its repealing the law without saying anything about what is going to take the place of the original means of payment—but if it fails to do so, then a sufficient sum for annual installments of principal and interest shall be set apart by the State Treasurer from the first revenues received, and applied to such purpose.

One difference is that under the present Constitution when a bond is issued the investor who buys the bond has a definite, specified irrepealable contract as to where the money is coming from to redeem the principal and pay the interest. In place of such an irrepealable arrangement, the proposal would require a bond for the payment of which no particular ways and means were actually guaranteed, since the ones originally specified might be wiped out by the repeal of the law.

Furthermore, if the Legislature did not see fit to substitute some other equally satisfactory and assuring ways and means of paying the amounts due on the bonds, this paragraph would have the first revenues received from any source applied to the purpose. This substitution of an uncertain ways and means of paying off the bonds might affect the credit of the State and the salability of the bonds, might even affect the credit of the State although candor compels me to admit that I believe New Jersey's credit position would still stand up even under the Proposal.

Interesting questions would arise if it so happened that there were repeals of two or three laws authorizing bond issues. Then it would be a problem for the State Treasurer to know to which bond issue he should apply the first revenues received, and it would also be an interesting question as to which particular other purpose would have to be sacrificed in order to apply the first revenues received to the payment of such installments of principal and interest.

These provisions of the proposal might result in the use of the proceeds of one bond issue to pay the instalments of principal

and interest on another bond issue relating to an entirely different matter, something like what Ponzi did up in Boston, if you old-time people recall, when he took one fellow's principal to pay off what was supposed to be the interest on other fellow's imaginary debt. I suppose we ought not get New Jersey into a Ponzi performance.

The Commission's Report at page 27 (p. 928), says:

> "The former requirement that the law which authorizes the bonds must pledge the source of payment is deleted because it imposes an unfair rigidity to the State's fiscal policies for as much as thirty-five years."

This statement seems to me to suggest that it imposes unfair rigidity to make provision for the payment of a debt when it is contracted. Personally, I see no unfair rigidity about the requirement of the present Constitution. It compels the giving of thought to the ways and means of paying an indebtedness before the incurring of the same and prevents diversion to other purposes. A peculiar thing in this connection is that on page 27 of the Commission's Report (p. 928), speaking of supplemental appropriation bills for current expenses, it is said:

> "The requirement that funds must be available will give pause to supplementary appropriations made without thought of the source of payment."

I find it hard to follow the reasoning that it is desirable to give pause to supplementary appropriations without thought of the source of payment, when there is at the same time set up a provision which makes no guarantee that a source of payment indicated at issuance will not be destroyed by repeal in the case of permanent bond issues.

Also, when a man buys a State bond, he likes to know that its terms are fixed, rather than subject to repeal. I do not believe the change would enhance the marketability of State bonds, and I suggest that maybe you ask your banker which will sell better, a State bond issued under an irrepealable law providing ways and means for payment, or one which would be issued under a repealable law such as the proposal contemplates. Either he will tell you that the bond which is issued under the irrepealable law and providing ways and means of payment would sell better, or else you had better get another banker.

This completes the textual review. Before I close, let me comment on the explanation which is given at pages 26 and 27 of the Commission's Report (pp. 927-928) concerning this article. At page 26 (p. 927), it is said:

> "So long as the State's left hand is not permitted to know what its right hand is doing in a fiscal sense, the State's financial management is obviously under a severe handicap."

I have already outlined in a general way what the State's budgetary practice is. I believe that if anybody has a legitimate question as to what the State is doing in a fiscal sense, the Budget Department, the Comptroller, and the State Treasurer should be able to tell what that fiscal situation is and I am not saying there are not other people in the State Government who will be able to tell you. Of course, they might not be able. For instance, the State Comptroller might not be able to tell you down to the last dollar but you can give him a few dollars leeway and if you get as close an approximation as to what the State's fiscal situation is as the State Budget Department, the State Comptroller, and the State Treasurer can give, I think you will find you have no occasion to think about this left hand and right hand quotation. And furthermore, I have no doubt that the Governor, without any new law or Constitution, can use that investigatory provision of the Budget Act that I spoke about before, if it were necessary, and I think he could find out what the State's left hand and right hand both are doing. Furthermore, I don't even think he would have to use that investigatory power. Senator Pierson said he didn't seem to have any particular trouble about finding out what was going on around here, and if he could find it out, so could anybody else, notwithstanding the fact he was in the Legislature before and we weren't, or some of us weren't. I don't know who the State's left hand is, or who its right hand is, as referred to in the explanation, but whoever the State's left hand is might drop in to see the State Budget Department some day—it is down here in the Trenton Trust Company—and if this visitor, this left hand, will specify who the State's right hand is supposed to be, I have no doubt that the State Budget Department will give him a pretty good idea of what the State's right hand, so-called, is doing. That first sentence of the report may be rhetorical, but I can't consider that it is realistic.

Furthermore, the statement that the provision abolishing so-called dedicated funds will remedy "this situation," which is their next statement, likewise seems far fetched. In the first place, there is no such situation. Moreover, since it is now the law that dedicated funds are budgeted, and, further, the law that monthly payment of State moneys must be made into the Treasury, the State Treasurer should know how much money is in dedicated funds, and as of particular dates. You will see in your statistical tables annexed to your budget message and also in the book of the State Budget Department "New Jersey State Government," it will show how much there was in those funds as of particular dates. I think, furthermore, if you would get the State Budget Department or the State Comptroller or the State Treasurer to go over the situa-

tion, you would learn a whole lot about dedicated funds that you wouldn't get out of the report of the Commission or anything anybody said here today.

To the suggestion that the so-called dedicated funds are separate little treasuries for favorite projects, established by demand of pressure groups, which is one of the suggestions I find at the top of page 27 of the Commission's Report (p. 927), take a look at your little book, "New Jersey State Government," and see what these dedicated funds are. Well, I won't take the time to read them all, but here are some of these little special pressure groups. Here are dedicated funds: State Highway Fund, State Road Tax, State School Tax Fund, Soldiers Bonus Bond Tax, Institution Construction Fund, and you will find them all in there. It would have been so much more interesting if these people, pointing out the terrors and iniquities of these dedicated funds, had enumerated them a little more. You would have seen, then, what kind of pressure groups they are. You could have judged for yourself as to the correctness of the suggestion that these dedicated funds are demands of the pressure groups. It seems to me this is kind of a pressure group statement, so long as the State's left hand is not permitted to know what its right hand is doing, etc. If they come after the Legislature with that kind of pressure talk, maybe there would be some justification for saying these dedicated funds were created by little pressure groups.

I am unable to grasp the meaning of the statement made in this report that says, "The matter of dedicated funds is related primarily to the revenue side of the State Government." It seems to me that when the Budget Act indicates that its intent is to provide for the budgeting of all State revenues and expenditures, whether or not they involve free treasury funds or pre-dedicated funds, it means that dedicated funds are as much concerned on the expenditure side as on the revenue side.

The other statement we see here, "while appropriations, also regulated by a new provision, deal with public expenditures" is unique. Of course appropriation deals with public expenditures. That is what an appropriation is, an authorization of an expenditure, so that learned bit of wisdom is unique.

The stated suggestion about emergencies and unforseeable contingencies and how they may be handled and how the provision will eliminate log-rolling all overlook the fact that the present budget procedure under the statute would be very little changed except that the proposal would require a two-thirds' vote to override the Governor's veto of an appropriation. The statement "these provisions should lead to greater economy and efficiency" seems to be another non sequitur except in the case of the requirement of a two-thirds' vote for supplemental appropriations or overriding of a veto, and to this two-thirds provision of overriding a veto you have not heard me offer any objection.

The last paragraph of the explanation needs no comment in addition to what I have already made concerning it.

On the whole, New Jersey's present financial setup is not so bad as is pictured by this report, nor is the new Article VII so wonderful as the proponents seem to think.

MR. CAVICCHIA: Mr. Chance, I quite agree with you that we ought to keep Ponzi performances out of our State Government. I wish you could agree with me that we ought to keep absurd performances out of these hearings. I am really amazed at your utter lack of knowlege of actualities with respect to legislative appropriations. You have cited at length the procedures which the statute outlines, or the Revised Statutes outline, in so far as passing supplementary appropriations bills goes. But, as a matter of fact, do you know that in this State years and years have passed before that procedure has been followed, and that Section is something that has been resurrected only this year?

MR. CHANCE: Well, I don't know about its being resurrected this year, and I suspected that some fellow would spring some question on me that would imply I didn't know what I was talking about, so I refer you to this little book, "New Jersey State Government," where I took that budgetary practice from, pages 118 and 119, and that is where it says just about what I said.

MR. CAVICCHIA: The point I make is this: You are talking theory as against practice. The theory is laid down in the statute, but actually the practice has been to pass millions and millions of dollars of supplementary appropriations bills pell-mell after the budget has been made up. And that brings me to the very point of your argument about not amending the Constitution in that respect but relying upon statutory procedures. It is absurd to do that because no matter how strict are the procedures outlined in the statute, the minute you bring an appropriation bill in the Legislature and pass it contrary to the provisions laid down in the statute, the passage of that appropriation bill supersedes any other statutory provision that may be upon the books.

MR. CHANCE: Why don't you run around to the Governor and tell him what a terribly bad crowd you have on the other side of the hall and get him to put out some kind of a little reprimand to the boys?

MR. CAVICCHIA: You are so strong for legislative significance, you wouldn't want the Executive to tell this Legislature how terrible we were, would you?

MR. CHANCE: I would like to have the Governor tell me how terrible you gentlemen in the Legislature are, if it is so.

MR. CAVICCHIA: What is the sense of having the statutory procedure on the books, when it isn't followed?

MR. CHANCE: Well, the thought occurs to me that one of the

speakers this morning indicated that it doesn't make any difference what kind of print you put down in a book; you can fix up your statutes; you can fix up your Constitution; you can fix up your rules of the Legislature; you can have all kinds of fancy things; and it won't make a bit of difference. They will say, "What is the Constitution between friends?" if they are going to have that in mind, but the only thing is that if it happens that the requirements of the statute are disregarded, why doesn't somebody tell the public about it?

MR. CAVICCHIA: Then your philosophy is that of Pope's:

"For forms of government, let fools contest;
That which is best administered is best."

MR. CHANCE: Certainly. I say that which is best administered is best, and you won't get any debate to the contrary on that, and it always depends upon who it is is administering it and how he administers it. No matter how fancy the documents are, if you don't have the right fellow administering it and administering it in the right manner, it isn't the best.

MR. CAVICCHIA: You support the theory of government of men and not of laws.

MR. CHANCE: Oh, no, not necessarily at all. What these men are going to administer is going to be laws.

MR. CAVICCHIA: Yes, but if they don't administer the laws the way the laws are written, then it becomes government of men.

MR. CHANCE: Why doesn't somebody try to impeach somebody else who doesn't do what the proper thing is?

MR. CAVICCHIA: Let's go to something else, Mr. Chance. Mr. Chairman, you will bear with me. I almost "broke my neck" to get here to hear Mr. Chance, and I have got to have my time.

MR. AMLICKE: I would like to announce to all present that the members of the Committee have no fixed opinions and if any questions are asked, they are merely asked for the purpose of clarification.

MR. CAVICCHIA: Mr. Chance, I am really amazed at the position you take for the Manufacturers Association with respect to the State's fiscal position. You make light of the fact that there may be a variance between statements or audits of the various fiscal officers. Let me ask you this: Among the organizations that you represent are large corporations, million-dollar corporations, are there not?

MR. CHANCE: Oh, they never give me any of it; I don't know.

MR. CAVICCHIA: I suspect I would like to have what you are getting for these hearings, but that is beside the point. The point I make is this: Would those corporations that handle millions of dollars annually be willing to let their financial position be so uncertain as they are apparently willing to let the State's position be uncertain?

MR. CHANCE: Well, the thing of it is that I am not persuaded that the State's condition is half as uncertain as I have heard it advertised here and as I have seen it advertised in this report.

MR. CAVICCHIA: Mr. Chance, let me make this observation: If you had been a member of this Legislature in the past five years, you would have known very well how uncertain the State's financial position is, when we struggled for weeks and weeks and months in order to find millions of dollars in order to finance relief, for instance, several years ago.

MR. CHANCE: Yes but the trouble wasn't in finding it; it was in trying to get it out of the dedicated funds.

MR. CAVICCHIA: No, the trouble was in knowing just where the finances of the State stood, and we couldn't tell within five or six million dollars sometimes.

MR. CHANCE: I don't know what you must have done. I don't believe you got that little fellow, whoever he may be, in back of the desk, who knows all the answers. You probably called the big shot in here, and the big shot didn't know. If you had gotten the little fellow back of the desk, he probably could have told you. I am not qualified to debate that.

MR. CAVICCHIA: I just wanted to tell you what the real problem in this government is. It is all right for you to talk from behind the desk and spend your time improvising arguments for the purpose of tearing this thing apart. I am willing to listen to sound arguments, but when you come here and talk theories and not actualities, then I can't give much credence to what you have to say.

MR. CHANCE: Let me read what Homer Zink says in the budget message of Charles Edison, Governor of New Jersey, 1943, State Fund, for the fiscal year ending June 30, 1943, and the Highway Fund, for the calendar year ending, etc. It says, "Pursuant to the provisions of the Revised Statutes, Section 52:28-8, there is herewith submitted the consolidated balance sheet of the State as of June 30, 1941. Complete schedules of anticipated revenues and expenditures in all funds for the fiscal years ending June 30, 1942 and 1943, as compared with the actual revenues and expenditures for the year ended June 30, 1941, are also submitted. Very truly yours, Homer C. Zink, Comptroller of the Treasury." And here are a whole lot of statements that explain what the revenues and expenditures were and what the assets and reserve and surplus were, and I don't see anywhere, in any of these statements, any little postscript, "provided, however, we haven't been able to find out what the difference is between this item and the other one."

MR. CAVICCHIA: Then you should have read Comptroller Zink's statement issued subsequent to that.

MR. CHANCE: I didn't see that; I don't know what that says.

MR. CAVICCHIA: If you had prepared your case as well as you wanted us to believe you had, you would have seen it.

MR. CHANCE: I am not suggesting that I am infallible. The only infallibility I have heard about is the fellows here who say this Constitution is going to reform everything and fix everything up. I don't claim that I have done everything that can be done. I claim that I have done the best I could in the time available.

MR. CAVICCHIA: Do I understand you to say that you are not necessarily against a single fiscal year but if a single fiscal year is desired, it can be done by statute?

MR. CHANCE: I don't know why not.

MR. CAVICCHIA: Wouldn't this be a reason for not relying upon statutory enactment, that today the Legislature might do it by statute and next year, after all the accounts have been set up and all the fiscal procedure of the State and local governments coordinated in so far as subventions go from the State Government to local governments, then the next Legislature will come along and for some purpose, certainly not for good government, we will say, will change it around and will make it a dual fiscal year again. Isn't there some logic in having a constitutional provision on that point?

MR. CHANCE: Well, I suppose it makes no particular—it wouldn't make me lose any sleep at night if the only change in the Constitution that you made was one that did say there should be a uniform fiscal year for both State funds and highway funds. I don't think it makes any difference particularly, and I can conceive there is some force to what you say, that the Legislature next year might come along and change it. However, let me tell you that under this thing, ninety days in two years they are only going to be allowed to meet, and it would be a couple of years before they could get around to do it, and anyhow, they would have only ninety days to talk about the various other complications that have come up in the last two years.

MR. CAVICCHIA: That isn't true, Mr. Chance.

MR. CHANCE: Why isn't it?

MR. CAVICCHIA: Because the Governor could call the Legislature into special session, and so could the Legislature meet upon petition to the Governor.

MR. CHANCE: The Governor wouldn't call them together to say he didn't want to have the one fiscal year.

MR. CAVICCHIA: But I can't understand the logic of that. Why wouldn't the Governor call them together?

MR. CHANCE: I don't know.

MR. CAVICCHIA: I just can't follow the logic of your argument.

MR. CHANCE: I hope you have got this one suggestion that I have made with respect to that. I don't see that it makes a whole lot of difference, and I won't lose any sleep if you put something in the Constitution that says that the State Fund and the Highway Fund will both operate on a calendar year basis or on a fiscal year ending June 30th.

MR. CAVICCHIA: Then you have changed your position from ten minutes ago, is that right?

MR. CHANCE: Well, if you can show me where I have ever changed my position from the first of these hearings up to now, I would be grateful, because I am not conscious of it.

MR. AMLICKE: The next speaker in opposition to the proposed Article VII is Mr. Frederick Petry, Jr., Vice-Chairman of the New Jersey Highway Users Conference, and representing the New Jersey Furniture Warehousemen's Association.

MR. PETRY: Mr. Chairman and Members of the Committee:

After the discussion we have just tried to listen to, but we couldn't hear entirely, I almost feel it is already useless for an ordinary businessman to attempt to impress the Committee with any factual information that he has at his disposal because it is so evident to me as a practical man that there is a lot of theorizing going on all the time and the practical side of our problems is almost entirely lost sight of. I would like to say too that I very much appreciated what Senator Pierson said prior to our adjournment for luncheon. I was present in this very chamber when the gasoline tax bill was first proposed and when Senator Pierson proposed the raising of a $100,000,000 bond issue and the dedicating of the fund from the taxes to be imposed for retirement of those bonds and to build our highways. Having that background, you can readily understand why the representatives of the people who pay these taxes are very much interested in what has been becoming and what is going to become of their money, and they are opposed to Article VII as contained in this Report.

Our Conference represents a cross-section of the citizenry of this State. We represent many of our farmers, our manufacturers and our businessmen generally, truck and bus operators, and any and all motorists. Like similar organizations the country over, the Conference has always concerned itself strictly with the problems of highway transportation and the method of financing the construction and maintenance of our highways.

It would be a grave fallacy to assume that, under gasoline rationing and with the restrictions imposed by the wartime rubber shortage, our State Highway System and its maintenance are not an important issue. On the contrary, the over-all demands upon

our transportation systems, because of the present war, have enhanced the importance of our highways and have made the motoring public conscious both of the value to our way of life of automotive transportation and of their responsibilities in preserving it. The car and truck owners of this State have made a heavy additional contribution to State revenues. All the citizens of the State have a share in the advantages of an adequate highway system. This public investment must be guarded and maintained. Only by a strict and separate accounting of highway user funds can this public trust be met.

In Article VII, Finance, of the Commission Report on Revision of the State Constitution, it is proposed that:

1. All dedicated funds shall be abolished.

2. All appropriations for the support of the State Government shall be made in a single budget appropriation bill.

This is in direct contrast to the accepted and most equitable method of handling State highway fund revenues.

Everyone admits that the gasoline tax is an equitable way of raising revenue for highways. Under the procedure followed since its inception as one of the chief fields of State taxation, the relationship between the purpose for assessing the tax and the purpose for which it is used has been carefully guarded. Largely because of this policy the motoring public has been willing to pay this tax in addition to drivers' license fees, registration fees on the motor vehicle itself, and car inspection fees. Only when the revenue is turned to non-highway purposes do we break this important relationship and make a citizen who owns a car or truck pay substantially more for the same functions of government than a non-car owning neighbor who is just as able to pay. To do so is obviously undemocratic! And, under the proposed general fund financing, those taxes levied on *one* group of the citizenry for special purposes may not necessarily be appropriated for the benefit of that group.

There is good reason and established precedent for the approved governmental practice of segregating special and trusteed highway funds from the general funds. Car and truck owners in New Jersey pay local and State property taxes and all the regular levies, and then in addition pay the gasoline tax and motor vehicle fees. In the fiscal year ending in 1941 the motor fuel and motor vehicle taxes in New Jersey accounted for not quite 50 per cent of all State tax collections. In normal times well over 50 per cent of this group's driving was for essential purposes. Now with the transportation situation and rationing in this State, necessity driving will approach 90 per cent of all automotive mileage. And so, it is now even more important that car and truck owners be given added protection and assurance that the additional automotive levies which they pay are used solely for highway purposes.

When these taxes are levied, the State enters into a relationship with the motorist and truck owner taxpayers quite similar to the function performed by the trust department of a bank. The State undertakes to act as trustee in guaranteeing that the money will be invested in and expended only for highways. When the money is collected, like all other special and trusteed funds, it logically must be kept separate and distinct from the general funds. Whenever such special funds are diverted into the general fund the practice can only be classed with the diversion of assets from a trust fund into the general funds of a bank. Even if the general fund were operating at a deficit, which is hardly the situation developing in New Jersey, there is no justification for such diversion. Whenever a banking institution becomes involved in serious operating difficulties and faces a deficit, the responsible officials are not relieved of the legal responsibility of maintaining separate sets of accounts for the special funds. Even though the bank might fail completely, the integrity of trusteed funds is protected by law. And so it should always be with special highway revenues paid by a minority of the citizens.

It is for this reason that in recent years, California, Colorado, Idaho, Kansas, Michigan, Minnesota, Missouri, Nevada, New Hampshire, North Dakota, and South Dakota have amended their Constitutions to prohibit the diversion of highway funds. For all intents and purposes, sixteen other States, Arizona, Arkansas, Connecticut, Delaware, Iowa, Maine, Mississippi, Montana, Oklahoma, Oregon, South Carolina, Utah, Vermont, Virginia, West Virginia, and Wyoming, retain revenues from their motorists for highway purposes. Twenty-seven of our States have taken definite action to protect highway funds. Against this sound and beneficial practice, New Jersey led all other States in percentage of diversion in 1939. And in 1940 diversion in New York, New Jersey, Pennsylvania, and Ohio alone accounted for over half of the highway funds thus mishandled.

The inherent character of the New Jersey gasoline tax as a road toll is shown clearly by the fact that the tax applies only to gasoline used on the highways. The law itself enumerates in some detail the large number of non-highway uses which entitle the consumer to an exemption from payment of the tax or to a refund in the event that tax already has been paid. In fact, New Jersey ranks foremost among the States in restricting application of its tax solely to use of the highways. Thus, even the slightest justification which might possibly be offered in defense of the diversion that almost inevitably follows general fund financing is invalidated.

In the period from 1930 to 1942, $103,000,000 which New Jersey motorists paid in special taxes for highway purposes was diverted

to non-highway expenditures. Reliable studies by federal agencies have disclosed that 57 per cent of all the motorists in New Jersey earn less than $30 weekly; only 10 per cent enjoy an income of more than $60 weekly. Yet simply because they happened to operate an automobile, and for many it is the only way to get to work, low-income motorists were called upon to provide general tax revenue to the extent of $103,000,000 more than their neighbors. The fact that $69,000,000 of this sum was expended for relief and $8,600,000 for educational purposes in no way alters the fact that diversion is the most inequitable kind of tax discrimination. Approximately $10,000,000 has been diverted each year for the past two years.

In his Budget Message of January 19, 1942, Governor Edison pointed out that the State Comptroller anticipated a reduction of 15 per cent in State revenues available for appropriation for the fiscal year commencing July 1, 1942. The Governor himself anticipated that the total State revenues for the present fiscal year would be insufficient to meet the appropriations that he believes necessary. He also proposed that the fiscal year of the State highway fund be shifted from the calendar year basis to the July first fiscal year of other agencies of the State. We fear the purpose behind this proposal was to facilitate the shifting of special motorist tax revenue to non-highway purposes.

Surely no one would maintain that through the coming year, and for that matter for the duration of the war, State motor fuel taxes and State motor vehicle fees will not decline at a faster pace than all other State revenues. With gasoline rationing, the rubber shortage, a scarcity of parts, and the cessation of automobile production, New Jersey motorists will be reduced to a minimum of essential car operation. They are to carry the burden of regular taxes plus highway user levies.

Just recently over $11,000,000 has been transferred out of the Highway Fund to non-highway purposes, and in the face of declining motorist tax receipts. There has been a decrease of $895,000 in New Jersey's gasoline tax collections in the first five months of this year as compared with the collections for the same months last year. Actually the loss of revenue was $1,219,719 for March, April and May. Gasoline tax collections for the month of May, when rationing began, declined $716,000. Thus, changing conditions prove that this diversion practice is unsound and dangerous. To perpetuate it by amending the State Constitution, as has been proposed, would not only be inequitable and unfair, but also unsound financially. Under the proposed general fund financing, which would be legalized according to Section VII of the Commission's Report, this type of financial juggling could go on almost without opposition or the knowledge of the taxpaying public.

It is true that highway construction and the matching of federal aid are largely out of the picture. But the current capital investment in State highways in New Jersey exceeds a third of a billion dollars. Of this gross investment, a total of $128,000,000 was derived from issues of bonds and approximately $75,000,000 of these fixed obligations still are outstanding. Their servicing requires some $5,200,000 annually. In addition, more than $55,000,000 has been spent through the years in maintenance of the State highway system; much of which can be considered a part of New Jersey's financial stake in continued preservation and upkeep of the original public investment. Expenditures for maintenance have been averaging $3,500,000 annually. With construction of new roads largely removed by governmental priorities, maintenance will be an increasing factor in State highway finance even in the face of sharply declining revenues. These two rigidly fixed items account for 17.6 per cent of the unprecedented highway revenues of the 1941 fiscal year. Since no one can attempt to predict accurately the duration of the war and the consequent difficulties of the normal motoring public, and since highway revenues may decline to the point where it might be difficult to meet pledged obligations, there can be no justification for the dispersal of the special taxes levied upon New Jersey motorists.

The State Comptroller has clearly stated the conditions governing highway funds in his recent report:

> "With compulsory restrictions or voluntary limitations in the use of automobiles, or both, gasoline tax receipts will be very greatly reduced and motor vehicle fees will also fall off. These two sources of revenue cannot then be depended upon for diversion to other than highway system uses."

Rather than follow a procedure which would remove controls over the use of special highway funds, the Constitution should be amended to establish more rigid control over application of these revenues to the purposes for which they have been enacted. There is ample precedent for this in the eleven States which have already adopted such legal safeguards. Three additional States—Iowa, Oregon, and West Virginia—are to vote this year upon similar amendments to outlaw any dispersal of dedicated funds. We urge that the State of New Jersey adopt an anti-diversion amendment to protect rather than endanger its highway user tax receipts.

MR. AMLICKE: The next speaker in opposition is Mr. A. C. Rich, Executive Secretary of the Fuel Oil Distributors' Association of New Jersey.

MR. RICH: The Fuel Oil Distributors' Association of New Jersey has always opposed diversion and feels that the money collected in the form of taxes for highway construction and maintenance should be used for that. We, therefore, oppose the proposal to

abolish dedicated funds and desire to point out that the only fair way to treat this special group of taxpayers is to use the money for the purpose for which it is collected.

MR. AMLICKE: The Committee wishes to announce that there are several speakers yet to be heard, but we will sit until every speaker has a chance to be heard. The next speaker in opposition is Mr. F. C. Conkey, representing the Central New Jersey Fuel Exchange.

MR. CONKEY: Mr. Chairman and Members of the Committee:

The members of the organization which I represent are definitely opposed to the abolition of dedicated funds and the idea of a single budget. They are large taxpayers both of real estate and gas tax. They have fought for many years in opposition to the diversion of Highway funds.

I also wish to add while I am on my feet that they disagree with the gentleman who spoke to the effect that the Highway Department funds are depleted or that there is a deficit. As a matter of fact, we would not be paying the carrying charges today if $103,000,000 had not already been diverted; and the condition that prevails, if there is any such condition in the State finances, is not due to any failure on the part of the motorists to pay their way.

I do want to say at this time, much has been said about Paragraph 6, which states that, "Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value." That has been taken from the present Constitution. It seems to me that a great deal of time has been devoted to Paragraph 4 and the preceding paragraphs wher some difficulty to a very great extent in this State could be corrected if something further was said in the Constitution, and there was set up a uniform method of some sort whereby taxes would be assessed and properly guarded. I have heard a whole lot from the proponents this morning about how we are going to handle these monies, but I have heard very little about the boy who is paying those taxes and who is going to pay those taxes and he is the fellow that should be given first consideration. You have got to get the money before you can spend it. Thank you.

MR. AMLICKE: The next speaker in opposition is Mr. D. J. Crecca, Manager of the New Jersey Motor Truck Association. Mr. Crecca.

MR. CRECCA: Mr. Chairman and Members of the Committee:

Our organization represents thousands of motor truck owners located throughout the State of New Jersey. As users of the highways of the State, we feel that highway user tax receipts are obtained for one purpose and that is for the construction and maintenance of the highways. Mr. Petry for the New Jersey Highway Users Conference has fully stated our position and I merely wish

to concur in and support the position stated by the New Jersey Highway Users Conference.

MR. AMLICKE: The next speaker in opposition is Charles R. Stout, Secretary of the Association of Chosen Freeholders of New Jersey. Mr. Stout.

MR. STOUT: Mr. Chairman and Members of the Committee:

A number of men in this room will recall that for a number of years various freeholders in the twenty-one counties have always been, and stood steadfast, for the preserving of highway funds, gasoline tax and motor vehicle tax, to be used for the purpose of building highways and bridges, paying off bonds and interest in the State, and also in the twenty-one counties. Meetings have been held by the freeholders of the State, and they are at this time quite alarmed about what may happen in the future to highway funds. The highway and bridge problem in the counties of this State is a large problem. If these funds are placed in a single fund and should be appropriated for other purposes, there is no question that the taxpayers of the counties will have to make up the deficit through the county budget from the taxpayers within that county; and particularly to the rural counties, that is a tremendous item. The demand for the improvement, maintenance and the expansion of highways in the various counties is apparently growing all the time and that problem is confronting the counties and has confronted them. As you members of the Legislature recall, various letters have been sent out at various times asking that the highway funds be kept intact and not diverted. I don't think that the freeholders are looking at this from a selfish standpoint. I feel that they are representing the people in the counties in which they are elected. We feel that in our great State of New Jersey—what is the great State of New Jersey but the combination of the twenty-one counties of the State into a State Government?—it finally comes back to the fact that the taxpayers of each county are affected by the acts of the members of the Legislature and also the members of the boards of freeholders and their officers.

Our president could not be here today. I would like to introduce at this time Percy Jackson and Arthur Bray, Vice-Presidents of the New Jersey Association of Freeholders, and with your patience we will hear from a few members from the various counties of the State. Mr. Arthur Bray, Freeholder of Mercer County.

MR. BRAY: Mr. Chairman and Ladies and Gentlemen:

I just want to voice the opinion of the taxpayers of Mercer County. We are against taking away dedicated funds. We want to at this time ask permission of former Senator Pierson to extend his remarks of this morning just a little bit.

MR. AMLICKE: The suggestion is made that we will permit

Senator Pierson to extend his remarks after the regular list is exhausted.

MR. BRAY: At this time I want to call on Freeholder William Spargo of Morris County.

MR. SPARGO: Mr. Chairman and Members of the Committee:

It was my privilege back in 1927, after having been elected Freeholder and at that time President of the State Farm Bureau, to sit in at a hearing over in the Senate Chamber when it was discussed and when the Freeholders Association and when the Farm organizations of the State led the fight, if you will, to have enacted into law a gas tax, and at that time we tried to have written into that law some provision which would state that this mandatory fund, would, some of it, go back to the counties. It couldn't be done—I remember very well Senator Pierson was there—but we were given the assurance that a reasonable amount each year would be handed back to the counties of this State.

With that background, I just want to say one or two words, because I am not privileged to talk too long. I have been Chairman of the Road Committee in Morris County for ten years. For a long time I was President of the State Farm Bureau and I was interested in the dirt road fund, if you will, or State aid moneys going to the municipalities and townships, and over in Morris County, as Freeholder, I have been in a position to observe the work done by townships in the county, and I have been able to observe what we have been able to do in Morris County with road money, as Chairman of the Road Committee, and I want to say positively that for years the only moneys Morris County has used for reconstruction and maintenance of bridges and roads have come from the motor vehicle funds, and I have seen over 125 miles of improved roads built in my county by this surtax money, if you will, and if anybody entertains the idea that because we have a fine construction program throughout the State now is the time it can be discontinued because all the roads are built and all the bridges are rebuilt, they just don't know New Jersey in the rural parts of this State, and I want to say here that I would like someone to tell me where a rural road leaves off and a State highway takes up. What is the State highway system of the State of New Jersey? It is all the roads that serve all the people. If you will, Mr. Chairman, come to Morris County on a holiday or weekend or Sunday, you will find that the people using the highways in Morris County or the township highways are not Morris County people; they are people from all over the State of New Jersey. I contend there is no division of highway system. It is all part of a State highway system that includes the little township road that runs by my place, that kicks up dust on Sunday when people from Essex and Bergen Counties drive through. It is just as much a part of the highway system to those folks as

the highway over in the central part of the County. We are asked to give up something positive, something dedicated to us, something we told the motor vehicle people of the State they must pay because they use and wear out the roads. We are asked to give up something positive for something not so positive. We are asked to give up dedicated funds and then come to the State House each year and ask the Budget Commissioner and Budget Committee of the State for some money for the townships and counties. I have been around this State House for the last twenty years, and I know the problem you people have in financing all types of legislation demanded of you, from relief on up—some good, some not so good—and I can picture the State Association of Freeholders or the township committee of the State coming to this Legislature and running the gantlet of the school authorities of the State, of the health authorities of the State, of the institutional authorities of the State, and then going home with not what we anticipated or what we would hope to put in a budget in January, but a whole lot less money because the revenue hadn't been forthcoming and the Legislature in its wisdom had taken the motor vehicle money, the dedicated money, to do something else. Morris County is very much opposed to doing away with dedicated funds. We have seen the value of this and we want to continue the value of it. We want to continue to cooperate with the State in building county roads and maintaining 4,000 bridges and culverts, if you will, in Morris County. We don't want that uncertain thing to happen every time we make up a budget in Morris County. We want to know when we start to make up a budget that money is forthcoming from the State.

Thank you for the opportunity to speak. I just want to say again that Morris County is opposed to doing away with dedicated funds.

MR. AMLICKE: The next speaker in opposition is W. J. Gaffney, Secretary of the Highway Users Conference. Mr. Gaffney.

MR. GAFFNEY: Mr. Chairman and Members of the Committee:

I had just intended, as Secretary of the Highway Users Conference, to read two telegrams received at the office this morning, but I cannot rise without taking issue with two statements made by the former Senator from Camden and the now Alcoholic Beverage Control Commissioner. I recall that he said the expenditures of the Highway Department, which included the payments to counties and municipalities, far exceeded the revenues of the Highway Department. No statement could be further from the truth. As I understand it, the Highway Appropriations Bill annually includes the payments that are to be made to the counties and the municipalities, as well as all other proposed expenditures of the department. Each year, to my knowledge, the Highway Department winds up its business not with a deficit but rather

with a balance, and in addition to all of this money, as was pointed out in the briefs submitted by the Conference, from 1930 to 1942 one hundred three million dollars has been diverted from highway funds to purposes other than the reason these taxes were collected.

Then, further, the Commissioner compared the taxpaying public, those who pay taxes because they imbibe alcoholic beverages, with those who pay gasoline taxes and motor vehicle fees for the purpose of building highways. I think such a comparison was an unfair one. Certainly, alcoholic beverage taxes are a luxury and today I do not feel we can consider motorists' taxes a luxury. We will admit that probably ninety percent of the highway transportation today is essential transportation.

I am sorry that the Senator has gone. I wanted him to hear what I had to say about those two statements.

Now, further, I would just like to read two telegrams received at the office this morning:

"New Jersey Highway Users Conference

I deeply regret my inability to be present at the hearing on Article VII. Our association is unalterably opposed to any diversion of State highway funds and opposes any such amendment.

Respectfully

New Jersey Association of
Township Committeemen
Jacob D. Spiegel,
Acting President."

"Unable to attend hearing on Article VII of the proposed changes to the Constitution. We are opposed to abolishing the Highway Fund on the basis that motorists' taxes are paid for highways and should be used for their maintenance and construction. The proposed change would be inequitable and unsound. We ask that you have this message read for the record at the hearing.

Mrs. Kathryn D. Sullivan, Secretary,
New Jersey Conference of A A A
Automobile Clubs."

MR. CAVICCHIA: Mr. Chairman, I too am sorry that Mr. Driscoll has gone, because I didn't understand him to make that statement. I understood him to say, and I may be wrong and I would like this to be clarified if I misunderstood him, that the money spent by municipalities exceeded by thirty million dollars what was paid by the State on highways.

I would like that clarified, because if that isn't true, we ought to have that in the record. Can anybody enlighten us on that?

MR. A. C. JONES, Burlington County: I understood the statement as it was explained by the Secretary of the Association. I intended to get on my feet and make the correction, myself.

MR. BEBOUT: I think the statement that the Commissioner made was substantially this:

The total amount of money annually spent by all units of government for highway purposes was approximately twenty million dollars in excess of the receipts from motor vehicle users.

MR. CAVICCHIA: That is right.

MR. BEBOUT: I don't believe anybody can dispute that statement.

MR. AMLICKE: Is that satisfactory, Mr. Cavicchia?

MR. CAVICCHIA: Yes, my understanding was substantially what Mr. Bebout just said.

MR. AMLICKE: However, the record will disclose what the actual statement was. If anybody is interested, he can see the record next week.

The next speaker will be Senator Arthur Pierson, who is being given this opportunity to speak in opposition to the proposed Article VII.

MR. PIERSON: I want to speak on one feature of Section V, in favor, however, and that is that number 3, I think, will correct the evil that seems to have gotten into our budgeting system here in connection with supplemental appropriation bills. There is a feeling that such bills being a later enactment overcome or outride the restrictions of the General Appropriations Act, that you can't make an appropriation in excess of anticipated revenues. I think certainly if that section were retained, it would be a very wholesome thing because I have observed, as Mr. Cavicchia has suggested, that there has been very little regard as to where the funds might be coming from just as long as we get ourselves on record or the appropriation made.

I would like to emphasize possibly and bring out one or two added features in connection with the dedicated funds. There seems to have developed more or less of a concession that the dedicated funds such as gross receipts tax, second-class railroad tax and the funds dedicated to counties and municipalities were not intended to be included in the blanket provision of Section IV, but they should be swept out of their dedication. That can easily be done and I am very glad that some of those who have opposed this Constitution have conceded that that matter was overlooked when this text was drafted and that there was no purpose of doing these funds out of their dedication to the purpose for which they are now given. The history of our highway system, the whole background of the obligations of the State, Boards of Freeholders and of municipal officials to keep an adequate system of trans-

portation for automobiles, is after all and notwithstanding all, one grand problem that cannot be divided or separated. I quite agree with these gentlemen, and I think there is every justification for their stand, who have said that the highway funds, that is, the funds derived from the gasoline tax and motor vehicle registration, always have been, and I think they should remain funds dedicated for some feature or character of that grand program of highway construction and maintenance. I think that we must concede that it is not simply a State function; it goes further. Mr. Spargo has said it goes very much further and it goes first to the counties and then it goes to the municipalities, and the funds have been and must be retained as dedicated for the purpose of assisting the counties and assisting the municipalities. It seems to me imperative that that dedication should be retained. If they are swept under that controlling clause at the opening of Section IV there as dedicated funds, and these several sub-divisions of the State must come down and besiege the Appropriation Committee or the Governor or the Budget Commissioner to make provision in an appropriation bill for those, it would be just unthinkable and mightily unfair not only to the automobilists, but to those who have not a separate but a coordinate obligation with our Highway Department to keep adequate transportation on good roads. That seems to me to be so fundamental and so inseparable the obligation that this State owes to its citizens, which goes back to the county organizations, back to the municipal organizations, in such a way and in such a nature, that we cannot avoid retaining those dedications for those purposes. I certainly trust that the Committee will take under serious advisement that those funds going to municipalities, counties, and possibly you had better put in school districts, dedicated by statute are excepted.

There is one other thing, and that is the question whether they would be called dedicated funds or not, the gross receipts tax, the franchise tax, the second-class railroad tax, the funds dedicated to municipalities. The fact that that has arisen and was not contemplated by the drafters of this revision I think is clear. I certainly must impress upon you gentlemen that there should be some attention given to the exempting of those and certainly because of the historic background, the obligations, which are so universal and so rest not only upon the State, but upon the counties and municipalities, the dedications, must be preserved to these several units of government from the highway funds and the other funds too.

I have contemplated and discussed with many of our legal friends just exactly what that first sentence in Section IV of Article VII would actually mean. And universally it has been deemed to be more or less uncertain and especially so since our courts have said that all taxes are State taxes and that these taxes

that are levied, the State must have a legal possession of for them to dedicate them. And being State taxes, it seems to me almost beyond the pale of argument that the revenues therefrom are not likewise State revenues. Because of that uncertainty and the fact that the text of Section IV there exempts one of those taxes—Is it not an established rule of statutory interpretation that where you exempt from a group one particular item and fail to exempt others, that you sweep under the control of the original group all that you do not exempt? I think that is fair. I think that is the expectancy. Consequently, it seems to me most clear that there is a fair assumption that a misconstruction, misconstruing the intent that seems to have been evidenced here—that it was not intended that these funds which are presently under dedication to municipalities and counties and school districts should be swept under that general clause; that it should be clarified and no question about it.

I want to speak once more, just a suggestion in connection with the two budgets. During my eighteen years here, I was a member of one or another House of the Legislature. Somehow or other it fell to my lot to work on at least much of the budget, much of the tax, and much of the highway legislation that was enacted during my service, and especially that feature of our highway funds that included revenues to be derived from the gasoline tax. It was very true, as Mr. Spargo said, that we had long conferences with the Highway Department and it was universally agreed that the calendar year period would prove to be the most advantageous for the administration of the Highway Department. We all know that having made certain that the funds coming to the municipalities and to the counties from the dedicated funds are in hand before our budgets are made up would greatly facilitate matters; yes, it would obviate many uncertainties that should not be present in the making of local and county budgets.

It is verily true that both the branches of the Legislature in 1927 promised that they would dedicate the revenues from gasoline tax and from license fees for highway purposes, and I think that we did make that pledge. I appreciate fully that those who came along later didn't know the history, the background of this thing, and could not be quite as much impressed with that agreement as we who were present in the making of it or were members of the Legislature when it was made, because it was universally accepted in both Houses of this Legislature that that was a part of the agreement made at the time, in 1927. Again in 1930, when we moved up the tax on gasoline from two to three percent, a like confirmation was made of the original agreement. Indeed, the highway users were in support of that and proposed it, if we would continue our pledge that these funds would be dedicated for highway purposes and that alone, and we renewed that pledge.

I sincerely hope, gentlemen, that you will so amend Section IV of this proposed Constitution that it will secure to municipalities and counties—yes, let the school districts be included too, if you please—such funds as are dedicated by statute to these several subdivisions.

MR. AMLICKE: Are there any others who wish to be heard briefly in opposition?

MR. BRAY: Mr. Chairman, I have about three or four more Freeholders I would like to have put on the record.

MR AMLICKE: Will you please call out their names and present them?

MR. BRAY: Freeholder Robert Adams from Somerset County.

MR. ADAMS: Mr. Chairman, one of the proponents for this proposed abolition of dedicated revenues said he had considerable experience during the depression. I often wonder what would happen if we didn't have some dedicated revenues, how they would kick these things around. It was also true, as he said, rather difficult to get some money for relief, but we did keep things going and you did find moneys for relief. It seems to me that groups of men in the various branches of our Legislatures over a period of years have seen fit to dedicate such revenues properly to be handled by our municipalities and counties. To make an out and out change and break down all the good work done over the period of years is certainly taking a step backward rather than a step forward. If there are some dedicated revenues that are enumerated here that aren't serving a good purpose certainly the Senate and Assembly can take care of that, but to put it in our Constitution and break down all the good work that has been done over a period of years—I would like you to consider it very carefully before that is done, and I heartily endorse what Senator Pierson has said of the highway funds, the work they have done over the period of years.

MR. BRAY: Mr. Chairman, Freeholder Robert Mayor of Monmouth County.

MR. MAYER: Mr. Chairman and Members of the Committee:

I can bring you a message of the Board of Freeholders of Monmouth County and a definite message of the people we have had the privilege of serving, as being greatly opposed to the abolition of dedicated funds for highway purposes. It is so essentially necessary in our county, and has been over the past period of years, that we have joined in with the rest of the counties in presenting from time to time the problem that we not only need these dedicated funds badly, in the interests of public good, but that in addition thereto we need added funds from this greatly increasing amount until the war had its effect upon the county, upon the State and through the State to the county, and we have been obliged to continue on as we are although all of us were very much in need of added funds. In Monmouth County our Board is not only judiciously using these funds but it is also obliged to add to these funds by appropriation an added amount to take care of the highways of the county and that has largely been further aggravated by the intense activity of the war camps there, with additional heavy traffic passing over these highways, causing additional expense and care. It is vitally important, therefore, to the taxpayer motorist, who has been paying these taxes and who has been satisfied with paying them as one of the large taxes because he knows he gets a positive return for the amount so taxed.

Over this period of years, as the Senator and Mr. Spargo and others have said, there has been a very fine relationship built up between the townships, the municipalities, the boards of freeholders, and the State. As I said, there has been a fine relationship built up in support of this tax because they know where these funds are being spent. We should be vitally concerned, and will be vitally concerned, about this situation, if it is intended to abolish these dedicated funds. Our county is not in shape to anticipate further taxation nor is it in accord with the theory that, as Mr. Spargo has said, we should come up to the State Capitol here and wrestle around, as we have to do on almost all problems, to determine what our county should get.

We therefore join with the rest in earnestly hoping and praying that these dedicated revenues may be continued and supported and strengthened under the Constitution, to be maintained by our municipalities in this State; without being taken away.

MR. BRAY: Mr. Chairman, Freeholder Charles Smith of Union County.

MR. SMITH: Mr. Chairman and Members of the Committee:

On behalf of the Board of Freeholders of the County of Union, I have very little to add to what has been stated by most of the objectors to this Article. We, like the rest of them, view with alarm the placing of our highway funds into a pool to be distributed by your Appropriations Committee for causes as they may arise or as their importance may appear to be and under the pressure oftentimes of this group or that group for this or that other cause. We think it would be very bad indeed, and we are opposed to it.

MR. BRAY: Mr. Chairman, Freeholder A. B. Rue of Sussex County.

MR. RUE: Mr. Chairman and Members of the Committee:

We appreciate the time you have given here to hear those opposed to changing our Constitution. It has been stated here that probably our Constitution is outmoded, but we don't feel that dedicated highway funds are outmoded. I want to say that up in our

county, it is a very rural and mountainous section; in fact, the highest in New Jersey, we have about eighty lakes, and we are proud of our road system. It has been built up by these dedicated funds to allow people from other parts of the State and other States to visit our county, which, as I have stated, is the highest point in New Jersey, and brings them probably nearer to heaven than they have ever been before. We like to have them travel on a good road to get there. I want to say that if we should lose this dedicated road money in our county and had to appropriate the amount we now receive from motor vehicle funds to take care of our 292 miles of county highways, in addition to the aid of all the municipalities of our county, it would increase our county tax rate over eighty percent, and I am sure that I don't want to tell the people of my county that something like that might happen.

I hope this Committee will give this serious consideration. I want to concur in what some of my colleagues of the State Association have stated. We like to have people from other counties come up and drive over our roads but we do have to have some help to keep them in condition so we can enjoy the privilege of driving over them. We invite you up there to see our scenery, and we hope you will continue to help pay for taking care of the roads. Thank you.

MR. BRAY: Mr. Chairman, I have just one more gentleman to introduce, Mr. Robert S. Tipping, County Treasurer of Bergen County.

MR. TIPPING: Mr. Chairman and Members of the Committee:

I am sorry the program was changed so that we couldn't be here this morning. I would like to have heard some of the other arguments. I want to submit to you all that we must pay great tribute to the Committee in attempting to change such a revered document as the Constitution, particularly at so unfortunate a time as a war year, because we are facing so many serious problems. Our minds are very confused on many things and it is a very, very serious thing to ask us to intelligently and very properly give thought to such a serious proposition. We submit that any changes in reference to our financial laws are unwise now, if not unnecessary, Mr. Cavicchia, because our financial future and economic future is very, very doubtful, to say the least, and many, many changes are going to come where quick action may be necessary for emergencies. Changes in our county have taken place very, very rapidly. Our county now, within a few years is one of the most important, industrially, in the State. We will complete another vast enterprise there, to be opened in September, and to interrupt us by changing our financial structure or to hamper us in any way in making this great all-out war effort would be very, very serious. I think, gentlemen, we ought to hold in abeyance any such action which will affect the financial laws of this State.

I submit therefore, on behalf of our Freeholders, that we wish no action be taken in regard to dedicated funds.

MR. BRAY: Thank you, Mr. Chairman.

MR. AMLICKE: On behalf of the Committee, I wish to announce the next hearing will take place on Wednesday next, at which time we will take under consideration Articles VIII and IX.

Thank you very much.

The hearing is now adjourned.

(Adjournment.)

BRIEFS AND COMMUNICATIONS SUBMITTED AT THIS SESSION

August 7, 1942.

Hon. Lloyd L. Schroeder,
Teaneck, New Jersey.

My dear Senator:

I am sending you herewith the brief I spoke of over the telephone this a. m. You will appreciate that these comments are entirely my own supported by my eighteen years intimate experience in the Assembly and Senate, during which time I think I had a good opportunity to observe the workings of our present Constitution and its application to the many State activities.

What I am particularly interested in is preserving beyond a question the certain dedication of the road funds and the 5 percent Inheritance Tax that has always gone to the counties.

As you know, I have been very much interested in the Utility Franchise and Gross Receipts taxes going to the municipalities and these I think should be preserved for the municipalities' benefit without any question. If, after the word "schools" third line, Section IV of Article VII there would be inserted "and funds dedicated by statute to counties and municipalities," this would protect both the presently dedicated Highway and Inheritance Tax funds to the counties and would also make secure the Second Class Railroad, the half of the Railroad Franchise, the Utility Franchise and the Utility Gross Receipts taxes.

I think you will agree that to have to battle the Appropriation Committee each year or biennially to get these funds secured to the counties or municipalities is asking public officials to have more faith in the Legislature than should be asked of them.

All these revenues, as they stand today, have a background to support their present statutory dedication. As far as the road funds going to counties is concerned, back in 1906 when we first required annual registration of automobiles, the entire revenue was dedicated to counties for the support of improved roads. When the Highway Department was organized in 1917, the same policy obtained, and the Highway Department was supported by the mill tax. This continued up to 1933.

You are, of course, acquainted with the present Second Class Railroad Tax and the half of the Franchise Tax going to municipalities, of which it can be fairly said that it was in lieu of the Second Class Railroad Tax which was theretofore a part of the local ratables and local tax revenues. The Utility Franchise Tax is a rent for the use of streets and certainly belongs to the municipalities as originally dedicated back in 1900. The Utility Gross Receipts Tax inaugurated in 1919 was in lieu of local tax assessments on utility property.

With such a background of precedent and equity I certainly feel secure in contending that some such amendment to Section IV of Article VII should be made.

Yours sincerely,

ARTHUR PIERSON.

BRIEF OPPOSING THE VIEW THAT THE UTILITY FRANCHISE AND GROSS RECEIPTS TAXES WOULD NOT BE REVENUES OF THE STATE AND SUBJECT TO BIENNIAL APPROPRIATION AS PROVIDED BY ARTICLE VII, SECTION IV, OF THE PROPOSED CONSTITUTION.

The proposition can be reasoned out under three distinct heads:

1. The courts have on numerous occasions declared that all taxes are State taxes, but to make such a decree applicable to the provisions of Article VII, the court would be obliged to make a further classification and differentiate between State and local taxes.

On the one hand it would seem clear that State taxes would be classified as those which are levied by statute without any intermediary legislative action by any political subdivision of the State, whereas local taxes would be such as are authorized by State law, but made effective by the legislative act of some subordinate subdivision of the State, such as a county, a municipality or a school district, as even the State would not have jurisdiction of appropriating to its own use the revenues derived from taxes levied by local, school or county legislative action. Consequently, a tax levied by the State must necessarily be a State Tax.

A tax must find its classification in the tax itself and not in the way the revenues are applied. It can hardly be argued that the revenues resulting from the State taxes are not initially State revenues.

2. The courts, have, on numerous occasions, stated that the revenues from both the Utility Franchise and Gross Receipts taxes are subject to such disposition as the Legislature may direct, which makes both State taxes and initially, State revenues.

The only difference between the revenues derived from the Utility Franchise and Gross Receipts taxes and the revenues derived from the Second Class Railroad taxes and the one-half of the Railroad Franchise taxes, which are dedicated by the Railroad Law to local and municipal use, is that the State Treasurer collects the revenues from the railroad taxes and disburses them to the municipalities on the warrant of the Comptroller, according to the formula prescribed by the law, upon the apportionment certificate of the State Tax Commissioner. In the case of the utility taxes the companies pay such taxes directly to the munici-

palities, on the formula prescribed by the law on the apportionment certificate of the State Tax Commissioner.

There can be no question that the proposed Constitution voids the dedication set forth in the Railroad Act of the funds going to the municipalities, and as the difference between the operation of the Railroad Act and the Utility Act is only the manner of payment, it is hardly conceivable that the court can hold that one is a State tax and a State revenue, and the other something else, which would not be covered by Article VII of the proposed Constitution.

3. The accepted rule of statutory interpretation is that when a general classification of things is stated in law and an exception made therefrom for one specific thing included in the general classification, all other specific things are included in the general classification. Consequently, by the present text of Section IV of Article VII, of the proposed Constitution, the income of the fund for the support of free schools is exempted from the group of revenues of the State government; therefore, all other revenues would necessarily be controlled by the disposition of the general group.

Such reasoning would immediately throw the Utility Gross Receipts and Franchise taxes, Second Class Railroad and the one-half of the Railroad Franchise Tax now dedicated to local or municipal use, under the provisions for the revenues of the State Government. Such a line of reasoning has further support in the provision that "separate funds may be maintained for revenues realized from any tax levied specifically for the purpose of maintaining free public schools" and other purposes and no authority is provided for separate funds for Utility Gross Receipts and Franchise taxes, Second Class Railroad and Railroad Franchise taxes.

The distinction under either line of reasoning is so fine and the result so serious to the municipalities, which have a fundamental right in these revenues, that an amendment to the text of Section IV of Article VII of the proposed Constitution should be made to make these revenues secure to the municipalities without a quibble or a question.

ARTHUR PIERSON.

HISTORY OF ROAD FUNDS AND INHERITANCE TAX FUNDS GOING TO COUNTIES AND MUNICIPALITIES JUSTIFYING THE CONTINUANCE OF THE DEDICATION.

In 1891 when the first State Road Commissioner was appointed, there was appropriated out of the general treasury fund the sum of $75,000. to be apportioned to counties by the State Road Commissioner for the construction and maintenance of improved roads.

1906 when the State first imposed the annual registration of automobiles and fixed a fee therefore, the funds accruing therefrom were dedicated to counties for the construction and maintenance of improved roads. This carried along until 1917, when the State Highway Department was organized. The dedication of funds accruing from the automobile licenses was continued for county use. The State Highway Department was supported by the mill tax, which tax was continued until 1933.

The dedication of Highway Funds to counties was continued in various forms and amounts and the Borough and Township Aid Funds were shortly thereafter established at the rate of $5,000 per county, to be deducted from the amount going to counties.

With the increase in revenues derived from automobile registration and the demands for a greater amount of revenues to support highway maintenance and construction, the receipts from motor vehicle revenues going to counties was fixed at a stated sum and the balance used for highway maintenance and construction. In 1927 the two cent gas tax was imposed and added to the highway fund. The tax was increased to three cents in 1930. The situation changed little in principle until 1933, when the Highway Budget Act was passed, but in this Act the statutory dedications to counties and to Boroughs and Townships were included as dedicated revenues to be listed as such in the Highway Budget, but their dedication was made by numerous other statutes. This practice has carried on to the present time.

In view of the increasing costs to counties for the maintenance and construction of highways to meet the increasing demands for motor traffic and from the fact that at least three-quarters of the travel of automobiles under State registry and gas consumed by such automobiles is used over other than State highways, the policy of continued and certain dedication of a portion of the receipts from motor vehicle licenses and gas tax is undoubtedly due the counties and should not be subject to the uncertainty of annual or biennial appropriations.

Collateral Inheritance Tax History

In 1909 when the Inheritance Tax Act was first imposed, 5 percent of the receipts were dedicated to the county where the decedent resided. While the Inheritance Tax Act has been amended and

supplemented by numerous enactments, the dedication of 5 percent of such tax going to counties has been retained up to the present time and such dedication has the support of the history of the tax and the service rendered by the Surrogates and should not be subject to the uncertainty of appropriation in an annual or biennial appropriation bill.

Budget Year For Highway Funds

Up to 1933 when the Highway Budget Act was passed, the State Highway Commission had complete control over the expending of Highway funds without budgetary control. However, during this period the dedication to counties and municipalities from the motor vehicle fees and gas taxes were nevertheless set apart as dedicated from these funds. During the period previous to 1933, the Highway Department, because of the peculiar nature of its work, which was actively engaged in between March and November of each year, operated on a calendar year period. This practice was somewhat influenced by the fact that the funds dedicated to the municipalites and counties would have a place as Anticipated Revenues in their annual budget, which budgets were obliged to be passed prior to March 1st.

The present calendar year period for the Highway Budget was fixed after lengthy discussions with the Highway Department and County Boards of Chosen Freeholders, as any other budget period would prove an obstacle to the most economical and effective administration of State Highway and County budgets.

To consolidate the Highway with the General State Budget would be most unsatisfactory and uneconomical and since the motoring public contributes all the funds for the support of the Highway Fund and are willing to continue their support to such a fund so long as the revenues derived are only used for highway work, it would be most unfair to the contributors of this Fund to co-mingle them with the general State revenues so that their identity as Highway funds would be lost. Consequently, the prayer of the Association of the Boards of Chosen Freeholders of the State is that the dedication of funds by statute to counties and municipalities be retained, both as to Highway funds and the 5 percent Collateral Inheritance Tax; that the present Highway Budget be continued as a separate instrument for appropriation of Highway funds and the fiscal period thereof be the calendar year as at present.

ARTHUR PIERSON.

HISTORY OF UTILITY AND RAILROAD TAXES THAT SUPPORTS THEIR DEDICATION TO MUNICIPALITIES.

Utility Franchise and Gross Receipts Taxes

The granting of the rights for utilities to use the streets of a municipality for their lines and mains has always been and still rests with the municipal governing body. Prior to 1900, every conceivable consideration was paid to the local municipality or otherwise, such as a lump sum, annual payments, free services, street pavings, drainage, etc., as the consideration for such privileges.

In 1900, the Voorhees Franchise Tax Act was passed and thereafter the consideration, for granting the privilege for use of the streets, was fixed by statute as a fixed percentage of the gross receipts. The property installed by all the utilities was subject to local taxation, which continued until 1919 when the Utility Gross Receipts Tax was substituted for the general property tax, for trolley, gas and electric systems. The revenues derived from the Franchise Taxes have, from 1900, been dedicated to the municipalities and apportioned in the proportion which the length of lines or mains in the municipality as such bear to the entire length of lines or mains in the State. Such a policy continued until this day.

It can be fairly stated that the Franchise Tax is the rental paid to the municipality for the use of its streets and that the Gross Receipts Tax is clearly in lieu of the local tax upon the property of such companies as are subject to this tax. Consequently, the revenues from both taxes are distinctly and clearly revenues which the municipality should receive as at present and not be subject to the uncertainty of legislative appropriation.

Second Class Railroad and One-Half Railroad Franchise Tax

Under the 1941 Railroad Act, the values of Second Class Railroad property in the several municipalities was taken from the schedule of taxable property in the several municipalities which was taxed at the local rate and in lieu thereof the Second Class Railroad Tax at the present fixed rate and one-half of the Franchise Tax was dedicated to local use in proportion that the value of Second Class Railroad property in the municipality bears to the value of the Second Class Railroad property in the State. The present railroad taxes dedicated to municipalities is so distinctly a tax in lieu of the Second Class Railroad tax at the local rate as formerly taxed, that it is distinctly the revenue of the local communities and should not be subject to the uncertainty of further appropriation by the Legislature.

Local Bus Taxes

In 1916, when the first Jitney Tax Act was passed, buses were excluded from the operation of the Utility Franchise Tax Act, and in lieu of revenues coming to the municipalities through the opera-

tion of the Franchise Tax Act, the 5 percent of the Gross Receipts of a bus line is paid directly to the municipalities in the proportion which the mileage of the line in the municipalty bears to the whole length of the line. While this is a State Act without any intermediary action of the local governing body, there could well arise a question whether it were not initially a State tax and a State revenue. In all events, the revenues now going to the municipality for the privilege of using the streets for the service is distinctly due it and should be preserved as a revenue to the municipality.

It would seem that because of the complication that might arise in connection with the classification of State taxes and State revenues, if the matter were brought to the Court for decision, Section IV of Article VII should be amended so as to definitely exempt these revenues from the provisions for the State revenues.

ARTHUR PIERSON.

September 21, 1942.

Hon. Lloyd L. Schroeder,
210 Main Street,
Hackensack, New Jersey.

My dear Lloyd:

At the request of the New Jersey Association of Real Estate Boards, I have examined the memorandum submitted by their representative, Mr. John F. O'Brien, at the Session of your Joint Committee created to conduct hearings on the proposed revision of the New Jersey State Constitution, held August 19th, and pursuant to my promise to that Organization under date of September 2nd. I submit herewith, my conclusions in relation to the subject matter thereof:

Sincerely,
ROBERT C. HENDRICKSON

MEMORANDUM RELATING TO STATEMENT MADE BY JOHN F. O'BRIEN AT A SESSION OF THE JOINT LEGISLATIVE COMMITTEE APPOINTED TO CONDUCT PUBLIC HEARINGS ON PROPOSED REVISION OF THE NEW JERSEY CONSTITUTION

At the request of the New Jersey Association of Real Estate Boards, I was asked to study the proposals presented by Mr. John F. O'Brien at a Session of the Joint Legislative Committee appointed on August 19th and to submit my conclusions with respect to the same, to the Governor and to the members of the Joint Legislative Committee.

In his memorandum, Mr. O'Brien offers objections to the fact that the Commission on the Revision of the New Jersey Constitution did not alter Paragraph 6 of Article VII of our present Constitution which provides that "property should be assessed for taxes under general laws and by uniform rules according to

its true value." He alleges that this provision has for years been unenforceable; that it has led to gross inequities in the local tax structure and has established an unduly heavy tax burden on land and improvements. My reaction to these allegations, is that both the enforcement and equity problems are matters of administration. That other States wherein similar systems are in vogue, have effected tremendous improvements in this field, no one can deny. It, therefore, follows that if like provisions can be made effective elsewhere, there is no reason why a real effort in New Jersey would not react similarly.

As to the allegation of excessive tax burdens, it seems to me that this must be approached from the viewpoint of current tax requirements. If property taxes are to be reduced and the essential functions of government are to be maintained on present service levels, new sources of revenue must be found. In the light of the Federal Government's complete preemption of the income tax field, and likely similar preemption of the sales tax field, sources from which new taxes may be derived are extremely limited and the extent of any new tax base is narrowed to fields which are already much overworked.

On Page 6 of his paper, Mr. O'Brien proposes a classification of property "at rates commensurate with the type of property."

This is clearly tax limitation and likewise tax reduction. Moreover, practically all of the evils which Mr. O'Brien complains of, are equally possible within property classifications unless the administration is likewise improved. As a matter of fact, even a reduction in the burden depends not only upon the established rate, but likewise on the policy of valuation. It, therefore, does not necessarily follow that "such classification would bring equity, honesty, and common sense into an assessment system." Accordingly, to my best recollection, the Commission on Constitution Revision, after long and serious deliberation upon various and sundry tax provisions which might be written into a Constitution, concluded that the less said about taxes in any Constitution, the better. In fact, I ofttimes feel that the whole subject should be left open to the Legislature so that New Jersey will be in a position to meet the post-war era and the difficult new order which is ahead, without jeopardy to the more essential processes of free government. Actually, almost everything that Mr. O'Brien mentions, except perhaps the classification of real property, is now within the province of the Legislature. To meet squarely Mr. O'Brien's objectives and proposals, it would be necessary to write a complete tax act into the Constitution. To deny that there has been bad administration of property tax in New Jersey, would be equivalent to the utterance of a bald untruth.

This situation should, according to my best judgment in such matters, be improved with all due speed but this, I feel, can be accomplished by legislation rather than by Constitution Revision.

STATEMENT OF THE COMMUNIST PARTY OF NEW JERSEY ON ARTICLE VII OF THE PROPOSED REVISION OF THE STATE CONSTITUTION

AUGUST 19, 1942—STATE HOUSE, TRENTON, N. J.

The Communist Party has few remarks to make with regard to Article VII of the proposed Revision, dealing with Finance. It is, of course, necessary to include in a State Constitution proper safeguards against misuse and waste of public moneys. But much of the efficient administration and wise expenditure of the State's funds is dependent upon the quality of men in public office, their social outlook and especially upon the controls exercised by the people through other democratic provisions in the Constitution and laws.

Paragraph 4 of Article VII, providing for the establishment of a General State Fund into which all State revenues shall be paid, with certain exceptions, appears to be a wise addition.

In line with the position we have expressed in earlier hearings, we wish to register our disapproval of several provisions in Paragraphs 5, 7 and 9.

Paragraph 5 as proposed provides that one general appropriation bill shall be enacted every two years, and that any other appropriation bill shall be enacted every two years, and that any other appropriation bill must receive a two-thirds' vote in the Legislature. Biennial blanket appropriations, like biennial sessions of the Legislature, will not meet the needs of the people even in normal times. The present and proceeding period of world crisis make it most unlikely that legislators, be they possessed of the greatest wisdom and perspicacity, will be able to gauge the State's needs for two whole years. Just to recall the years of depression crisis, when thousands of New Jersey unemployed literally were starving while the Legislature callously ignored their plight for months on end, will give a clue to the dangers inherent in the present Proposal. We also would recommend that the requirement of two-thirds' affirmative votes on supplementary bills be changed to a simple majority.

For similar reasons we oppose Paragraph 7 which would limit the State indebtedness to $100,000 unless authorized by a law submitted to the people at a general election. There have been in the past and there will be again, and in times of peace, situations of a special or emergency character, which will require effective solutions without any delay. We propose revision of this paragraph to enable these situations to be met.

Paragraph 9 provides guarantees that the principal and interest on any debt or liability of the State will be repaid. Should the law authorizing the specific object or work for which the liability is contracted be repealed before principal and interest are fully repaid, the State Treasurer must apply the first revenues received in order to complete payment. This paragraph pretty well expresses a primary consideration with protection of property and investments that tends to pervade other portions of the proposed Constitution also. We suggest that greater consideration for safeguarding the interests of the people and less for safeguarding the interest payments of the banks will help considerably in establishing the fuller economic and political democracy for which we are struggling today.

MANUEL CANTOR
Legislative Representative.

STATEMENT OF NEW JERSEY STATE LEAGUE OF MUNICIPALITIES

To Honorable Lloyd L. Schroeder, Chairman, and Members of the Joint Legislative Committee on the Revision of the State Constitution.

In Re Article VII

The New Jersey State League of Municipalities, on behalf of its members, respectfully submits for your consideration the modification or amendment to Article VII, which is concerned with finance.

Municipalities by statute receive certain tax revenues dedicated or allocated to the municipalities by specific tax acts in consideration for certain privileges or uses in lieu of general property taxes. We refer to the right of a utility to use the streets of a municipality for their lines and mains or the use of the streets for bus service.

The Utility Franchise and Gross Receipts taxes for 1942 amounted to over $16,000,000. This revenue by statute goes to the municipalities of the State in lieu of other types of property tax. The Franchise and Gross Receipts taxes, the Railroad taxes, the local bus taxes are regarded as a State revenue, but each of these taxes from its inception has been dedicated to the use of municipalities. Some of them are paid direct to the taxing districts.

Section IV of the Proposal says "All revenues of the State Government from whatever source derived . . . shall be paid into a single fund to be known as the General State Fund, subject to appropriation for any public purpose. . . ."

There are enumerated the specific exceptions to the general provision which requires all revenues to become part of the General State Fund.

It is our contention that under this section of the proposed Constitution all revenues now dedicated to the municipalities would be subject to appropriation. This may not have been the intent when this paragraph was drafted but there is grave danger

that the language could be so construed as to require legislative appropriation.

In order to safeguard the right of the municipalities to this revenue we respectfully submit that the exceptions should include a reservation of all revenues now dedicated by statute to municipalities.

TOWN OF MONTCLAIR, NEW JERSEY, BOARD OF COMMISSIONERS

Department of Revenue and Finance

August 18, 1942

Honorable Lloyd L. Schroeder,
Chairman, Constitution Revision Committee,
State House,
Trenton, N. J.

Dear Senator:

For the past five or six years I have been actively interested in the taxing of Public Utilities under the so-called Gross Receipts and Franchise Tax Laws, and also in the distribution of these taxes to the affected municipalities.

Upon reading Article VII of the proposed new Constitution, I am very much concerned, as must be every other municipal finance officer, in the implications of that section as related to utility taxes.

The courts have held that these are State taxes. It would seem to follow under Article VII, Paragraph 4, that they must be deposited in the General State Fund, thereafter to be distributed, from time to time, by legislative mandate. Since these funds are intended to be dedicated to the direct use of the municipalities, it would seem highly desirable to include, if possible, in any revision of the proposed draft of a new Constitution some method of excluding these taxes from deposit in the General State Fund and for providing for their segregation or direct distribution to the municipalities.

For this and other reasons I would urge your Committee to give serious consideration to meeting this very practical problem in your final report to the Legislature. I am sure that had I had an opportunity to do so I could have readily secured the approval of the sentiments expressed herein from many, if not all, of New Jersey municipalities.

Yours very truly,

B. H. FAULKNER, Director

ALFRED W. KIEFER
Counsellor at Law
Hackensack

August 18, 1942

Legislative Committee on Constitution Revision,
State House,
Trenton, New Jersey.

Gentlemen:

It is my understanding that a hearing is to be held in connection with Article VII of the Proposed Constitution Revision.

As a municipal attorney, I wish to express my approval of Section IV, Article VII of the proposed Revision.

Respectfully yours,

ALFRED W. KIEFER

STATEMENT SUBMITTED ON BEHALF OF THE PROFESSIONAL EXAMINING AND LICENSING BOARDS WITH REFERENCE TO ARTICLE VII OF THE PROPOSED REVISION OF THE CONSTITUTION OF THE STATE OF NEW JERSEY

To the Special Committee on Revision of Constitution:

The professional examining and licensing boards which now operate with funds dedicated specifically to the enforcement of the Professional Practice acts, respectfully call your attention to the brief filed by them with your Committee on July 28, 1942 in connection with the consideration of Article IV of the proposed Revision.

The reasons advanced, in the brief referred to, for maintaining the professional examining and licensing boards under direct supervision of the Governor apply with equal force to the maintenance of the present status with respect to their finances.

The total receipts and expenditures of the eleven professional examining and licensing boards average about $200,000 annually, and the monthly accounting made by each board to the State Auditor and Comptroller provides ample assurance that these funds are expended for the purpose intended by the legislative acts under which the boards operate. The purpose to which these funds are dedicated is the protection of the public health and welfare, and since the funds are paid in large part by the professions themselves, there appears to be no good reason for disturbing this arrangement. It is a notorious fact that in States where the professional examining and licensing boards have been placed under legislative appropriation and have been financed by free treasury funds, the expense of maintaining them has increased greatly.

It is therefore in the interest of the taxpayer as well as in the interest of the health and welfare of all the people of the State to permit the professional licensing and examining boards to continue to operate with dedicated funds.

Respectfully submitted,

State Board of Medical Examiners
State Board of Registration and Examination in Dentistry
State Board of Professional Engineers and Land Surveyors
State Board of Architects
State Board of Embalmers and Funeral Directors
State Board of Examiners of Nurses
State Board of Optometrists
State Board of Public Accountants
State Board of Veterinary Medical Examiners
State Board of Commissioners of Pilotage
State Board of Pharmacy

BRIEF PRESENTED BY NEW JERSEY FARM BUREAU AND NEW JERSEY STATE GRANGE TO THE JOINT LEGISLATIVE COMMITTEE TO STUDY THE REPORT OF THE COMMISSION ON REVISION OF THE NEW JERSEY CONSTITUTION, TRENTON, NEW JERSEY

August 1942

To the Members of the Joint Legislative Committee:

We must now consider the article of the Proposed Constitution relating to "Finance." The important change here relates to the abolishment of all dedicated funds. From time to time, especially in years when governments find normal revenues below normal expenditures there arises a demand for such action. Alleged reasons are many. Sometimes they are urged by our most thoughtful citizens. But frankly, considered as a whole, they are not impressing. Considered separately, the better ones seem superficial; the poorer ones manifestations of mental dishonesty. Perhaps a constitutional provision abolishing only *future* dedication of funds might not be dishonorable nor otherwise serious, though we think even then there would be potential elements of harm. But a retroactive provision, as the one proposed, must be positively bad.

What, indeed, are "dedicated funds"? They are simply public revenues received through a legislative enactment from specific sources to be used for some specific matter of presumed public welfare. The Legislature simply imposes a tax, or a quasi-tax upon some specified property, or specified action, and pledges the

revenue thereby received to the promotion of the specific matter in issue.

The whole affair proceeds upon the legislative assumption that it is in the public welfare (whether the assumption always is justified is not here within the scope of the argument) and remains, as it began, a purely legislative function, to be regulated as the Legislature deems wise; always of course, within the equal rights of all. If the Legislature is of the opinion that, as the Commission's "Explanation" says, "the State's left hand is not permitted to know what its right hand is doing," it is entirely capable of, and justified in providing that the "left hand" shall know. It all would become a simple matter of bookkeeping. Indeed, is not that the actual situation now, at least with the more important funds? Furthermore, surely there can be no real legislative impediment to "careful planning" of the budget and of the appropriations, as has been alleged in such an arrangement.

Consider now whether there is anything either immoral or beneficial in the principle of dedication of funds. There seems a possibility of a little of the first, and a certainty of much of the second. That is, there seems that abuses sometimes do emanate from dedication; also, as we shall see, that there are undoubted cases where such dedication has been, and remains desirable. No doubt sometimes "special interests" succeed in impressing themselves upon legislatures, and urge that since through such an arrangement it will not become a public financial burden, secure the desired legislation. This of course is an abuse. But in all such cases legislatures have the remedy within their own hands. They can outlaw the special interest by employment of the same methods used in legalizing it. Special interests, indeed, do sometimes become so rooted that they claim their special interests have become vested rights. But such claims are false. There is no legislative authority which can make a "right" out of a "wrong." And special interests, in societies of equal individuals, are wrong. In such societies there can be no political recognition of a special interest of any sort, no matter how moral otherwise the interest may be. We shall shortly see however, that vested rights do accrue when created by legislatures acting in the *general interest*, though they may relate to only specified citizens or groups.

Among cases of dedication of funds in New Jersey one thinks first of railroad tax revenues dedicated to the public school system. In opposition to such dedication it was urged, and it is still urged, that aside from a more scientific accounting system, the support of public schools is such a vital public matter that the tax payers should be brought into the most personal touch with the system and with its cost, and that direct personal taxation would accomplish that end. But would it? Experience with other existing direct personal school taxes does not seem to justify that assumption. If it would accomplish such an end it would accomplish

much. But still it would not justify the breach of faith necessarily involved. For there was a solemn pact entered into at the time the act was passed. It was that the additional tax to be paid was to become a fund exclusively devoted to public education. It may be that existing railroad managements may not now be much concerned about the fulfillment of the moral pledges then made. It also, may be that the several branches of the system may not now be much concerned. But the fact remains that the pledges were given; and, while in politics enacted legislation may not bind succeeding legislatures, in morals they do so bind, at least until released either by mutual consent or by extreme public necessity.

Consider, also, the moral issue underlying the disposition of motor vehicle revenues. Hardly a more solemn dedication of funds to a specific purpose could have been made. And the continual fulfillment of the pledge then made remains as vital as when given. We desire to take a few minutes to relate the facts regarding the reason for this dedication. They occurred many years ago, when largely increased motor vehicle fees were proposed. In recent discussions of this subject they have been largely overlooked. Aside from funds reasonably necessary to maintain the department there appeared then, as now, no moral or legal reason why use of motor vehicles should be taxed beyond the use of other property, except that the revenues therefrom should be used for some purpose of particular benefit to the taxpayer, and then only when the promotion of the particular benefit is in the general welfare. To otherwise tax would amount to unequal taxation.

The early motor vehicle acts had provided only for revenue reasonably adequate to insure efficient administration of the act. During the preceding years New Jersey had developed a splendid system of macadam roads—the pride of the nation, and the first state-wide system of improved highways on the Western Continent. Upon the advent of the automobile these roads began to ravel. By the time the first regulatory act was passed they were in bad condition. This, indeed, was one of the major reasons for its passage. In a few years more they were practically destroyed. The wrath of farmers and of horsemen was unbounded. They insisted that the motorists should pay for the damage they had caused. Motorists also were mad. They said the Government owed them, as members of the general public, a suitable highway system. Eventually an understanding was reached. This understanding was no implied or theoretical affair. It was the result of actual negotiations between the State's Highway Department, representatives of highway users, of farmers, of organized motor clubs, of the Motor Vehicle Department, and of other interested groups. In general effect the moral agreement was that the State and the several municipalities should continue to provide roads which would have been suitable for highway users before the advent of motor vehicles, and that the

motorists should provide, through registration and license fees, for the improvements necessary for their added use, and for their maintenance. More equitable and more sacred moral compacts seldom have been entered into. And the reasons for their continuance are as valid now as those which existed at the time the agreement was made. In morals they are as binding now as it was a third of a century ago.

If, and when, prevailing motor rates do not produce sufficient revenue to keep the motorists' part of that agreement the fees should be increased to an amount necessary to do so. If, and when, they are found more than sufficient the fees should be reduced not misappropriated. Under such circumstances the repudiation of the former dedication amounts almost to moral embezzlement.

Again, with fish and game revenues, much the same argument may be used. Fishing and hunting may not amount quite to an unalienable right, as is the right of common use of highways by all legitimate highway users, though some do so regard it; and under English custom clearly, at least, it is nearly so. It seems entirely proper under the legislative police power, to regulate its exercise; and to tax it, but only for the purpose of its own promotion and benefit. But it is as clearly beyond that power to tax it for the general public benefit as it is to segregate any other legitimate conduct for special taxation to produce general public revenue. It seems in morals, at least, to be as clearly wrong as would be general taxation, for instance, of church going, or school teaching.

All such "rights" now are reasonably protected from unreasonable encroachment by wise interpretation of the Constitution. They should not by any means be defeated by constitutional amendment. To us it seems that the present proposition to place all revenues into one general fund is an emanation of thoughtlessness, with at least a trace of cupidity. Easy money being in sight, why not take it? When, several years ago, necessary general revenues were hard to collect, there was a determined effort, even among honorable men, who should have been more thoughtful, to pillage the motor vehicle highway funds. It was asserted that highways were not so much needed at that time as relief. This of course was true. But no one seems seriously to have urged that, if highway funds must be taken, the honest way would have been to borrow the necessary funds from the highway fund, to be repaid when the relief burden had been raised, and if not then needed for reasonable development of the highways, to be returned to highway users through reduced fees and taxes. It was dishonorable to thus compel motorists to pay more toward relief than their equitable share. The whole thought seemed to be to take by force and to keep by force—immoral force—always the agent of tyrants. Again, years ago, the new railroad tax, the more willingly paid by the railroads because it was to be used for educational purposes,

hardly had become effective before avaricious public revenue spenders began to grab parts of it for their own use. There seems to be something in the best of us which "winks" at, if it does not actually condone such immorality. Let us not encourage it through constitutional amendment—let us not employ expediency in the place of right.

The proposed provisions of the Commission relating to appropriations bills, and to borrowing on bonds, seem worthy of unanimous approval, and we trust such approval will be accorded.

Respectfully submitted,

NEW JERSEY STATE GRANGE
D. H. Agans, Master

NEW JERSEY FARM BUREAU
H. Earl Probst, Secretary

PUBLIC HEARING

August 26, 1942

Morning Session

on

Proposed Revision of the New Jersey Constitution
Article VIII. "Elections and Suffrage"
Article IX. "Amendments"

The Joint Legislative Committee appointed pursuant to Senate Concurrent Resolution No. 19, passed June 15, 1942, convened in the Assembly Chamber in the State House at Trenton on Wednesday, August 26, 1942, at ten-thirty o'clock A.M., for the purpose of holding a Public Hearing in connection with the Proposed Revision of the New Jersey Constitution (1942) pursuant to announcement previously made.

The following members of the Joint Committee were present: Hon. Manfield G. Amlicke (presiding), Hon. John M. Summerill Jr., Hon. H. Rivington Pyne, Hon. Dominic A. Cavicchia, Hon. Vincent S. Haneman and Hon. Mildred A. Preen.

The Chairman opened the Hearing and the Hearing proceeded as follows:

MR. AMLICKE: The meeting will come to order. The program for the day will be the consideration of Articles VIII and IX.

We will first take into consideration Article VIII, and I will ask Mr. Winston Paul to present the speakers in favor of the proposed Article VIII. Mr. Paul.

MR. PAUL: Mr. Russell Watson, representing the New Jersey State Chamber of Commerce.

MR. WATSON: Members of the Committee: I would like to speak very briefly on Article VIII, particularly Paragraphs 1 and 2. The Commission states, at page 27 of its Report, (p. 928), concerning these paragraphs:

> "The requirement which, in effect, keeps questions from being submitted at a special election is a departure from past practice. It was once thought that the voters' attention could be concentrated on a particular question by holding a special election. Experience has proved, however, that the added and substantial expense of special elections is unwarranted because all such elections have been but lightly attended by voters. The new requirement of submission at general elections will assure that the true sense

of the greatest possible number of qualified voters will be taken on public questions."

Thus, it appears that it was the intention of the Commission by these paragraphs to restrict the referenda on special questions to general elections. It seems to us that these two paragraphs might be read so as to require that such questions could be submitted only at general elections, and that all general elections must be held on the first Monday in November, and that therefore the spring elections, county and municipal spring elections, might become unconstitutional. If there is anything in that apprehension, we suggest that Paragraphs 1 and 2 should be re-phrased.

The only other significant new provision in the Article is in the last sentence of Paragraph 7, which provides that registration shall be upon personal application in the case of the first registration of any voter and shall remain effective for such period as the Legislature may require. There are many arguments pro and con upon the subject of personal registration. The Chamber submits that whatever be the validity of those arguments, the first vote, at least, should be based upon personal applications for registration. Suffrage is the basis of our democratic system, and it should be kept as clean as possible.

Therefore, with a clarifying change in Paragraphs 1 and 2, the Chamber advocates Article VIII.

MR. AMLICKE: Mr. Mortimer Eisner.

MR. EISNER: On Article VIII, I have taken the position, as I have on the previous articles, that while there may be questions with respect to composition as carrying out the clear intent of what the phrase of this Article intended, it does substantially, in my opinion, represent a piece of advance thinking that should be well incorporated in the general law of the State of New Jersey. I don't want to go into detail on it and I make only the one point which seems to me to be material, and that is this: The substitution in both Article VIII and the subsequent Article, Article IX, of general election for special election, is in my opinion a most necessary and salutary change. I believe, not merely on the basis of the economy that will be gained for the people of this State, because if that were all that is necessary we could well stop here—a trifling sum of $700,000 to hold a special election means very little waste in a State which has lived through the squandering of money and the waste of time and effort under this Constitution for years—but I do look on the change as a salutary one because it seems to me that more important than anything else is the necessity of educating the people in their Government and stirring up an interest of the people in their Government. It is notorious that special elections are not considered nor well attended and that being the situation, the only hope is that at a general election these issues will come before the people and that under those conditions

the people will be stirred up. They may be educated because their minds will be focused on one thing at a general election in each particular case. For that reason, Mr. Chairman, I subscribe entirely to Article VIII and Article IX.

MR. AMLICKE: Mr. Paul, do you have any other proponents whom you wish to present at this time.

MR. PAUL: No.

MR. AMLICKE: Commissioner Miller, do you care to be heard?

MR. MILLER: On Article IX, Mr. Chairman.

MR. AMLICKE: Are there any others who wish to be heard as proponents of the proposed Article VIII? If not, the next speaker will be Mr. R. Robinson Chance, representing the Manufacturers Association of New Jersey, speaking in opposition to the proposed Article VIII.

MR. CHANCE: Mr. Chairman and Members of the Committee:

It seemed to me that the remarks of Mr. Watson ought almost to have been classed as being against because he doesn't want it as it is; he wants it made different, and that means against in my language.

However, I noted at one of the earlier hearings that the matter of suffrage had been demoted, so to speak, from its position of Article II in the present Constitution, to Article VIII in the proposal captioned here "Elections and Suffrage."

Appearing on the same basis that I stated in the opening paragraphs of my remarks at the first hearing, I take up the text of that Article.

The first provision provides for general elections to be held on the first Tuesday after the first Monday in November just as does the present Constitution. However, it is observed that the present Constitution Article IV, Section II, Paragraph 3 contains a provision which would permit the Legislature to alter the time of holding such election, whereas the proposal contains no provision of that kind. Which is superior is hard to say. I suppose there could be a great emergency on the regular day that the election is supposed to be held so that it would be impossible to hold it. If that were the case, it might be wise to have a provision such as is in the present Constitution which would provide that the Legislature could make other arrangements. At any rate the proposal does definitely say that such elections shall be so held.

The second sentence of the first paragraph requires the election of the Governor and Members of the Legislature at a general election. Up to that point, no question can arise. Some question is presented, however, by the words.

> "Such local officers as may be provided by law shall be chosen at a general election."

These are the last sixteen words of Paragraph 1. Does this mean

that whenever the law provides for local officers they shall be chosen at a general election, or does it mean that local officers shall be chosen at a general election if it is so provided by law? There seems to be some ambiguity in this phraseology. It does not seem clear beyond reasonable argument that this paragraph would not require that local officers provided by law be elected at the general election. If this view were accepted the election for some of the local offices now held in the springtime might be thrown into the November election. Nothing in the explanation indicates that such an interpretation is not what is intended. There seems to be room for clarification in this regard.

The second paragraph is entirely new. It would require questions subject to a vote of the people to be submitted at the general election, or in the case of local propositions at a regular county or municipal election. The argument in favor of this provision made by the explanation in the report, that added and substantial expense would be saved by this method, is undoubtedly accurate. The other argument that the new requirement will assure that the true sense of the greatest possible number of qualified voters will be taken on public questions is not nearly so convincing.

I have made no statistical research, but I imagine that it would be found that in most cases the number of votes cast on public questions at general elections falls below the number of votes cast for candidates running for office in such election. If this is so, it may mean that at general elections the voters' attention is really more concentrated on candidates than on questions submitted.

Morever, another possibility suggests itself; namely, that the failure of voters to participate in the special elections in the past may really indicate that a lot of the questions so submitted were matters in which the majority had no interest, and that their failure to vote was really an indication on the part of the voters that they had no enthusiasm in favor of the matter submitted to referendum. I think that on a question in which the people are really interested, they will come out to vote regardless of whether the matter comes up in a general election or in a special election. The past records may indicate that the majority of the voters have had a tendency to discount propaganda as to the necessity or desirability of various measures which by one kind of pressure or another have been proposed for referendum.

The net result of the foregoing considerations is that the only certain argument that I see in favor of the submission at a general election is its economy. The main argument the other way is that campaign funds supposed to be used to promote various candidacies might be diverted to propaganda for or against a question submitted at a general election.

The only changes from existing requirements seen in the third paragraph are that it would make registration a prerequisite to

voting and the provision about qualified voters being entitled to vote "upon all questions which may be submitted to a vote of the people."

No reason is seen why previous registration is not desirable. The only suggestion with respect to the quoted provision is that it might be an improvement if it were clearly indicated that the submission "to a vote of the people" refers to submission by the legislative authority. Probably that is what the phraseology would be deemed to mean, but no harm could come from an additional provision so specifying. This suggestion is prompted by the fact that I believe one of the speakers at an earlier hearing suggested that if a change in the Constitution were not effected with respect to the basis of representation in the Legislature, other ways might be found to accomplish the result. It is wondered if the speaker had in mind the submission of some amendment not authorized by the Legislature and submission in a manner not authorized by the present Constitution. A provision saying that these votes of the people were on submission of the Legislature might be an additional safeguard against any "rump convention" or any referendum not authorized by law. Such rump conventions can cause trouble and difficulties as we know in the instance of Dorr's Rebellion in Rhode Island. The case of *Luther* v. *Borden* in the United States Supreme Court also throws some light upon the circumstances of that rebellion.

The fourth paragraph, stating certain disqualifications which would prevent one from enjoying the right of an elector, is the same as the present provision except that the present Constitution includes in the category of disqualified persons one "convicted of a crime which now excludes him from being a witness unless pardoned or restored by law to the right of suffrage," whereas the proposal makes the test dependent upon whether the conviction is of a crime which at common law would have excluded one from being a witness.

To understand these provisions it is necessary to know what are the crimes for conviction of which in 1844 one would have been excluded from being a witness, and what crimes the conviction of which at common law would have had that same effect.

These matters are discussed in a recent book entitled "Evidence in New Jersey Practice" by Lodge, Section 39, in which one of the authorities cited is *State* v. *Henson*, 66 N. J. L. 601. The gist of the matter is that before 1874, and that includes 1844 when the Constitution was adopted, the subject was governed by a New Jersey statute passed in 1779, that no person convicted of blasphemy, treason, murder, piracy, arson, rape or sodomy or any infamous crime against nature, or bigamy, perjury, forgery or larceny above the value of $6.00 should be admitted as a witness unless first pardoned, and that no person convicted of perjury or

subornation of perjury should be admitted as a witness although pardoned. Accordingly, those were the crimes to which the present Constitution referred. In 1874, however, the law was changed. The law now seems to be that unless there is a definite statutory provision to the contrary, no person is excluded from being a witness as a result of conviction of crime, the conviction going to credibility rather than competence. The only exception seems to be in the case of certain crimes with respect to elections. Accordingly, if a new Constitution were adopted now which only excluded from the rights of an elector a person convicted of a crime which now excludes him from being a witness, using now the same word that is in the 1844 Constitution, the only crimes covered would be certain crimes involved in the election laws. It was evidently in recognition of this that the draftsmen of the proposed Revision changed the word "now" to the words "which at common law would have excluded." The only criticism that suggests itself to me in this connection is that in the case of *State* v. *Henson* above mentioned it is indicated that the English judges did not attempt to give an exhaustive list of the crimes which rendered the perpetrator infamous and incompetent to testify, but dealt with each case as it arose. In other words at common law certain things were known to exclude one from being a witness, but just what the limits of it were did not seem to be defined. This being so, the common law test which the proposal would adopt seems to be possibly an indefinite test. It would probably come nearer to accomplishing the result desired if the test were made a crime which prior to 1874 would have excluded one from being a witness.

It is not observed that any substantial changes are made by the fifth and sixth paragraphs respecting absentee voting by persons in the military or naval service. While the present Constitution provides that the Legislature shall have power to provide for such voting, and the proposal says it shall provide for the same, the present provision is probably mandatory. At any rate, it is followed, so no objection is offered to the fifth and sixth paragraphs of the proposal.

The seventh paragraph is new, so far as constitutional provision is concerned. It requires personal registration as a qualification of voters, the same to remain effective for such period as the Legislature may prescribe, and allows the passage of laws for the ascertaining by proper proofs the citizens who shall be entitled to the privilege of suffrage, and for the registration of all qualified voters. I offer no adverse criticism of this paragraph.

The only further thought that I would mention with respect to this article is that the subject matter thereof seems to me clearly separable from the other provisions of the proposal, and I see no reason why, if it is desired to submit this subject, it cannot be done separately rather than as a part of a revised Constitution

to be submitted as a whole. In this connection, I may also note that when I addressed myself to this "all or none" subject upon a previous occasion, one question was asked, if I would read one part of a case or the whole case in determining its significance. The evident thought of the questioner was that I was putting too much stress on page 11, of the Report (p. 912), when I indicated that the commission evidently intended to have submitted to the people for acceptance or rejection as a whole " A revised Constitution for the State of New Jersey, the text of which is set forth in Paragraph 2 of this report." Since then, I have again examined the whole report in this regard. And the references throughout the report, beginning with the statement of transmittal and continuing to the title page of the proposed text, page 31 (p. 930), fortifies rather than detracts from the view that the Commission recommended by its report the submission of the particular text on the basis of acceptance or rejection as an entirety. For instance, it is said on page 9 (p. 910), "the document submitted in this Report"; page 10 (p. 911), "in the proposed revision" is used and also "this Constitution will not" and again "This Constitution will" on page 10 (p. 911), I skip page 11 (p. 912); at page 13 (p. 913), in the heading I read "the proposed Constitution"; at page 15 (p. 914), is the heading "what is new in the revised Constitution" in one line, and under that "the revised Constitution." After speaking about the questions presented, it is said "the revised Constitution answers them" etc.; the title page of Part II reads "Text of the Proposed Constitution" etc.; and all through the explanation it is clearly manifest that what it was intended should be submitted to the people to vote for or against as a whole is the text annexed to the report. As I have said before, I say again, I see no reason why separate articles should not be separately submitted, as it was done in New York, and no reason why the manner of amendment provided by Article IX of the present Constitution could not be utilized if any change is made. Neither do I see any reason why this subject of suffrage and elections should be relegated to eighth place. I think it belongs back alongside the Bill of Rights as Article II, where it appears in the present Constitution.

MR. CAVICCHIA: Mr. Chance, I must say again, just to clarify this point, the Commission did not say we believe this is the only form of Constitution which can give to New Jersey sound government. The Commission said the result, it believes, is a document which can meet the demands of sound government. Naturally, the Commission has its own proposal and naturally, in discussing the proposal, it must refer to it as "the Proposal," and I say, again, that as a member of this Committee I don't interpret the Commission's Report to say that the Commission believes that its document is the only one that should be adopted.

I just thought I would make that observation in view of your several statements just now.

MR. CHANCE: Well, I don't see that that is any question I am supposed to answer. You have just put that on the record alongside mine in the report, and they can read them together.

MR. CAVICCHIA: To sort of balance what you said, Mr. Chance.

MR. CHANCE: Maybe it does; I don't know. I certainly hope that the other members of your Committee agree with you, that maybe the Commission doesn't think this is all that could be said.

MR. AMLICKE: Mr. Arthur J. Edwards at this time will speak in favor of modification of the proposed Article VIII.

MR. EDWARDS: I want to call attention, in a precautionary way, to Paragraph 7 here, registration to be upon personal application in the case of the first registration of any voter. When this Article comes to its final drafting, I think that extreme care should be taken that there is no conflict between this paragraph and the laws which the United States Congress may make for absentee voting for soldiers. At the present time there is before Congress—it has passed the House, it has been recommended by the Committee on Judiciary of the Senate but I don't know whether it has actually passed yet or not—is a bill by Ramsey of West Virginia, which provides for the registration by the commanding officer of any soldier or sailor on duty in Continental America. The point is that there should be nothing in our Constitution which will prevent the receipt of the vote of the absentee soldier or sailor who enlisted before he was twenty-one and who had no chance to register in his own State, or who neglected to register, when and if the military service sends the vote in from his position in the field. I don't know the final text of that bill because it is in progress now, but it has in it a phrase which rather upset me, that signature before the commanding officer would be considered as a qualification to vote. The point is purely precautionary, to see that no conflict occurs between the federal laws and our laws in the matter of first registration.

MR. AMLICKE: Are there any others who wish to be heard in connection with Article VIII?

The Committee is very much surprised there is so little controversy about Article VIII. We shall now proceed with discussions on Article IX.

The first speaker will be Mr. Russell Watson.

MR. WATSON: Mr. Chairman and Gentlemen of the Committee:

In speaking to Article IX, it seemed to me in preparing this statement that there are two phases of the subject; namely, the difference between the present Article IX and the proposed Article IX, which boils itself down to this: Do you favor an easier or more difficult method of amendment; and also a much more—

the much more—I hesitated because I have discussed this with the Chairman—and also the much more important question whether the method of amendment or the method of adopting this revision proposed by the Revision Commission is valid under our present Constitution. This is a question germane to the present Article IX. Therefore, I had prepared to discuss that phase of the question; not only that, but the State Chamber of Commerce through its very efficient Mr. Joseph H. Furman released what I am about to say to the press. It seems to me it is germane to the present Article IX, and with your permission, I will discuss it.

Let me say I am not prepared to present, I do not intend to present, a technical legal argument. It is short, concise and can be done in ten or fifteen minutes. It is based upon two or three fundamental principles of law. If you agree those principles of law are sound, I think you will agree with the conclusion. If not, it will lead you to a different conclusion. With your permission I will speak to that.

The present Article IX provides that any specific amendment, and please bear in mind the word "specific," that any specific amendment or amendments may be proposed in the Senate or General Assembly, and if agreed to by two successive Legislatures, it shall be submitted to a referendum at a special election, provided that if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

The proposed Article IX provides that any specific amendment or amendments may be proposed in the Senate or General Assembly and if approved by two-thirds of each House, shall be submitted to a referendum at a general election, provided that if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly, the latter clause being alike in both provisions.

The Revision Commission recommends that the Legislature, through suitable enabling legislation, request authority from the people to submit a revised Constitution. I don't want to labor that point which Mr. Chance brought out. We have talked about it over and over; let it rest here. When this Committee confers publicly or privately with the Commission, I think they will unanimously tell you that not one member of the Commission was so presumptuous as to expect that this is the law of the Medes and Persians, to be taken or rejected as a whole. It is their recommendation and what goes to the people in their view will be what the Legislature adopts if the original authority is granted; so let that dispute rest upon what the Commission say themselves when they come here.

To go back, the Revision Commission recommends that the

Legislature, through suitable enabling legislation, request authority from the people to submit a revised Constitution, and that upon a favorable vote of the people on this question, a revised Constitution be incorporated in a legislative bill and be enacted as a law and be submitted to a referendum at a general election in such form that the people will vote either for or against the document as a whole. This recommendation presents the question whether a revision can constitutionally be adopted by this method or whether the present Article IX is exclusive and the Constitution may be revised or amended only pursuant to its provisions. We shall address ourselves first to this question, and as I said, not in a technical way, but basing our argument on two or three fundamental principles of law. It seems to me to be quite clear, but perhaps I am wrong.

Opponents of the proposed Revision argue that the present Article IX provides the only method by which the present Constitution can be amended or revised. They argue that the present Article IX is a contract, upon the performance of which the minority may insist.

Let us first controvert that statement, which is the basis of the whole argument. We say that Article IX does not contain the only provision in the existing Constitution for constitutional change. Paragraph 2 of Article I of the present Bill of Rights also provides for constitutional change. It reads as follows:

> "All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it."

We say that the Constitution may be revised by any method which finds its sanction in the act of the people under that paragraph. This paragraph in the Bill of Rights is a clear declaration of the right of the people to change the Constitution otherwise than through the present Article IX.

Let us consider the differences between the two paragraphs and by the two paragraphs, I mean the present Article IX and this Paragraph 2, Article I of the Bill of Rights.

The present Article IX relates to any "specific" amendment or amendments and provides that if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

This article, this present Article IX, does not relate to or contemplate a revision, and here we come to the first fundamental principle of law upon which we stand. This article does not relate to or contemplate a revision because there is a clear and fundamental distinction between "revision" and "specific amendment."

The present Article IX relates only to specific amendments; it permits only specific amendments.

Revision implies a re-examination of the whole law and a redraft without obligation to maintain the form, scheme or structure of the old. A revision is a new instrument, in form a complete document to be submitted as a whole and standing or falling as a whole. Amendment, on the other hand, implies continuance of the general plan and purport of the original, with corrections to better accommodate its purposes. Amendments relate to particular sections and are submitted as such to be voted upon separately. Basically, revision suggests fundamental and thorough-going change, while amendment is a correction of a specific provision or a series of specific provisions. This fundamental distinction between revision and amendment is recognized in all the judicial precedents and by all authoritative writers on the subject. The distinction is particularly applicable to New Jersey procedure and is emphasized by the language of the present Article IX which authorizes the submission only of "specific" amendments, clearly implying that the article does not relate to or permit a revision. Incidentally, the adjective "specific" modifying "amendment" appears in only two of the State Constitutions which contain a similar paragraph. I believe there are some twelve or fifteen similar paragraphs in other States, but only New Jersey and Massachusetts employ the word "specific" to modify the word "amendment," and we think its meaning is unmistakable.

What is meant by "specific amendment"? Obviously, these words relate to such amendments as the so-called "horse racing" amendment of the present Constitution. This was a specific amendment dealing with a definite subject which could be voted for or against separately and distinctly. This is the kind of amendment that can be and constitutionally should be submitted under the present Article IX.

Are we then to conclude that because a revision is not a "specific amendment or amendments," the people are irrevocably precluded from considering a revision? We say, "No." It is found in Article I, Paragraph 2, above quoted, which declares that all political power is inherent in the people; that government is instituted for the protection, security and benefit of the people; and that they have the right at all times to alter or reform their government whenever the public good may require it. This is one of the fundamentals of the Bill of Rights.

We insist that those who will argue that the present Article IX is the exclusive vehicle of constitutional change give thought to Article I, Paragraph 2, and if they conclude that it does not empower the people to authorize and adopt a complete revision as one document, tell us what the paragraph does mean. In our view, it is susceptible of no other construction.

Now I come to our second fundamental principle of law. Those

who look to the present Article IX as the only means of constitutional change ignore the fundamental legal principle that the right to alter the Constitution is not a legislative power. It is essentially the people's power and may be authorized and exercised only by them. They reserved this right in the broadest possible language by Article I, Paragraph 2. They granted to the Legislature the right to submit only specific amendments by the present Article IX. The basic distinction between a constitutional revision and a specific constitutional amendment explains the different scopes of the present Article I, Paragraph 2, and the present Article IX. The right to submit a revision by the constitutional convention method, which is not here in issue, has been sustained in other jurisdictions where the question has arisen upon the basis of this fundamental principle of constitutional law. The method proposed by the Revision Commission rests upon the same principle.

The Revision Commission recommends that the Legislature request authority from the people to submit a revised Constitution. Thereby, the people would sanction the process of Revision. The Revision Commission also recommends that if the people grant such authority, the Legislature incorporate a revised Constitution in a legislative act—you see, they say a revised Constitution in a legislative act—and submit it to a referendum at a general election. Thereby the people would adopt or reject the revision. The result would speak the popular will. The entire procedure would find its sanction in Paragraph 2 of Article I, the Bill of Rights, which reserves to the people all political power and the right at all times to alter or reform their government through their chosen representatives—this is a representative democracy—through their chosen representatives, the Legislature.

We will next discuss the recommendation of the Revision Commission that the revision be submitted in such form that the people will vote either for or against it as a whole. This recommendation is based in part upon the legal distinction between revision and specific amendment; namely, that a revision is a complete document necessarily to be submitted as a whole and standing and falling as a whole, while amendments relate to particular sections; and in part upon the realistic practicality that no other method is feasible. And we will give you two or three practical illustrations of that.

The Revision Commission said on page 11, of its Report (p. 912), in support of this "whole or none" consideration:

"The Commission is of the opinion that the foregoing procedure is the most efficient, economical and speedy method for ascertaining the will of the sovereign people to adopt a new Constitution. It also conforms to the best accepted American constitutional theory and tradition. It is impractical to utilize the amending method provided by Article IX of the present Constitution. The

great number of interdependent changes which under this article would have to be submitted to the people separately should not be torn apart by piece-meal acceptance if we are to have a workable Constitution. In addition, under Article IX it would be necessary to submit separate amendments in a special election at an estimated cost to the State of $700,000. Furthermore, at no special election in the history of the State have a majority of the voters ever participated, and it is inimicable to the democratic process that a minority of the people should pass upon comprehensive revision of the fundamental law. In the unanimous opinion of the Commission, the only feasible alternative to the method which it recommends is a constitutional convention."

The unanimous opinion of the members of the Commission formed after exhaustive study and reflection is entitled to great respect.

Now, I come to these practical illustrations. Let us cite some practical illustrations which illustrate the soundness of this reasoning. Here I have to stick rather closely to my text.

Article V, the judiciary amendment, would reconstruct the entire judicial system. Section II of Article V would create a Supreme Court which would be a court of appellate jurisdiction in the last resort. Section II, this new section, would supplant six specific paragraphs of Article VI, Section II of the present Constitution, which creates a Court of Errors and Appeals. So much for that.

Section III of Article V of the proposed Revision would create a superior court of general State-wide jurisdiction, and Section IV would create two appellate divisions. Section III and IV would supplant numerous specific paragraphs and sections of the present Article VI.

The question presents itself; Is the proposed Article V a "specific" amendment within the meaning of the present Article IX, or is it a series of specific amendments? It could be argued persuasively that the proposed Article V is a series of specific amendments because it would supplant two articles and many specific paragraphs and sections of the present Constitution. In such case, the proposed Article V would have to be broken up into a series of specific amendments which could be voted upon separately, and if some were adopted and some were rejected, we would find ourselves with some of the new courts and some of the old courts with conflicting jurisdictions. The outcome would be unpredictable and the result might be hopeless confusion.

We think that Article V is not a specific amendment but is a proposed reconstruction of our entire judicial system, which would replace the form, scheme and structure of the present system and therefore is a revision which could not be submitted under the present Article IX and could properly be submitted only under

Article I, Paragraph 2, as an alteration or reformation by the people of their government.

Article IV of the proposed Revision is another illustration. Its fundamental proposal is to clothe the Governor with executive authority and responsibility. The article would work a fundamental change in that it would transfer to the Governor certain powers which now could be exercised only by the Legislature. It is a new conception. It must stand or fall as a whole, depending upon whether a majority of the people agree with the philosophy of government which it expresses. Is it a revision or a series of specific amendments? Obviously, it is a revision. It would supplant several specific paragraphs of Article V and several specific paragraphs of Article VII and would introduce several entirely new provisions. If it be a revision and not a series of specific amendments, as we think, it could not be submitted under the present Article IX. If it be considered a series of specific amendments and were submitted under Article IX and if some were rejected and some were accepted, the result might be a meaningless jumble.

This is what might happen: As just noted, the proposed Article IV would transfer to the Governor certain powers now belonging to the Legislature. The proposed Article III would revise legislative procedure and powers in important respects. The two are interdependent in this aspect and others as well. Suppose that Article III and Article IV were submitted as separate specific amendments and suppose that Article III were rejected and Article IV were accepted. The result would be that the Legislature would retain some powers under the old which, at the same time, would have been transferred to the Governor under the new—an inexplicable and unworkable paradox.

These illustrations could be multiplied many times. Careful study of the document from this view point leads to the conclusion that the proposed Revision is, in fact, a revision and is not a specific amendment or a series of specific amendments and therefore could not be submitted under the present Article IX; and that the proposed Revision is, and any revision which might be substituted therefor by the Legislature would necessarily be, an integrated document which, in practice, could not be separated into segments which could be separately adopted or rejected, because the result would be unpredictable. Practicality permits no alternative to rejection or adoption of a thorough-going revision as a whole.

Nearly one hundred years of experience have demonstrated that it is practically impossible to submit a revision to the people for their consideration by the Article IX method. Anyone who doubts this statement will be convinced by reading the scholarly treatise—I am sure you have all read it; if anyone hasn't, he or

she should—entitled "The New Jersey Constitution—A Barrier to Governmental Efficiency and Economy," written by Dr. Charles R. Erdman Jr., and published in 1934. All that the Revision Commission recommends is that the people be offered the right to alter that Constitution, the right which they reserve by Article I, Paragraph 2 of the present Constitution. They may accept or reject the offer as they may choose. This is the keystone of democracy.

Those who insist that Article IX is the only method of constitutional change, in effect, are (this I submit is absolutely undeniable) opposed to any revision because a thorough-going revision of this kind such as the Legislature may submit, for this is the thing that the organization for which I speak thinks is absolutely essential to the welfare of the State of New Jersey and to the cause of good government, is unobtainable under Article IX. Article IX legally doesn't permit the submission of a thorough-going revision and it is just impossible to put one together that would be, under any and all turns that the voting may take, as the Commission said, a workable document.

It may be argued, and it has been said here this morning, that New York State recently submitted separate amendments. That isn't so.

Incidentally, the New York situation and the New Jersey situation are not analogous because the amendment provisions of the two Constitutions are different, but even under the New York amendment, which doesn't present the difficulty our Article IX presents, the main body of the last change was presented to be taken or rejected as a whole.

There were nine amendments.

The first was a comprehensive revision affecting 20 articles and 135 sections—twenty articles comprising 135 sections, of which 15 were new. I think there are only about 150 or 160 paragraphs in this.

The first New York amendment was a comprehensive revision affecting 20 articles comprising 135 sections of which 15 were new. All of these 20 articles and 135 sections were submitted as one amendment for adoption or rejection as a whole. They were, in effect, a revision and did not constitute a specific amendment.

This procedure would be impossible under our Article IX, which requires that specific amendments be submitted in such manner that they can be voted upon separately, and is like that proposed by the Revision Commission.

So it appears that the first amendment submitted to the New York electorate contained 135 sections and was submitted for adoption or rejection as a whole precisely as is proposed by our Revision Commission. Time doesn't permit an exposition of these 20 articles and 135 sections. Read them for yourselves and the reading will bear out that statement.

What about the other eight amendments? They were amendments which could be passed upon separately and adopted or rejected without affecting the main body of the revision comprising these 135 sections. What were they? They were such subjects as legislative apportionment, which can stand or fall by itself without affecting the others; elimination of railroad grade crossings; low rent housing; judicial review of administrative orders; and the like. Mostly, these separate amendments, which could be voted on separately, dealt with subjects which are not incorporated in our present Constitution or in the proposed Revision.

As I said, the New York and New Jersey situations are not analogous because the provisions of the two Constitutions respecting amendments are entirely different. However, be that as it may, the fact is that the main body of the amendments submitted was voted upon as a whole and the proposals thereof were not submitted separately.

So much for the procedure proposed by the Revision Commission.

If I may now address myself very briefly to the proposed Article IX, it is really a middle of the road proposal. It depends upon whether you favor quick and easy amendment of the Constitution or whether you favor mature deliberation, whether you favor permanency, some degree of permanency, in your Constitution, or whether you favor currency. The present Article IX would be changed so as to provide that specific amendment or amendments might be submitted to a referendum if approved by two-thirds of the members of each House of any one Legislature. The present requirement that any specific amendment or amendments be agreed to by two successive legislatures would be discarded.

Another change would be that the referendum would be held at a general election instead of at a special election, thus insuring participation by a larger proportion of the electorate. I didn't intend to speak of that—it has been mentioned—but the deplorable fact is that it is the great weakness in our democratic system that many, many people otherwise good citizens do not exercise their franchise but will do so if it comes to them as a duty. There are many, many voters who would not go to a special election to vote on an amendment, but who, knowing that they would have to vote upon it at a general election, would inform themselves and inquire about it and make up their minds and vote. It is a fact, a deplorable fact, but nevertheless a fact.

Now, getting back to Article IX, we think that changes in the fundamental law should receive more deliberation than changes in statutory law. The former give expression to basic law and principles of government; the latter are current.

The requirement that any specific amendment or amendments be passed by one Legislature instead of two successive Legislatures would make constitutional amendment more expeditious than at present. The requirement that the amendment be approved by two-thirds of each House would entail a high degree of legislative study and deliberation which is now sought by the present requirement that the amendment be agreed to by two successive Legislatures.

The proposed Article IX, like the present Article IX, is limited to "any specific amendment or amendments" and would not relate to a revision by the constitutional convention method or by the method presently proposed by the Revision Commission, both of which would still be available under Article I, Paragraph 2 of the proposed Revision.

The proposed Article IX would expedite the amendment process and at the same time would insure mature legislative deliberation and consideration by the greatest number of voters possible and, therefore, the Chamber advocates it.

Thank you, members of the Committee.

MR. AMLICKE: Mr. Paul.

MR. PAUL: Commissioner Spencer Miller Jr. will be the next speaker, Mr. Chairman.

MR. MILLER: Mr, Chairman and Members of the Committee:

One of the most important things about a good Constitution is that it is subject to change. George Washington recognized this fact when he wrote to Bushrod Washington on November 10, 1787, concerning the new United States Constitution, which he had helped to formulate:

> "The warmest friends and the best supporters the Constitution has do not contend that it is free from imperfections; but they found these unavoidable, and are sensible, if evil is likely to arise therefrom, the remedy must come hereafter. In the present moment it is not to be obtained; and as there is a constitutional door open for it, I think the people (for it is with them to judge), as they will have the advantage of experience on their side, can decide with as much propriety as ourselves on the alterations and amendments which are necessary. I do not think we are more inspired, have more wisdom, or possess more virtue, than those who will come after us."

The making of the present United States Constitution was a peaceful constitutional revolution, made necessary because the old Articles of Confederation were so difficult to amend that it had been impossible to make the changes which experience proved indispensable if the new Republic was to maintain the liberty and win the security which only effective and responsible government can provide.

Washington and the other great men who helped to found this Republic had good reason to know that the very life of a Constitution may depend upon its amendability. This is wisdom which we must never forget.

There is another piece of wisdom in Washington's statement which we need to remember. That is, that neither virtue nor wisdom can be expected to die with the passing of any generation. If it did, no amount of foresight and no rigid constitutional prescriptions would avail against the inevitable consequences of folly and depravity.

On the other hand, a Constitution should, by definition, be basic law, expressive of the more enduring principles and features of the political order, and embodying the tested political wisdom of the community.

A Constitution, therefore, must be sufficiently adaptable to permit people to profit by their own experience and to enable government to meet new needs as they arise; but it should not be so changeable as to veer with every temporary wind that blows. The framing of an appropriate provision for the amendment and revision of a basic law is therefore a vitally important and extremely delicate operation. In this connection there is one point about which most critics of the New Jersey Constitution agree; namely, that the method of amendment prescribed in Article IX of the present Constitution has not proved satisfactory in operation. Before examining the reasons for this and considering possible remedies, we should remember that the flexibility and even the amendability of a Constitution do not depend solely upon the language of the amending article. There is, first, the inherent right of the people to adopt a new or revised Constitution by means of a Convention, or in any other peaceful manner consistent with republican principles. This right of the people antedates and transcends any written Constitution. It would be absurd to contend that the people of one generation could, by making a Constitution, deprive future generations of the same basic right.

But the real test of a Constitution is its adaptability year in and year out, to changing conditions and concepts, without repeated or extensive changes in its text.

It must be, in fact, a living Constitution. Governor Edison has phrased this happily when he said, "The Constitution is for the living, not the dead." The primary reason for the amazing durability of the United States Constitution substantially as written in 1787 is its brevity and the general terms in which it was written. It took just six thousand words for the Founding Fathers to formulate the basic charter for this nation one hundred and fifty-five years ago. It has required over a million words for the United States Supreme Court to interpret that basic law in the light of new cases that have been brought before it in a century and a half. It provided only the essential frame of government,

leaving to the people of successive generations to fill out that frame through legislation, judicial interpretation and custom. It is, therefore, no accident that the judiciary provisions of the Federal Constitution are perfectly satisfactory today, whereas the judiciary provisions of the New Jersey Constitution of 1844, which are several times as long, are quite unsatisfactory. In explanation, we need only to know that the New Jersey Constitution devotes more space to the now practically obsolete office of justice of the peace, than does the United States Constitution to the whole subject of judicial organization and power. One of the great merits of the proposed Revision of the State Constitution which we have been discussing during the last few weeks is its elimination of considerable detail of this sort.

Of course, mere verbal brevity is not the essential criterion of the adaptability of a constitutional provision. The judiciary provisions of the proposed Revision are slightly longer than the judiciary provisions of the present Constitution; but the Revision furnishes the basis for a simpler, more flexible court system readily susceptible of expansion, contraction or administration to meet changing conditions.

Sometimes the adaptability of a constitutional provision depends upon a few apparently insignificant words. For example, the United States Constitution clearly puts the entire power of nomination to executive office in the President, or in the heads of departments responsible to the President. This provision has made it possible as the executive establishment in the Federal Government has grown, to continue to hold the President responsible. The New Jersey Constitution seems to have set out to give the Governor the power to appoint most executive officers; but by fixing long terms for certain constitutional officers, and by inserting the unobtrusive words "whose appointments are not otherwise provided for by law" in the paragraph apparently giving the Governor the bulk of the appointing power, New Jersey's Constitution has prevented the development of a responsible executive branch in the State Government.

These and other similar constitutional impediments to continuing good government in a changing world are corrected in the Revision before us. Between now and the time when the people vote on a revised Constitution, it is desirable that the language of the Revision be carefully combed to make sure that it does not include any such hidden barriers against the continuous and salutary improvement of the organization and procedures of every branch of government. The more carefully this job of verbal pruning is carried out, the less use will have to be made of any method for the making of changes in the text of the Constitution itself.

If the present New Jersey Constitution had been carefully

drafted in the light of a clear conception of the natures and boundaries of the great powers of government, we might not have been so conscious today of the inadequacies of the method of amendment which it includes. We can certainly correct many of the deficiencies in the body of the Constitution written by the men of 1844, but we are no more entitled than our predecessors to assume that we will not make mistakes which will require correction hereafter. It is, therefore, another mark of the commendable effort of the Hendrickson Commission to correct demonstrated defects in the Constitution, that it has attempted to simplify and speed up the excessively complicated and halting method of making amendments prescribed in the present document. The following definite improvements should be noted:

1. It provides for the submission of amendments by the vote of both houses of a single Legislature.
2. It provides that amendments shall be submitted at a general rather than at a special election.
3. The so-called "time lock," which provides that "no amendment or amendments shall be submitted to the people by the Legislature oftener than once in five years," has been clarified and liberalized so that amendments could be submitted to the people at any general election, subject only to the qualification that "the same amendment, or one effecting the same change in the Constitution, shall not be submitted to the people more often than once in five years."

These changes would eliminate a number of the stumbling blocks which have so far rendered the method of piecemeal amendment of the Constitution practically worthless as a method of keeping the document up to date. It is not that any requirement in the present amending method presents an excessively difficult hurdle; it is the combination of requirements and limitations—the passage in identical form by two successive Legislatures, the submission at a *special* election to be held for that purpose only, and the "time lock," which has so far been generally interpreted to prevent such special election being held more than once in five years. Sometimes meritorious amendments have been stopped in the second Legislature. Sometimes meritorious amendments have been *defeated* at a sparsely attended special election because they have been associated with questionable or objectionable amendments from which the majority of those who voted were unable or indisposed to distinguish them. Probably more often than we can ever determine, an opportunity to secure a salutary amendment has been defeated because of the supposed inability to hold an amendment election for another three, four or five years, or because of the disinclination on the part of the Legislature to fine the people of the State the heavy cost of a special election.

The late Charles A. Boston, one-time president of the American Bar Association, writing thirty-five years ago on the need for revision of the New Jersey Constitution, was particularly critical of Article IX:

> "It is unnecessary for me," he wrote "to picture the combinations and permutations under this arrangement by which desired or imperative changes might be indefinitely postponed. It might be done, if two Legislatures disagreed in an unimportant particular, or if the two houses of one Legislature disagreed over a word, or if a wholly unimportant amendment were rejected by the people. The people cannot even provide within five years a satisfactory substitute for a rejected amendment. It seems to me that, if the Constitution is so construed * * * then the Constitution itself sets the people in bondage both to its Legislature and to an arbitrary period of time."

Most citizens of the State will approve I believe the elimination of these stumbling blocks to the sound periodical amendment of our State Constitution. To this extent most of the members of the New Jersey Committee on Constitutional Convention are doubtless in accord with the purposes and terms of Article IX as revised by the Hendrickson Commission. Since the amending article is so crucial to the future of the Constitution, the members of our committee are particularly anxious that it should embody the results of the most careful study and thought on the subject. Upon the first reading of the proposed Revision, the majority of the members of our Board of Trustees, although they commended the provision that an amendment might be submitted by a vote of a single Legislature, expressed the fear that the requirement of a two-thirds vote in both houses, might make the Constitution more rather than less difficult to amend. The Board of Trustees, therefore, tentatively expressed the hope that amendments might be submitted by a majority vote of one Legislature. In expressing this wish, the members were not unmindful of the importance of preserving the integrity of a well drawn Constitution against hasty or ill considered change, or against change beneficial only to a single section of the State. They doubtless felt that the latter kind of change was adequately guarded against by the equal representation of the counties in the Senate, by virtue of which the eleven smallest counties representing only about 15% of the population of the State could defeat any amendment considered inimical to the rural sections. We have, moreover, recognized the propriety of safeguarding the amending process more carefully than the ordinary legislative process. The requirement of a popular referendum, is of course such a safeguard, but additional safeguards are doubtless desirable. We have, therefore, started to make a study of votes by which amendments have passed one or both houses

of the Legislature under our present Constitution. That study is not yet complete, and it is, therefore, impossible to draw any final conclusions from it at this time. As soon as it is finished, we shall make it available to this Committee.

The data that we have at hand, covering the votes on all amendments which have actually been submitted to the people, is worth a comment at this time. The vast majority of the amendments which have been submitted to the people have actually received the vote of more than two-thirds of both houses. In most cases there have been no dissenting votes at all or only a handful of such votes. There are a few instances in which an amendment received just less than a two-thirds vote of one house or the other, which would probably have received two-thirds if that number had been required and a more nearly full house been present. But there are at least two amendments which were finally approved by the people, which according to the indications, might not have been submitted if two-thirds had been required.

In view of these considerations, and pending future study of the matter, I should like to take the liberty of pointing out a number of possible ways in which a workable amendment method may be harmonized with the need for preserving the Constitution against capricious or ill-founded change.

One possible compromise would be to include an alternative method by which amendments might be presented to the people. The present passage by a majority of both houses of two successive Legislatures, and the proposed passage by two-thirds vote of one Legislature. If this plan were adopted, an amendment which had substantial State-wide support would ordinarily win the two-thirds vote and be submitted directly to the people at the next general election, but if a small minority controlling more than one-third of either house of the Legislature stood in the way, the people would still have an opportunity by a majority vote of the next Legislature to secure the submission of the amendment. Another possible safeguard might be to require that if an amendment resolution obtained a majority, but not a two-thirds majority, of both houses, it would not be submitted to the people unless signed by the Governor, like an ordinary bill or joint resolution.

Any of these methods could be further safeguarded by requiring that any resolution for amendment of the Constitution must have been before the Legislature for at least thirty days, or some other specified period, and been given a public hearing before adoption by the Legislature. This would insure more deliberation and more public participation than is ordinarily the case with the passage of legislation.

Your Committee might also like to consider the possibility of a conservative provision for the popular initiation of constitutional amendments. In this connection I shall file with you a copy of

the proposed amendment to the New York Constitution, now being advocated by the New York Citizens Union and other civic groups. As you will see the plan is carefully safeguarded to insure that no amendment will be initiated unless it has support from the State in general rather than from a particular section. The great advantage of the constitutional initiative is that it gives the people themselves a regular method for proposing changes in the basic law. If it does not seem wise to provide that amendments be submitted for popular approval merely on the basis of an initiative petition, it could be provided that an amendment so initiated would be submitted to the people only after it had received a majority vote of both houses of the Legislature. Actual consideration by the Legislature of an initiated amendment could be made mandatory by provision that such an amendment would be the first order of business for the Legislature and that unless the Legislature acted within a certain period of time either affirmatively or negatively, such an amendment would be submitted directly to the people at the next general election.

There is another method of securing popular participation in the amending process, and more deliberate consideration by the public of proposed amendments, which is worth considering as a method for revivifying the democratic process generally. It comes within the orbit of adult political education. There has been a considerable revival of the town meeting idea in recent years. There is, of course, the Town Meeting of the Air, of which I am privileged to serve as a Trustee, but there has also been a great increase in local discussion groups, organized for the consideration of all sorts of public questions. Particularly noteworthy are the groups that have been promoted in the rural sections of our country under the inspiration of the local agricultural agents.

In our own State we have such adult education projects as the Farmers' Institutes, the Labor Institutes and the Rural Institutes which have been set up at Rutgers University with the cooperation of the University, the State Agricultural Experiment Station and the farmers and labor organizations.

Why could not our Constitution provide that every amendment, before it is voted on by the people, should be read and discussed at one or more public meetings in every municipality of the State, called by the Mayor or Chief Magistrate of the municipality? Such a provision would symbolize a return to methods of public discussion in neighborhood groups with which democratic government began. It would be highly appropriate for a new State Constitution to lead the people back to this fundamental requirement of sound popular government.

The Board of Trustees of the New Jersey Committee on Constitutional Convention has also expressed the hope that the revised Constitution might include some such provisions as that in the

New York Constitution for the periodic submission, to the people but not to exceed twenty years, of the question, "Shall a constitutional convention be called to consider a revision of the State Constitution?" This, too, is in accordance with sound American tradition. It has the double advantage not only of insuring that every so often the people will have an opportunity without undue agitation to decide whether or not their Constitution needs reexamination but also of eliminating the possibility of chronic agitation for constitutional revision. In considering the drafting of a clause for periodic vote on Revision, your Committee might like to consider the possibility of offering as alternatives the specially elected convention and revision by the Legislature which we are now undertaking.

The foregoing suggestions have been presented to you not as coming officially from the New Jersey Committee on Constitutional Convention. I have offered them rather in an attempt to assist your Committee, after more thorough study of this vitally important question, in determining what, if any changes, in addition to those proposed by the Revision Commission, should be made in the present article concerning further amendments of the State Constitution. With respect to this article, as with respect to all other articles, it is the objective rather than the letter of any particular text in which our committee and the citizens of the State generally are interested. We are all in accord with the objectives of Article IX as drawn by the Revision Commission. We merely ask that further study be given to this matter in order to determine whether or not some additional provisions might assist materially in attaining those objectives.

May I conclude with a brief reference to Thomas Jefferson's reflection on constitutional revision as contained in excerpts from a letter by him to Samuel Kerecheval in 1816:

> "Some men look at Constitutions with sanctimonious reverence, and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. I am certainly not an advocate for frequent and untried changes in laws and Constitutions. I think moderate imperfections had better be borne with; because, when once known, we accommodate ourselves to them, and find practical means of correcting their ill effects. But I know also, that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times."

MR. PAUL: Mr. Arthur J. Edwards, Mr. Chairman.

MR. EDWARDS: Mr. Chairman, Members of the Committee: I represent no association and am merely a citizen who has given quite considerable thought to this whole question, and throughout the life of the Commission I have been unofficially, completely unofficially, in rather close correspondence with them on several features relating to this procedure.

It seems to me there have been some rather indefinite words used here, as to what this Revision amounts to. Technically, as affecting the laws of New Jersey, it amounts to no more that the Commission Reports of 1881 and 1894, which were received by the Legislature and disposed of without the courtesy of a reference to any committee. It is merely an advisory report to the Legislature. It has no feature of inviolability whatsoever. The Commission was charged with the duty of inquiring into the subject of constitutional revision and of suggesting in what respect the Constitution of New Jersey should be changed and making recommendations to provide for more effective working of present-day representative processes. This report of the Revision Commission is merely an advisory report to the Legislature and takes on no vitality whatsoever until the Legislature adopts either it or its own version of a Revised Constitution, making such use of the suggestions in the Commission's Report as they see fit to do. I don't think that this present report must be regarded as in any way unchangeable because the formal words which are ultimately agreed upon by the Legislature must be the Legislature's own responsibility in its recommendation to the people.

So, it is quite fair, it seems to me, to take this merely as a basis for change and propose suggestions from there on. I think it is perhaps true that if this question of the Legislature submitting a revised Constitution is submitted at the November election, the people can themselves feel that this proposed Constitution probably represents the maximum deviation from the old form. In other words, no more radical changes are likely to be recommended by the Legislature when it comes to revising this or re-writing it or re-phrasing it. No more radical changes are likely to be suggested than as are in here. For instance, the dividing of counties into Assembly districts—I don't think the Legislature itself would revise the provisions for the Senate and propose a Senate on any other basis than one member per county, and there are other changes people apparently have shied away from making in the past which this Commission has avoided. That will assure the people as to the degree of change likely to be submitted to them in 1943 if the plan goes through.

I just want to make that plain because I have studied the responsibility of the Commission, and as I say, this Commission Report is merely an advisory report to the Legislature by a group

of men the Legislature appointed, with no power whatsoever except to report back to them what they thought was proper.

Now, speaking directly to Article IX, I recommend the adoption of Article IX relating to amendments substantially as submitted by the Commission on Revision, and I particularly support the Commission's recommendation of a two-thirds vote in both Houses of one Legislature for proposing an amendment, instead of a majority vote in both Houses in two successive Legislatures, as in the 1844 Constitution. A mere majority vote means in general only the support of one political party for a change in the fundamental law in case one party controls both Houses, as so often happens in New Jersey. A mere majority vote means making the proposed amendment a "party measure" and experience in New Jersey effectively demonstrates that that is insufficient to secure later approval by the electorate.

The following study of experience in the submission of constitutional amendments in New Jersey is based largely on Mr. Charles R. Erdman Jr.'s "The New Jersey Constitution—A Barrier to Governmental Efficiency and Economy," Princeton, 1934, pages 31-36, covering the period following the adoption of the numerous Commission-recommended amendments from 1875 to date.

In all of New Jersey's political history, special elections have been held eight times upon the adoption of constitutional amendments—1875, 1890, 1897, 1903, 1909, 1915, 1927 and 1939. In four of these elections, 1875, 1897, 1927 and 1939, fifty per cent of them, amendments were adopted, one each at each of these last three; that is, since 1875. The other four resulted in the defeat of all proposals submitted to the people.

Experience seems to demonstrate that any measure which will get the people's ultimate support must start in the Legislature with fairly representative support from leaders of both parties; that is, with more than a mere majority vote—and that without such starting support its adverse fate is fairly forecast.

Of fifty-eight legislative proposals since 1875 which received the approval of the first House that voted on them in the first session, the people had the ultimate opportunity to vote on only eighteen. One might think that the approving vote of the people's representatives in two Senate sessions and two Assembly sessions would fairly reflect the popular opinion of those they represented. However, of the eighteen thus approved by their representatives, the people finally ratified only three of their legislators' recommendations.

The three amendments adopted since 1875 were of minor importance and influence from the State-wide standpoint: 1897, anti-gambling, lottery, and bookmaking, partially reversed by the people in 1939 to permit parr-mutuel betting on horseracing, and zoning in 1927. A study of these measures indicates the probable

support of both political parties. On the other hand, New Jersey's experience clearly shows the major responsibility of the people themselves, rather than of the Legislature, for the defeat of legislative proposals.

This study seems to indicate that bi-partisan support of an amendment proposal is an absolute prerequisite for final ratification. If a proposal does not get bi-partisan support in the Legislature, it is a pretty good indication that it is not of sufficient interest and importance to place it beyond the category of a one-party measure, and not likely to have the necessary two-party support to carry the referendum. If this is a correct premise and bi-partisan support is necessary for popular approval, then a requirement of a two-thirds vote in one session only—three Senators more than a majority and ten Assemblymen—is not likely to result in the defeat of any proposal which might later win popular ratification. If two-thirds is unattainable, it is likely to be a measure of greater interest to one political party than to both, and deserving of postponement until greater support has been earned.

The requirement of a mere majority vote in both Houses, in my opinion, will not operate to make changes in the Constitution easier of attainment but will rather tend to a multiplicity of voting on amendment proposals that do not sufficiently represent a State-wide demand for change to insure their ratification.

I suggest a clarifying amendment of the last sentence in Paragraph 5 of Article IX by striking out the word "effecting" and inserting in lieu thereof the words, "substantially related thereto or effecting substantially," so the whole sentence will read: "The same amendment or one substantially related thereto or effecting substantially the same change in the Constitution shall not be submitted to the people more often than once in five years." The word "same" connotes absolute identity, as is now required by Article IX, in the resolutions proposing an amendment as passed by the two Houses in the first Legislature and also in the next to be chosen. The re-phrasing of a clause or a change of a few words is most likely to so alter it that it will no longer "effect the same change," or it will at least require a court decision to determine whether or not the meaning is changed. The prohibition, in my opinion, should be designed to prohibit too frequent consideration of similar aspects of the same subject—should be against voting oftener than once in five years on any proposal for change of the same nature or theme, and not merely be against a repetition of the same exact wording or a variant thereof or re-phrasing with negligible change or variation of the same theme.

Just what departure from the text of the original proposal is sufficient to remove it from the "substantially related" category is not clear, but I can think of no more accurately definitive word. We can safely trust the distinction to judicial determination, if

ever required. The Commission's recommendation appears to have been inspired by the present differing interpretation given the similar "five-year time lock" clause in the Constitutions of Pennsylvania and New Jersey and by the divergent decisions of the Pennsylvania Supreme Court in 1924 and in 1937. A clarification of the present ambiguity appears highly desirable. I don't think it is necessary to take the time to differentiate between those two decisions, but in 1924 the Pennsylvania courts absolutely said five years meant five years, then afterwards, in 1937, because the Legislature in its own practice had been disregarding that particular dicta for pretty nearly a quarter of a century, they put in that that same thing meant "substantially related." I think a clarifying clause is worth while.

I was very much interested in Mr. Watson's analysis of legislative power here, because it compliments me by following so closely the argument which I myself prepared and which some of you may have seen in the New Jersey Law Journal. I was going to save that for a later session of the Committee because it is more pertinent, as I present it, to some other features than right at the moment. But I think fully that Section II of Article I, which provides that the people have the right to alter and reform their Constitution whenever the public good requires it, is a definite and positive power and not merely a fine phrase or truism, as some people try to describe it, and it is up to the Legislature under one of the sections at the end of the Constitution to give vitality to that. The people themselves can't legislate; they can't get together in State-wide town meetings; and the Legislature is their chosen functionary to handle matters of that kind. I think that, as now proposed, if the people do direct the Legislature to submit a revised Constitution, altered and modified as they think best, it is a procedure which will stand up; and I quite agree that the present procedure of Article IX is permissive—specific amendments may be submitted. It is wholly permissive and it does not exclude other procedure which is based on other powers of the Constitution.

I feel that the Legislature has the full right, if the people direct it, to submit a revised Constitution, to go ahead with its investigation and thought on the revision and present the finished article to the people at the time the people may direct.

MR. PAUL: I would like to introduce next, Mr. Chairman, the Secretary of the New Jersey State Legislative Board of the Brotherhood of Railroad Trainmen, Mr. Albert F. Anderson, of Port Morris, New Jersey.

MR. ANDERSON: Mr. Chairman and Members of the Committee: I am representing the Brotherhood of Railroad Trainmen in the State of New Jersey.

The Brotherhood of Railroad Trainmen has not prepared any suggestions on constitutional revision. My purpose in appearing here today is to bring before the Committee the position of the Brotherhood of Railroad Trainmen in the matter of constitutional revision.

We have had representatives in attendance at each of the hearings heled here and we have listened with interest to the various problems discussed. From what we have learned here, through study of the present Constitution and from the opinions advanced by our various locals, we believe that there is a necessity of revising the Constitution by constitutional convention. Thank you.

MR. PAUL: Miss Evelyn Seufert, of Bergen County.

MISS SEUFERT: Mr. Chairman and Members of the Committee: There are a few more facts available about our amendments that we have had to date and about the special elections, which might be considered when we contend that special elections do not give to the State the proper reforms necessary by which we can correct our present Constitution.

The speaker just previous to the last one gave us some figures about the number of proposed amendments we have had during a period of time. Considering only those special elections, which means that amendments must have passed both Houses of the Legislature for two successive years, we find that since 1875 we have had eight special elections. At those eight special elections, eighteen different amendments were considered, and, as has already been said, only four were adopted; and further, as already has been said, not one of those four actually affected the machinery of our State Government. The first one dealt with minor court changes, the most important point being the giving to the Governor instead of the Legislature the power to nominate county court judges. The second one in 1897 made gambling unconstitutional. The third one gave the municipalities the right to make local ordinance rules. The fourth, as we know, permitted parimutuel betting. Not one of those in any way brought about substantial reform in our State Government. However, you might be interested to know the subject of the fourteen amendments that got to a special election and the fact that these subjects were rejected in these special elections. The amendments rejected, fourteen of them, covered the subject of the amending process itself; that is, various proposals to change our present amending process in the Constitution. They also dealt with creating assembly districts—we had that introduced a number of times—that is, being able to have single assembly districts instead of assembly districts by counties as they now are. Another one dealt with providing for biennial sessions of the Legislature and extending the terms of the Legislature. That came up twice and was defeated twice. The subject of excess condemnation was defeated in 1915. Of course, the subject of judicial revision and different kinds of amendments was defeated four times in special elections in 1890, 1903, 1909 and

1927. Salary increase for legislators was considered at a special election in 1909 and was defeated. An amendment to repeal the provision in our present Constitution against special legislation was defeated in 1890. Amendments to set up water supply districts were defeated in 1927, and amendments providing for women's suffrage were defeated in 1897 and 1915. We submit that these subjects which were defeated were of much more importance to the people as a whole in relation to our State Government than the ones which were finally successful in getting through.

It is interesting to note also that at these elections, special elections, such a small proportion of the registered vote comes out. Just taking two special elections as an example, one dealing with only one subject, judicial reform, and the other dealing with three different subjects, we find in 1903 when only judicial reform was up for consideration by the public, less than seven percent of the voting population of the State voted at that special election, and we find in 1909 when the question of biennial sessions of the Legislature and term extenders came up plus judicial revision plus salary increases for the Legislature, less than ten percent of the registered voting population of the State actually voted.

I think these figures speak for themselves as to why special elections do not reflect the majority of opinion in the State.

MR. AMLICKE: Are there any others who wish to be heard in favor of the proposed Article IX?

MRS. HENDERSON: I represent the League of Women Voters. Mr. Chairman and Members of the Committee: The New Jersey League of Women Voters has for many years supported and worked for proposals to improve the amending process provided in the State Constitution. We believed changes should be made first because the method provided is too difficult and second because it is unnecessarily expensive.

We, therefore, made the following recommendations to the Commission on Revision: that amendments should be voted on at the general election instead of at a special election; that amendments must pass both Houses of the Legislature by majority vote of the membership at one session and be approved by the Governor before submission to the people; that the five-year restriction on submission of amendments be eliminated.

We are pleased to see that the proposed Constitution provides for submission of amendments at the general election. We feel sure that change will result in the participation of many more voters in such referenda; in less hesitation about presenting worthwhile amendments and in a considerable saving of money to the State.

We would have preferred the elimination of the five-year restriction on submission of amendments, but the change proposed

is a decided improvement and we welcome and endorse it as a step forward.

We recommend the provision that amendments shall be submitted to only one session of the Legislature, but we question very seriously whether the provision that they must be approved by two-thirds of the members of both Houses achieves the end desired, that of making amendments easier. The requirement of a two-thirds vote makes it possible for an extremely small minority of the population to exercise an absolute veto on matters desired by not only a majority of the people, but of the counties. This is certainly undemocratic and very unjust. Our suggestion that approval by the Governor be required would provide an additional check and one that would not be imposed by a small minority group. The League would approve a provision that proposals for amendment must be before the Legislature for a specified period before a vote could be taken, thus guaranteeing more deliberation and public discussion than is frequently the case with the passing of ordinary legislation.

The League also suggested that the new Constitution include a provision that the question of holding a constitutional convention shall be submitted to a referendum vote every twenty years. Of course, the people have the right to hold such a convention, but that provision would assure them that that right could not be infringed or its exercise unduly delayed. Moreover assurance that opportunity to consider revision every twenty years would prevent continuous agitation for revision.

MR. AMLICKE: Are there any other proponents who wish to be heard at this time?

If not, we will now hear from the opponents to the proposed Article IX.

The first speaker will be Mr. R. Robinson Chance, representing the Manufacturers Association of New Jersey. Mr. Chance.

MR. CHANCE: Mr. Chairman and Members of the Committee:

At the outset I would like to note that it has seemed to me that part of the argument of Mr. Watson has been one of the best arguments that I have heard against the text of the proposed Constitution. I have not followed the accuracy of the references that he made, but he has told you about how in Article This there is something which is tied with Article That and vice versa, all around; about how the things have been muddled in together instead of separating separable things; he says that they are intertwined; and if that is so, then that is a very strong argument, it seems to me, why you should go over the document and separate those separable things so that they are not intertwined. In other words, we should not let the muddling together of separable articles be the basis of an argument that you can't submit separable matters separately.

I was also somewhat interested to note that when Mr. Watson

started off he said that this page 11, (p. 912) was going to be left where it was, and then the long part of the end of his speech was about the very thing that I thought he said he was going to leave silent. But, while we think about this page 11, (p. 912) I want to call your attention particularly to this sentence, "That through suitable enabling legislation, the Legislature at the primary election in September, next, shall request authority from the people to submit a Revised Constitution at the general election of November 1942." Some of the speakers have said there is no haste about this matter. It seems to me as though the very fact that they have that clause in there is further corroboration, it seems to me, of my thought that what they want is this document as a whole.

I also thought that what we were supposed to discuss was Article IX of the Proposal. I had thought first that I would come here with a legal argument about what the situation was as to whether you could go about this amendment or revision, as they call it, by the process that the Commission has recommended. But, at the conclusion of the last session, one of the proponents approached me on the matter and suggested that he thought perhaps it would be better if we left that to some other time and we spoke to the Chairman about it, and if there is another time presented later on, I will go through the references then. I have started my preliminary work and have all the key numbers of all the cases in the country that have anything to do with amendment and revision of a Constitution, but today I shall not argue at length the legalities, although if I may be permitted, I will mention something about them.

Just one more thing before I get into the text that I have before me, and that is these figures that Miss Seufert has given us. They were very interesting indeed. What they spell to me is that if it were only possible to get out such a very small percentage of people to vote on these amendments that have been submitted from time to time on court reform and the other things, it is very evident that there was really no majority demand for the things which had been in the past presented to the Legislature as being something there was some great demand for. Really it may be that the difficulty is that the small minority pressure groups that persuaded the Legislature in those days that there was some demand fooled the Legislature and mistook their own hopes and fancies for a popular demand. And if you go out and ask the first ten fellows you see how much they demand this Constitution, you will get the answer as to what great demand there is for this Revision that they have before us. I tried it out myself on some fellows when I was down in Cumberland County one day last week. They knew there was something going on, but it wasn't worrying them any about having it changed and revised in this manner. I have tried the same thing in Warren County. I have tried it in various places, and I find

we people that are here are the ones that have the big demand and not the people throughout the State.

Repeating by reference the opening paragraphs of my statement on the first day of these hearings as to the position of the Manufacturers Association of New Jersey and myself, I take up the discussion of Article IX of the draft of revision proposed by the Commission and captioned "Amendments."

In a sense this is one of the most important provisions because if a Constitution may too easily be changed guarantees therein contained are of slight significance.

At the outset let us note the similarities between the present Constitution and the proposal and the differences. By each document the initial step in the amendment process is proposal in either the Senate or the General Assembly. By the Constitution a majority of the members elected to each of the two Houses is sufficient for the initial approval; under the proposal a two-thirds vote of the members elected to each House would be necessary. Both documents provide for the entry on the respective journals of each House of the yeas and nays taken on the proposed amendment.

By the present Constitution the approved amendment is referred to the Legislature then next to be chosen and must be published for three months prior to the election of the Legislature next to be chosen in at least one newspaper in each county if any be published therein. The proposal omits any reference to a second Legislature.

By the Constitution if each House of the Legislature next chosen, as aforesaid, agrees to any amendment or amendments by a majority vote of all the members elected in the respective Houses, it shall be the duty of the Legislature to submit the proposed amendment or amendments which have been agreed to by two Legislatures to the people.

By the Constitution the submission after approval by two Legislatures is required to be in such manner and at such time, at least four months after the adjournment of the Legislature, as the Legislature shall prescribe, submission to be at special election to be held for that purpose only.

The proposal would require the submission by the first Legislature approving in the manner therein mentioned at a general election instead of a special election. The time of the election would have to be not more than four months after the date of publication, and publication would be once in a newspaper in each county, if any be published therein, such publication to be not less than three months prior to the submission of the amendment to the people. The proposal would also require that the submission to the people be in such manner as the Legislature may prescribe.

Both the Constitution and the proposal make a majority of the qualified voters who shall vote thereon the number necessary for

ratification. While the phraseology is slightly different, it is believed the substantial effect of both documents is the same in this regard.

Both documents provide that if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

In both documents there is a five-year limitation regarding resubmission of an amendment or amendments. The phraseology in the Constitution is "no amendment or amendments shall be submitted to the people by the Legislature oftener than once in five years." The Summary at page 28, of the Commission's Report (p. 929) indicates that the proposed change in this regard clarifies the five-year limitation so as definitely to apply to the same amendment or one dealing with the same subject matter. I believe there is no difference in effect between the two five-year limitation phraseologies, and opinions in the office of the State Attorney-General as to the effect of the present limitation seem to corroborate this view.

Summarizing, the outstanding differences which the Proposal would bring about would be that the submission would follow action by one Legislature instead of by two; the Proposal would require a two-thirds vote of each House at one session, while the Constitution requires concurrence of a majority in each House of two Legislatures; the Proposal would require that the amendment be submitted by advertising once only, while the Constitution requires advertisement for at least three months between the first and second Legislatures and the submission under the Proposal would take place at a general election instead of a special election.

A study of Article IX of the Proposal will show that its provision that an amendment to be submitted shall be advertised once does not tend toward assuring consideration by the largest possible percentage of voters. Not only is this true because there is only one advertisement, but because under the terms of the Article that advertisement is to be made in the summertime during July or early August when many people are away on vacation and probably would not see the advertisement. The summary and explanation in the Commission's Report does not dwell on this circumstance, in fact does not mention it. What the summary and explanation says is that the general election at which the proposed amendment is to be submitted is to be held not less than three months after approval by the Legislature. That is undoubtedly true but it is not the whole story.

Look at Paragraph 2 and you will observe that the one publication provided must be "not less than three months prior to the submission to the people." As already noted the submission is to be at a general election, and the proposed Article VIII, Paragraph

I would require that general elections be held on the first Tuesday after the first Monday in November. Paragraph 2 then would mean that the one publication could not be later than the date in August which is three months prior to the date of the general election.

Then look at Paragraph 3 of Article IX of the Proposal and you will see that the general election at which the amendment is to be submitted must be "held not more than four months after the date of publication." Now four months before November is July. In other words, Paragraph 2 would require the publication to be not before the date of the general election. In short the net result of Paragraph 2 and Paragraph 3 is as I said before that the one advertisement would take place in the vacation period in July or early August.

The comment of the summary that the submission will be held at the next general election to be held not less than three months after such approval by the Legislature, also deserves to be noticed more particularly. Remember that the Proposal, Article III, Section I, Paragraph 3 would have the Legislature meet in regular session biennially on the second Tuesday in January and adjourn sine die not exceeding ninety calendar days thereafter. This means adjournment in the early part of April. Since the next general election would be in the following November, the submission would be seven months after a regular session if the proposal for amendment were approved at a regular session. If the approval were early in the regular session, the interval between approval and submission at the general election would be longer. If a regular session ended without a proposal for amendment, it would be at least two years before there could be any regular session to make proposals of amendments.

Of course, the Governor could call a special session, but that too would be subject to the requirement that the advertisement take place in July or August in order to comply with Paragraphs 2 and 3 of Article IX of the proposal.

Under this proposed revised Constitution there would not be much time for the Legislature to consider amendments whether a regular session were employed or a special session. If the subject of amendment came up at a regular or ninety calendar day session, full consideration would be hampered by the fact that the Legislature would have so many other things to attend to, such as work on the appropriations for a two-year period and consideration of the numerous other matters which had arisen in the two years since the last session and would be likely to arise before another session.

If a special session should be called to talk about amendment, it would have to talk fast since Article III, Section I, Paragraph 4 would permit such a special session to last only fifteen calendar

days. I noticed that Dr. Miller this morning said something about the suggestion that a proposed amendment might wait thirty days before action on it. That doesn't mean he says this text does it, but that was one of the suggested changes that he thought was possible. Now, of course, if that were the idea, it couldn't take place at any special session because the fifteen calendar days of the special session would be up fifteen days before the end of the thirty-day waiting period that was mentioned. It seems to me that it is not the intent that the Legislature should think too long about amendments.

When we recall the length of time it took the Commission on Revision to prepare and submit its Report and draft Constitution, it becomes apparent that it is important that the Legislature have time to consider. Perhaps it would be an improvement if provision were made more in line with the present requirement. Of course, the change, if made, to biennial election of the Legislature and biennial session would present a complication and would not permit the result of an election to guide the Legislature in the final determination of whether to submit an amendment or not. Nevertheless, it might be possible to make a provision whereby the same Legislature after having once approved a proposed amendment could come back at some later period in special session after reasonable time for reaction on the part of their constituents for final determination as to whether to submit the proposed amendments or not.

Turning to the subject of the manner and form of submission which the fifth paragraph makes, it is observed that here is followed the same provision to be found in the present Constitution, namely, if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly. This seems highly desirable, and much superior to the recommendation which the Commission makes at page 11, of their Report (p. 912) for the submission of their revision in such form that the people will vote for or against the document as a whole. I have read numerous books on government but have yet to find one in which there is denial of the view that revisions of State Constitutions submitted on an all or none basis are likely to be defeated through the combined efforts of elements objecting to particular provisions of the proposed Constitution.

I should next like to direct your attention to the fact that the Proposal omits something which it would do well to cover. It fails to make any provisions which would obviate future confusion and differences as to whether it is intended that the Constitution be hereafter changed in any other manner than by the precise method pointed out in the article relating to amendments. Reserving, if opportunity is at some time in the future presented, the

request to be allowed to say something about that, I may now say, without expressing any opinion as to what the law is in this regard, without fear of contradiction, that the subject is one on which there is great difference of opinion among lawyers and students of government. For example, I have a copy of a 27-page opinion by former Attorney General Wilson against the legality of any change except in the manner pointed out in the Constitution. On the other hand, there are articles in the New Jersey Law Journal by Circuit Court Judge Thomas Brown, 64 N. J. L. J. 105, and Mr. Atwood C. Wolf, 64 N. J. L. J. 177, which express different views. Likewise in 65 N. J. L. J. 365, there is an article by Mr. Arthur J. Edwards, who has spoken before us this morning, on constitutional methods for revision, which expresses views different from those of former Attorney General Wilson. In 36 N. J. L. J. page 7, it appears that former Justice Van Syckel held the view that no change could be made except in the manner in which Article IX of the Constitution provides. In 64 N. J. L. J., page 305, Vice Chancellor Bigelow notes the scope of the debates on future amendments at the Constitutional Convention of 1844. He mentions some of the views of the participants of that convention. The debates of the 1844 convention are also reported in the Newark Advertiser on file in the State Library in the State House Annex.

This by no means exhausts the catalogue of articles and opinions on the subject. In the face of all the conflicting views and opinions, it seems that if there is to be any revision of the Constitution or any amendment of the article relating to amendments, the same should contain such provisions regarding methods of change, revision or amendment that there could be no room in the future for the doubts and differences on the subject which now exist.

The view just expressed as to the desirability of a redraft of this article prompts further general observation as to provision for amendment.

While Professor Walter F. Dodd in Illinois Constitutional Convention, Bulletin No. 3 (Springfield, 1919), in recapitulating the various procedures in use for amendment of State Constitutions, indicates six methods of change, and the discussion in the Annals of the American Academy of Political and Social Science for September, 1935, goes into amendments and revisions of State Constitutions quite fully, the methods in use can be boiled down to three principal classes. They are by; one, constitutional convention; two, legislative proposal and submission to referendum; and, three, by popular initiative.

In New Jersey, the Legislatures of 1873 and 1894 authorized constitutional commissions to draw amendments which were to be reported to the Legislature, who in turn would submit the amendments to referendum or not, as it chose.

In the 1873 proposal, the Governor was to appoint two members from each congressional district, and at that time districts were set up in such a way that the small counties had more districts than the larger ones. The Commission of 1894 was precluded from suggesting other changes than those which might affect the judiciary. According to Lee in "New Jersey as a Colony and as a State," none of the recommendations of the 1894 Commission were finally adopted. I think I noted that Mr. Edwards this morning stated that the Legislature didn't even give them the courtesy of a hearing on the thing, but anyhow they weren't adopted. In both cases the commissions were obliged to report to the Legislature.

For reasons presently to be noted, it appears to me to be useless for proponents to have associations or societies for constitutional convention or to try to get a constitutional convention in this State, based on population. Numerous acts for constitutional convention have been introduced. As frequently they have failed of passage. As we all know, the bill introduced by Senator Hendrickson for a constitutional convention to be held at Trenton on October 15, 1941, did not pass.

In this connection let me quote "Modern Battles of Trenton," Volume 2, by William E. Sackett. Said Mr. Sackett:

> "... The recasting of the State's organic law has been always recognized by the seasoned politicians as a political and legislative impossibility. ... And when Governor Wilson set out to throw away the old charter of 1844, which by giving each county one and only one Senator, makes the smallest county as potent as the largest in the State Senate, he entered upon a task that no one before him had ever undertaken with the hope of accomplishing it. Not excepting Sewell and Abbett, Governor Wilson is the most masterful force that has ever come into State affairs. But if his arm had been ten times as powerful, it would yet have lacked the strength to batter down this ancient refuge of the minority counties.
>
> Tradition, as well as love of power, rooted the adherence of the lower-State Senators to the protection of the county system of Senate representation. In the days when the Federal Union was being formed, New Jersey had balked at the effort to tempt her into the Federation because she was small and fearful of being overpowered in the National Legislature by the larger commonwealths in the pact; and it was in response to her insistence upon an equal voice with the largest of them there that the basis of representation in the United States Senate is by States and not by people. The system by which each State, however small, has two votes in that House of Congress, and no State, however large, more than two, became famous in the constitutional discussions of 1788 as the 'Jersey Idea.'
>
> And when the State entered upon the work of building a new system of government for herself in 1844, adherence to the 'Jersey Idea' of 1789 led to the establishment of the Upper House of the Legislature, on the same basis of equal representation for the counties."

Although the Democratic platform in Governor Wilson's time had contained a plank for a popularly elected constitutional convention, the project had no chance of success. The Democratic Senators from the small counties were still all in favor of convention, but they could not agree upon the lines upon which it should be made up.

Again I quote from Mr. Sackett's book:

> "In the ardor of the discussion it finally came to be questioned whether there was any legal way of giving the State a new Constitution. Where, for instance, did the Legislature get the power to order the tearing up of the Constitution that was the only warrant for its existence? And, if it assumed it, who was authorized to declare the passing of the old and to promulgate the coming of the new? Attorney General Edmund Wilson made these inquiries pregnant with a written opinion that neither Governor nor lawmakers were empowered to act—that the Constitution itself provided the only means for its renovation, by amendments ratified by two Legislatures and then by the people. And when it was answered that the Legislature had started the movement that eventuated in the Constitution of 1844, reply was made that up to 1844 the State had had no Constitution that limited the powers of the Legislature, but was operating under a charter that still recognized the King's Sovereignty."

A bill was introduced to call for a popularly chosen convention with representation from each county by delegates based on population. The bill rested in committee. Governor Wilson called the Senators of the rural counties into the Executive Chambers and, as Sackett puts it, "labored with them." Maybe somebody knows what it means when it says the Governor labored with them, but anyhow, that is what Sackett says that Wilson did with the Senators then. But they refused to consent to any population basis convention that would be sure to make a Constitution providing for a population basis Senate. Somebody suggested a compromise provision, that in voting on the clause in the new Constitution to fix the Senate representation the convention should vote so that all votes from each county should count as one vote. Again I quote Mr. Sackett:

> "The compromise seemed to quiet the apprehensions of the objecting Senators. But it dawned on them later that a mere Legislature had no right to forestall the proceedings of a convention of the sovereign people; and, even if it had and the popular convention were to throw its instructions to the winds, and were to vote each delegate separately, and consequently report a Senate reorganization on the population basis, what could be done about it? It would be an exercise of popular sovereignty that no Court would have the temerity, if it had the power, to dispute."

The rural counties came to the conclusion that the alleged compromise safety clause was no real guarantee whatsoever. The Assemblyman who had introduced the original bill and the compromise withdrew the compromise and forced the vote on his original bill. It passed the Assembly but in the Senate the Senators from Essex, Bergen, Morris and Passaic were the only ones to vote in its favor. As Mr. Sackett concludes his chapter, "The adverse vote of the other seventeen Senators put it out of the way for the winter."

There is no reason to suppose that the rural Senators of today are any less alert than were those of the past, and no reason to suppose that they are any more willing to jeopardize their strategic position by taking any chance on a constitutional convention.

Accordingly, I think that anyone who hopes for a constitutional convention, chosen on a population basis, hopes in vain.

Before leaving this sentiment of the rural sections I might note that in Macdonald on American State Government and Administration, Elihu Root is quoted as having said at a New York State Constitutional Convention:

> "I insist that the small and widely scattered communities, with their feeble power comparatively, because of their division, shall by the distribution of representation, be put upon an equal footing, so far as may be, with the concentrated power of the cities. Otherwise, we never can have a truly representative and a truly republican government."

And it is sometimes argued that the cities are more subject to regimented voting at the behest of a political machine than the rural regions, so that a large number of city votes sometimes indicate less sober independent thought than a smaller number of votes from the rural regions. I merely record what the situation is without expressing any personal views in these matters.

Amendment by popular initiative is not likely to find favor in New Jersey for similar reasons. I noticed that Mr. Miller mentioned this morning the possibility of having some petitions presented by people throughout the State to initiate amendment, but if provision were made for proposal by a percentage of population, the larger counties could produce the percentage and initiate a proposal to put representation in the Senate on a population basis rather than on a county basis, and this reason alone seems likely to be enough to prevent any popular initiative proposal from getting past the Legislature, and moreover, apart from anything peculiar to New Jersey, experience under the popular initiative in other States since its adoption for statutes in South Dokota in 1898 and for constitutional amendments in Oregon in 1902, has not shown that it is any producer of political or governmental millenium.

So, we have left legislative proposals as the only practical way for change in New Jersey. It is not perceived that it makes any particular difference whether the Legislature gets its proposals from commissions on revision, from gubernatorial recommendations or conceives them itself. The essential things seem to be that the Legislature submit and that the people vote.

The alleged desirability of eliminating the necessity for more than one legislative action upon a proposed amendment has been mentioned. Lincoln said, "You can fool all of the people some of the time and some of the people all of the time, but you cannot fool all of the people all of the time." And it might, as I have indicated before, be a good thing to give the Legislature an opportunity to retract, if it finds out it has been fooled by pressure propaganda in favor of a proposed change.

We have a distinct illustration of how generally the people may be carried away with a particular idea in the case of NRA. For a time, blue Eagles were all around us. When a bill was introduced in New Jersey to fall in line with the baby NRA, it was adopted. A little later it was with considerable satisfaction that I obtained from Judge Fake in the United States District Court for this District an opinion declaring the National Industrial Recovery Act unconstitutional (10 Fed. Supp. 1), and there were few who wept when about two months later Mr. Schecter's dead rooster knocked the Blue Eagle out with the unanimous vote of the United States Supreme Court. There is no guarantee that similar temporary popular fancies might not arise in the future. This should be borne in mind in connection with the proposal that one action of one Legislature should be sufficient. The two-thirds vote, while some safeguard, against hasty thoughtless submission, may not be enough. It may be desirable to require a majority of the persons qualified to vote or a higher percentage of those actually voting in the referendum.

I think the report of the Commission errs when it says that the procedure which precedes the action of the people on any change in the fundamental law should be made as simple as possible. It fails to recognize that fundamental principles are not as

changeable as summer winds and that a Constitution should not contain things that are more properly regulated by statute.

Chief Justice John Marshall said in *McCulloch* v. *Maryland*:

> "A Constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of a prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves."

With such a Constitution, the amendment method should be hedged about with such requirement as will prevent the submission of hasty ill-considered experiments based on theory and speculation.

I too shall quote George Washington, who said in his farewell address:

> " . . . experience is the surest standard by which to test the real tendency of the existing Constitution of a country—that facility in changes upon the credit of mere hypotheses and opinion exposes to perpetual change, from the endless variety of hypotheses and opinion."

While he was speaking of the Federal Constitution, the thought applies equally to a State Constitution.

The voice of the people may be the voice of God, but in the matter of constitutional amendment and revision safeguards should be provided to guarantee that what really speaks is the voice of the people and their considered judgment as to what is necessary and desirable. A change in our basic and fundamental law is too important to be rushed through without turning the light fully upon it.

MR. CAVICCHIA: Mr. Chance, you have gone at length to raise doubts as to the method of revision, citing the differences of opinion among authorities.

MR. CHANCE: I have not expressed my opinion on that subject. I have said that that conflict makes it important that when they get up any new revision, they put something in it that will make it so clear that everybody will know what it means and there won't be conflicting views.

MR. CAVICCHIA: Is there any doubt in your mind that the people are sovereign?

MR. CHANCE: Well, I argued at considerable length with you about that. I think I said they were, and you tried to tell me the Legislature was.

MR. CAVICCHIA: Oh, no, don't you impute to me that statement, because I tell you very emphatically the people are sovereign. Now, I ask you a question. Is there any doubt in your mind that the people are sovereign?

MR. CHANCE: I have already said I agree with this clause in the front of the draft here and the one repeated in the present Constitution that says, "All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it." I am not saying that isn't a sound political principle in this country.

MR. CAVICCHIA: Is that your way of saying "yes," that the people are sovereign?

MR. CHANCE: Yes, I say the people are sovereign, if you want a direct "yes" or "no."

MR. CAVICCHIA: That is fine, because I had understood you to agree with that several weeks ago.

MR. CHANCE: Then we are agreed on your understanding.

MR. CAVICCHIA: Now, Mr. Chance, if the people are sovereign, then by any stretch of the imagination how could the people be limited to changing their form of government by the amending process?

MR. CHANCE: Well, now, Mr. Cavicchia, I have twenty-seven pages of opinion here by Attorney General Wilson of this State, in which he tells how that is so, and I have said I didn't personally want to express my opinion about that subject today because the proponents last week led me into the idea that we ought not to argue the legalities of the thing today, and I spoke with your temporary Chairman and it was then left that I wouldn't argue the legalities of it today at length, but that if opportunity presented in the future and I felt disposed to express any opinion, I might ask then for the privilege of expressing it. I have not given my opinion as to whether or not it is legal to revise it in the way that this Committee has stated. As far as I have gone on that is to point out to this Committee that there is now a great conflict of opinion and a lot of people say one thing, they can't do it, and a lot of people say they can, and that in the face of that conflict, in the face of those doubts and differences which now exist, when you do get up a revision, put in it something which will clearly indicate that you are going to have conventions if you are, or that you are not going to have them if you are not; that you are going to have initiative or that you are not. But at any rate, clarify the matter so that the next people who talk about

this thing will not have to ask one of the speakers the same question you asked me.

MR. CAVICCHIA: The point I make is that if the people have no right to change the Constitution, then how is putting it in this document going to correct that feature? If it is fundamentally right, it is fundamentally right. Mere inclusion of a formal statement in this document certainly isn't going to clarify the situation.

MR. CHANCE: A lot of other States have put in that they could have constitutional conventions. A lot of them don't have it, I suppose. I don't know how many there are that have it. Let me see—do I remember that?

MR. EDWARDS: Thirty-six have it, and twelve have not.

MR. CHANCE: There you have the answer.

MR. CAVICCHIA: The point I make is this: If the people are sovereign, and I think we all agree fundamentally—

MR. CHANCE: We all say that we do, anyhow.

MR. CAVICCHIA: Then, were the people of 1844 more sovereign than are the people of 1942?

MR. CHANCE: To answer that one I would have to give an opinion. Would you like me to read—

MR. CAVICCHIA: No, I am familiar with that opinion. It is only one man's opinion, and I know the circumstances under which it was given.

MR. CHANCE: He was Attorney General. Maybe his opinion ought to be worth more than that of the rest of us fellows around here.

MR. CAVICCHIA: And the present Attorney General has given an opinion that has changed the interpretation of this amending clause which has stood for almost ninety years or more. Overnight he gave an opinion which changed the whole theory of limitation upon frequency of amendment, and I don't agree with this Attorney General.

MR. CHANCE: This Attorney General Wilson and the present Assistant Attorney General Backes have both rendered an opinion about that five-year business, that that means just the same as the revision provides. In other words, it is the same amendment. Some people undertook to say you couldn't put up any amendment—if you had one, it is five years without any—but I think the opinion of the Attorney General, the present one, means the same as the Report of the Commission on Revision.

MR. CAVICCHIA: That is his opinion. It is too bad he didn't go to the minutes of the Constitutional Convention as reported in the Daily Advertiser and to the whole argument concerning amendments, and then I think they would have reached a different conclusion. But I would like to bring this out since you have touched

on the subject, that when Mr. Hornblower, who was by the way Chief Justice of New Jersey, was asked the question as to whether the inclusion of a provision concerning amendments in the 1844 Constitution would limit the method of changing the Constitution, Mr. Hornblower said, "If the gentleman will allow me, I will say that I have been thinking of that subject and am of the opinion that this report only provides a mode in which specific amendments may be made, but the Legislature will still retain the power to call a convention to revise the Constitution."

MR. CHANCE: Some of the other fellows at the same meeting expressed contrary views, didn't they?

MR. CAVICCHIA: Mr. Hornblower was Chief Justice of this State, so I would like to believe in his opinion because I think he must have been schooled in the fundamentals of government perhaps a little more than the other members who had contrary views.

Now, let's go to the question you have taken up, the question of the smallness of the vote at these special elections. You have tried to show that the people are not interested in changing the Constitution. Do you know how many voters turned out for the ratification or rejection of the Constitution of 1844?

MR. CHANCE: No, I have no figures on that thing.

MR. CAVICCHIA: Well, for ratification, 20,276; for rejection, 3,526. The point I want to make is this: It is a historic fact that people don't seem to come out, but that doesn't necessarily mean that these important questions should not be brought before the people. Now again, would you say that the fact that special election days are not holidays may have some bearing on why so few people come out?

MR. CHANCE: I don't think that makes a bit of difference. I won't say quite as much as that. I think it does make some difference. The fact it is not a holiday makes a little difference. There are some people whose work is such that they are tired out at the end of the day and they can't get down to vote as easily as they could if it were a holiday. But I have observed that when people have a real kick, when people are really in earnest about something, they are going to go vote. But if the proposition or if the candidate is something they don't care anything about—it is all right if the thing gets over or it is all right if it doesn't get over—they won't bother to go vote. On the other hand, if they are perfectly satisfied that it go either way, they won't bother to vote. If they don't care whether it goes one way or the other, they don't go out. I think that the question as to whether the people are really interested in the thing or not is whether they go out and vote, in a large measure.

MR CAVICCHIA: Sure, but haven't we today means of communicating to the people the importance of these problems, means that were not available in other years. Today we have the—

MR. CHANCE: I will tell you one of them. Here is one of them. I have before me a statement of the last meeting that we had here in a paper of a city of fifteen thousand people, and the publicity which we have of what took place here would indicate that only one man spoke—"Chamber of Commerce Official Speaks"—and it tells what he said. But nobody else is supposed to have said anything, and you know how many people there were around here from the various municipalities, all of whom spoke against the thing. Still this great publicity produced only this one thing.

MR. WATSON: A very discerning newspaper!

MR. CHANCE: They got the right kind of a press release from Mr. Furman, who, by the way, I see is the publicity man on this—

MR. AMLICKE: Mr. Chance, stick to the article please.

MR. CHANCE: Is my cross-examination ended?

MR. CAVICCHIA: That is all I have to question.

MR. AMLICKE: Are there any other opponents who wish to be heard?

MR. BROWN: Yes.

MR. AMLICKE: I have you registered as a modificationist. If there are no other opponents, I will now call on Mr. Brown who wishes to speak in modification of Article IX.

MR. BROWN: To the Joint Legislative Committee for ascertaining the sentiment relating to Constitutional Review. One of the outstanding reasons for revising the Constitution of 1844 is the cumbersome method of amending, as a result of which in 48 years proposed changes were under consideration 156 times but were approved by the two chambers only 14 times and in the entire lifetime of the Constitution resulted in amendments on only four occasions two of which had to do with horse racing. That this cumbersome method was the deliberate act of the Convention of 1844 was evidenced by the protests against it voiced by Mr. Condit, a member of the convention who because of it resigned his membership and refused to sign the Constitution. No wonder that this Constitution of 1844 has been unable to meet the changing conditions of the times. Because of this and other outstanding defects the Legislature authorized the Commission for Revision, whose Report this Committee is now subjecting to the inspection of the people. Reference to page 53 of that Report (p. 953) shows that the method of amending has been changed but little.

The old method requires that the initial step be taken only by the Legislature. This is unchanged so that the people, if they wish to restrain an abuse of power by the Legislature, must still appear as suppliants before those who have abused it for permission to exercise their authority and stop the abuse. The fact that the people have no other recourse than thus to appeal to their

creature, the Legislature, is anomalous to say the least. Under the Federal Constitution the Legislative power is limited, necessarily so, to a definite description of what it can do and the initial step in the process of adding to these powers can be taken by either of the two parties in interest, the Congress or the Legislatures of the States. Compare this with the New Jersey Constitution under which the legislative power can do anything, with a few exceptions, and only one of the parties in interest, the legislative power itself, can take the initial step to add another exception. Both parties, the Legislature and the people, the grantee and the grantor, the servant and the master, should have this power of initiative.

The old method requires in the initial step, the favorable action of two successive legislatures agreed to by a *majority* of the members elected to each of the two houses. This has been changed in the Report requiring the favorable action by but one Legislature but agreed to by *two-thirds* of the members elected to each of the two houses. This change eliminates one impediment but sets up another and that other is a real impediment for as few as eight votes in the Senate can prevent approval, nor is it necessary to cast negative votes; absence from the chamber or refraining from voting will accomplish the same end. Thus in the Senate which is denied the power to originate a revenue bill there is given to eight of its members the extraordinary power to kill a proposed amendment. It is possible for Senators elected by nine per cent of the population of the State to nullify the vote of those elected by the other ninety-one per cent. On such a serious occasion as the impeachment of a Governor the prevailing vote in the Assembly is not two-thirds but a majority and yet two-thirds in each house is required to approve an amendment.

The old method prohibits the submission of *an* amendment for ratification oftener than once in five years; this has been clarified in the Report to mean *the same* amendment but the lapse of five years has been retained although in practice it would be six years because with biennial sessions the Legislature would not be in session until the sixth year.

Under the old method a delay in publication beyond the critical date of four months before election an amendment would at best have to carry over until the following year, or, in the opinion of some, it would expire. This has not been changed in the Report.

Thus the Report of the Commission confirms and prolongs this stripping of the people of all but a shred of their sovereignty and faces them with the possibility of another century of impotence. There is only left the shadowy power to choose representatives who will do the people's will but this has not served them in the century past and is only a long time remedy at best, because of our party and parliamentary systems. The capacity of a few

members of the Legislature to control the whole process of amendment should be taken from them.

I suggest the following substitute for Article IX of the Report.

> "1. Any specific amendment or amendments to this Constitution may be proposed in the Senate or General Assembly, and if the same shall be approved twice by the two chambers in joint session by a majority of the total members elected to the two chambers, with an interval of not less than ten calendar days between approvals, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon."

The suggested action of the Legislature in joint session instead of each chamber separately gives equal value to each member's vote and the total vote is more truly proportionate to the population than when these representatives are divided into two groups.

Voting twice with a sufficient interval insures against hasty action and legislative devices.

This method of proposing an amendment is purposely made easier than that in the Report that it may not be used as a mere obstruction which was repeatedly the function of the old method. Making easier this part of the process, the proposing of an amendment, will not act to either slow or hasten the other part, the ratification.

> "2. Any specific amendment or amendments to this Constitution may be proposed by a petition of registered voters numbering not less than two per cent of the vote cast in the last preceding general election, and embodying such amendment or amendments and such petition shall be mandatory upon the Legislature meeting in joint session, to act upon a resolution embodying the amendment or amendments, and if they shall be twice approved in the manner provided herein in the case of amendments proposed in the Senate or General Assembly, such amendment or amendments shall be entered on the journals of the two chambers with the yeas and nays taken thereon.
>
> 3. Each petitioner shall sign a separate copy of the petition which shall state his or her residence and place of voting. The petition shall be presented to the President of the Senate and in such manner as to facilitate inspection."

The proposal by petition makes it possible for voters to take the initiative but opens the door not too widely to alarm those who fear a flood of trivial amendments. The requisite two percent if based on a presidential election year, would number about 40,000 and would require a considerable organization and be costly; there would have to be a real demand for the amendment to secure so

many names. Though this method is mandatory on the Legislature only to vote upon the proposal and carries the initiative no further, yet it will subject the proposal to the deliberative process which it is not possible for the people to employ and prevent the defeat of a proposal without due consideration. As a collateral effect it will tend to restore the dormant power of the people by energizing the declaration that all political power inheres in them and will, by setting the finger of restraint upon the legislative power, give new life to representative government.

> "4. Proposed amendments shall be preferred as to argument and disposition."

Making amendments preferred legislation is warranted by the necessity of meeting the requirements of the critical dates for publication, etc., and by the ease otherwise of putting it aside until too late and thus delaying it for two years.

> "5. The Legislature shall publish any approved amendment once in at least one newspaper of each county, if any be published therein, not earlier than four months before its submission to the people and not later than one month before such submission.
>
> 6. Approved amendments which have been published as required by this section shall be submitted to the people at the next following general election. Submission shall be in such manner as the Legislature shall prescribe. If more than one amendment be submitted they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly. The same amendment or one effecting the same change in the Constitution shall not be submitted to the people more often than once in four years."

The provision for publication not earlier than four months nor later than one month before submission gives the officials concerned ample time to do this and the shorter interval is ample notice, too, in these days of highly developed means of communication.

> "7. The legality of the act of ratification shall not be questioned because of the method of proposing and presenting an amendment to this Constitution or a revision of it."

In order to meet objections that have been voiced in this present instance, the legality of the accomplished fact of ratification is declared. Ratification is an exercise by the people of their sovereignty and is not dependent upon any of the preliminary steps leading thereto. It is the final act and not the preliminaries that ordains and establishes.

"8. Every ratification vote shall be canvassed by a committee appointed by the President of the Senate and the Speaker of the General Assembly and the said committee shall hold public sessions daily for that purpose until its task is finished; PROVIDED that if such canvass is not finished within six months the vote as returned shall prevail. If a majority of the qualified voters who vote thereon shall approve and ratify any amendment to, or revision of this Constitution it shall become a part thereof after the vote has been canvassed as herein provided. Not more than fifteen days nor less than ten days before a ratification election is to be held a notice shall be mailed to every registered voter in the State and such notices as are returned shall be delivered to the committee for canvassing."

No greater electoral crime can be committed than a fraud in a ratification election. Every voter in the State is concerned with every vote cast; all practical means should be taken to prevent the will of the people from being defeated. A canvass of the vote should be mandatory and have the permanency of a constitutional requirement. It presents another hurdle for the political boss and if backed with adequate punishment may prove effective against such a high-jacking as has been threatened against this work of the Revision Commission.

The notice sent by mail has proven effective in tracing fraud.

"9. The Governor shall not have any power to approve or veto any resolution or bill for amending the Constitution."

The Governor's power to approve or veto proceedings for constitutional changes is now neither affirmed nor denied. It has been questioned in this and other States and to remove any doubt it should be denied.

MR. AMLICKE: Are there any other modificationists who wish to be heard? If not, that will conclude today's hearing. The Committee wishes to thank you for staying without recess for lunch.

May I ask the assembly whether there is any reason for a public hearing on Article X, "General Provisions"? I am just trying to find out whether or not we should have a hearing set aside for Article X, which is "General Provisions," and Article XI, which is "Schedule."

MR. BROWN: I would like to speak on it, but can't I file my statement with the stenographer instead of speaking before the Committee?

MR. AMLICKE: If you wish, sir. Are there any others who wish to be heard on either article?

MR. BERGER: The State Chamber will not wish to be heard on those two.

MR. AMLICKE: The Committee will go into executive session to decide when we will have the next hearing. It appears that a promise has been made that we shall hear those who couldn't be here on the article concerning the judiciary. Announcement will be made through the public press. We may or may not have the hearing next Wednesday, but that will be announced.

The hearing now stands adjourned.

(Adjournment.)

BRIEFS AND COMMUNICATIONS SUBMITTED AT THIS SESSION.

STATE OF NEW YORK No. 1891, INT. 1546

IN SENATE

March 12, 1942

Introduced by MR. WILLIAMSON—read twice and ordered printed, and when printed to be committed to the Committee on the Judiciary.

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

Proposing an amendment to Article XIX of the Constitution, in relation to amendments to the Constitution by petition and vote of the people.

Section 1. Resolved (if the Assembly concur), that Article XIX of the Constitution be amended by adding a new section, to be Section IV, to read as follows:

4. In addition to the methods provided in the preceding sections of this article for amending this Constitution, the people themselves may by petition propose any amendment thereto.

The wording of any such proposed amendment shall first be submitted to the Attorney-General. Within thirty days after such submission the Attorney-General shall render to the person submitting it his advice as to the form of the proposed amendment and its suitability to accomplish its purpose.

Within two years after any proposed amendment has been submitted to the Attorney-General and his advice has been received thereon, or after thirty days from the time of such submission if the advice of the Attorney-General has not been received, a petition for such amendment may be circulated and filed with the Secretary of State under the conditions hereinafter set forth. If a petition meeting the required conditions is so filed, the Secretary of State shall transmit the amendment proposed therein to the Legislature at the opening of its regular session in the calendar year following.

The Legislature shall consider the amendment and each of the two houses shall take a roll call vote on it without change not later than the conclusion of the first regular session after the one to which it is first transmitted. If both houses agree to the amendment without change at the same session and agree to it a second time at the first regular session of the Legislature thereafter following an election of the members of the Assembly, the Secretary of State shall submit it to the voters as an amendment proposed by the Legislature as provided in Section I of the article.

If, however, the Legislature shall fail to agree to the proposed amendment a first time before the conclusion of the first regular session after the session to which it is first transmitted or if, having agreed to it a first time, the Legislature shall fail to agree to it a second time at its first regular session thereafter at which it is authorized to act thereon, a supplementary petition for the proposed amendment may be circulated and filed with the Secretary of State under the conditions hereinafter set forth, and thereupon the Secretary of State shall submit the proposed amendment to the people for their approval or rejection at the first general election which occurs after the calendar year in which the supplementary petition is filed and also after the first general election at which the Legislature could have submitted it to the people as its own proposal after the transmittal of the proposed amendment to it as a result of the original petition.

Any such proposed amendment shall be submitted to the people in the manner prescribed by law for the submission of amendments originating in the Legislature except that it shall be described as "A proposed amendment of the Constitution instituted by petition." If a majority of the electors voting thereon in the city of New York and also a majority of the electors voting thereon in the State outside the city of New York shall approve any such amendment and if the number of electors in the whole State so approving shall be at least equal to one-fifth of the votes validly cast for candidates for the Assembly at the regular election of Assemblymen occurring in the same year, or in the next preceding year if no regular election of Assemblymen occur in the same year, it shall become a part of the Constitution from and after the first day of January next after such approval or at such later time as may be prescribed in the amendment.

If provisions of two or more constitutional amendments approved by the people at the same election are in conflict, the provisions of the measure receiving the largest number of affirmative votes at such election shall prevail to the extent of such conflict, except as provided in Section III of this Article.

An original petition as provided for in this section must be signed by at least two hundred fifty thousand qualified electors of the State and a supplementary petition by at least one hundred fifty thousand such electors who did not sign the original petition. All such electors must be persons registered to vote within the State at the general election next preceding the affixing of their signatures to the petition. Not more than one-third of the signatures required for an original or supplementary petition shall be counted from the signatures of residents of any one county and not more than one-half from the signatures of residents of any one city. Every original petition must contain the signatures of at least five hundred qualified electors from each of three-fourths of the counties of the State and every supplementary petition the

signatures of at least three hundred qualified electors from each of such number of counties. No supplementary petition shall be signed until the session of the Legislature to which the amendment for which it is circulated is first transmitted and also the first regular session thereafter have both adjourned without agreeing to the amendment a first time or, if the Legislature agree to the amendment a first time, until the first regular session thereafter following an election of the members of the Assembly has adjourned without agreeing to the amendment a second time, and no supplementary petition shall be filed with the Secretary of State more than five years after the filing of the original petition. An original or supplementary petition may be circulated in several parts, each of which shall contain the full text of the proposed amendment, and any number of such parts may be filed together or separately. This section shall be self-executing, but the Legislature may pass laws not inconsistent therewith for its proper enforcement and regulating the manner in which it shall be applied.

No. 2. Resolved (if the Assembly concur), that the foregoing amendments be referred to the first regular legislative session convening after the next succeeding general election of members of the Assembly and, in conformity with Section I of Article XIX of the Constitution, be published for three months previous to the time of such election.

BRIEF PRESENTED BY NEW JERSEY FARM BUREAU AND NEW JERSEY STATE GRANGE TO THE JOINT LEGISLATIVE COMMITTEE TO STUDY THE REPORT OF THE COMMISSION ON REVISION OF THE NEW JERSEY CONSTITUTION.

Trenton, New Jersey
August 26, 1942

To the Members of the Joint Legislative Committee:

The change suggested in the first paragraph of the Commission's Report requires that all officials shall be chosen at general elections. This seems wise. Should there not be, however, some provision making certain in emergencies, the filling, temporarily, of vacancies, either through executive appointment or in some other way?

The change suggested in the second paragraph makes impossible at special elections the submission of questions upon which the electorate is to decide. Is this really important? Of course, generally, special elections are not desirable. But is it not a proper legislative function? And may there not be emergencies when such elections are necessary? If the provision is of enough importance should there not be power somewhere to meet such emergencies? We do not commend the custom prevailing in many jurisdictions of legislative "declarations of emergencies," whenever a Legislature desires to do something unauthorized, or of doubtful authority. We do not think, as some do, that there can be such power inherent in any Legislature. Such powers are simply survivals of despotic states. Nor should constitutions confer blanket powers to declare emergencies. But they justly may be declared upon express constitutional authorization, and this, it would seem, might be a justifiable case. If the suggestion appears otherwise desirable we think it should include a provision to this general effect.

Another suggestion of change in this paragraph is one not made by the Commission. It relates to the limit of residence for voting. Has not the time long past when the reason for a year limit on residence within the State before voting ceased to exist; if ever there really was a valid reason? Its effect is to deprive almost everyone moving into the State of a vote for that year. The only limit necessary, or as we think desirable, is one sufficient to prevent fraud. The limit fixed upon registration is, or should be made, sufficient for that purpose. Even the five-month limit for county residents seems more than necessary. If the largest possible electorate, within the limits of honest elections and competent electors is desirable, and we think it is, present restrictions seem inexcusable. We commend this matter to your serious consideration.

Another original suggestion regarding Paragraph 3, is the inclusion of new matter. Should not the Constitution define "resi-

dence"? There always has been conflict of opinion, both popular and juridical. Should "residence" be regarded synonymous with "home," or with "domicile," or with "abode"? To what extent do these several words express the same idea? Is one's residence where he spends the major part of his time? Is it where he may chance to be for the time being, whether the time be longer or shorter? Is it where some election officer or some petty judge may say it is? Or is it where, as some of the older people used to think, one sleeps, or eats, or where his washing is done? If either of the last-mentioned rules should be applied now-a-days, many would vote from public restaurants or from public laundries. Yet, if the other alternatives mentioned were to be carefully considered they would appear only a little less absurd. The earlier cases, as we understand, held a voter's residence to be where he himself publicly declared it to be, and when once so established, it remained fixed until a public declaration of change had been made. It seems now, however, that other opinions have received judicial acceptance, and in some States also legislative sanction. In the interest of uniformity, as well as of honest elections, a definition of "residence" seems a proper constitutional provision.

Fourth. We commend the Commission's suggestion relating to the provisions regarding the voting of persons previously convicted of crime. If anything in the present Constitution is archaic it certainly is the provision making the law as it appeared in the statutes at the time of the adoption of the Constitution, regarding the eligibility of persons as witnesses, the test of disqualification. Whether making of "crimes at common law" the test, as the Commission suggests, is the best that can be done we are not sure. We do fear that it, too, may not reflect the most mature thought. It, too, may be found too indefinite. But clearly it is superior to the existing provision, and, at the moment at least, we have no better suggestion. Perhaps a better one may occur to you before your work is completed.

We have another criticism to the language of this paragraph. It is in line with one made in our first memorandum. It relates to the careless use of words, survivals of words of despotism, wholly inappropriate in Constitutions of limited States of sovereign citizens, unwisely still in common use. The earlier criticism referred to the use of the word "privileges" in the Bill of Rights; this one to the "rights" of electors and the "rights" of suffrage. Such words should not be used in charters of free citizens. Probably few other words or phrases have been more misused. Clearly there can be no "right" of suffrage in a limited State—in a limited purpose corporation of any sort. "Suffrage," "voting," impose "obligations" and "duties," and obligations and duties only. There is no element of a "right"—either inherent or acquired, but just the opposite. Voters act only as fiduciaries, as one rendering a service to others.

They do not act as principals, but as representatives, as one executing a trust, not exercising a right. The sooner there is popular recognition of the true nature of the office of elector, the sooner we shall have more truly republican States and more honest corporations of all kinds. This will imply, also, more honorable public officers, more honorable corporate officers generally. There is not time, of course to elaborate here upon these fundamental principles. Though it would be worth the time to do so. But the principles not only are sound and we believe vital, not only to the long-continued maintenance of limited States, but to all other corporate enterprise. Some day these principles will be recognized. Should we not promote the coming of that day by making the language of our public documents conform to the true spirit of our institutions? We may do so in this instance by substituting the words "shall perform the duties of an elector" for the existing words "shall enjoy the rights of an elector."

The fifth and sixth paragraphs of the Commission's Report seem desirable.

Respectfully submitted,

NEW JERSEY STATE GRANGE
D. H. Agans, Master
NEW JERSEY FARM BUREAU
H. Earl Probst, Secretary

STATEMENT OF THE COMMUNIST PARTY OF NEW JERSEY

HEARINGS ON ARTICLE VIII OF PROPOSED REVISION OF NEW JERSEY CONSTITUTION

Our comments on Article VIII again will be few and brief. Most of the provisions merely re-state long-established practice and procedure as to elections and suffrage. Not that we should take our right of suffrage for granted. There is a great section of our land where this fundamental democratic right is denied to millions of native-born Americans. The vicious poll tax, coupled with fake literacy tests and supplemented by unbridled terrorism serve to bar from the ballot boxes of our Southern States those whose color or economic circumstances make them "unworthy" of sharing democracy with the powerful reactionary minority now in power. It is fitting in these times when the issue of free elections is being decided with bullets on the field of battle that we be reminded that we in New Jersey cannot take our liberties for granted. It is also proper to call upon our representatives in Congress and in the Legislature to do their part to end the menace of poll tax, lynching and terror, which too long has disgraced our country but which today is undermining our unity and gravely endangers a victorious war effort.

Article VIII, Paragraph 2 would limit referendum on all questions to the general elections. We submit that there may be situations and issues of such immediate public import as to make imperative special elections at which such questions may be submitted to the people. Recommendations we have made in previous hearings would require possible special elections for the operation of the initiative, referendum and recall as well as in the event of the death of the Governor.

In the discussion of the legislative article we made proposals as to the method by which members of the Legislature should be chosen. To implement these proposals we would add in Article VIII the necessary paragraphs either to establish Assembly Districts according to population based on latest census figures, or to establish proportional representation.

Paragraph 3 establishes the age of 21 as the minimum for voting. While ruled out from consideration at this time by your Committee since it would be inconsistent with our Federal Constitution, we would like to voice a thought we believe merits consideration by all Americans. We witness today the heroic wartime role of young men and women between the ages of 18 and 21. Military and naval authorities are unanimous in the opinion that young men of this age have the steadiest nerves, display the greatest courage and can undertake the most difficult missions. It is no exaggeration to say that now, more than ever, the fate of our country rests with our youth. Why then, should not citizens of 18 be granted the right of suffrage? The traditional argument of

youth's immaturity and inexperience is no longer valid, we maintain. Our country, which pioneered in the development of democratic government, could examine with profit the splendid contributions, both in peace and war, of the youth of our ally, the Soviet Union, where there is universal suffrage for all over 18 years of age. We look forward to this advance throughout the world as part of the century of the common man heralded by our government leaders.

MANUEL CANTOR,
Legislative Representative Communist Party of New Jersey.

STATEMENT OF THE COMMUNIST PARTY OF NEW JERSEY

HEARINGS ON ARTICLE IX OF PROPOSED REVISION OF NEW JERSEY CONSTITUTION

Abundant proof has been adduced in these hearings attesting to the great difficulty encountered over the last 100 years in passing amendments to the present Constitution. The difficulty certainly cannot be laid to any absence of need for effecting changes. The principal barrier was the awkward undemocratic method provided for the amendment process. The proposed revision of the amending article is no great improvement. It falls far short of the much more democratic provisions in numerous other State Constitutions.

We propose that a constitutional convention be provided every ten years. If needed at other times, the convention can be convened whether by legislative action subject to referendum by the people or by an initiative petition and referendum. Eleven States now provide for initiative for constitutional amendments, a method which we also suggest in addition.

The single method provided by Article IX is itself much too circumscribed. The vote for legislative approval should be by simple majority not by two-thirds. The provision for public advertisement should stipulate "at least once in at least one major newspaper in each county." We are mindful in this regard to a recent experience in connection with one of the earlier of Mr. Foran's milk hearings.

As we construe the language of Paragraph 3 it would limit the real consideration of amendments to a period of four months in two years. The rest of the term only discussion could take place. We would eliminate this unnecessary restriction. We would do the same in Paragraph 5 which limits the submission of the same or similar amendments to the people to once in five years.

We can explain a desire to restrict and limit the amendment process only as an expression of a fear of the people which the Communist Party does not for one moment share.

MANUEL CANTOR,
Legislative Representative Communist Party of New Jersey.

PUBLIC HEARING

September 17, 1942

Morning Session

on

Proposed Revision of the New Jersey Constitution
Article V. "Judicial"

The Joint Legislative Committee appointed pursuant to Senate Concurrent Resolution No. 19, passed June 15, 1942, convened in the Assembly Chamber in the State House at Trenton on Thursday, September 17, 1942, at ten-thirty o'clock A. M., for the purpose of holding a Public Hearing in connection with the Proposed Revision of the New Jersey Constitution (1942) pursuant to announcement previously made.

The following members of the Joint Committee were present: Hon. Lloyd L. Schroeder (presiding), Hon. Edward J. O'Mara, Hon. John M. Summerill Jr., Hon. H. Rivington Pyne, Hon. Manfield G. Amlicke, Hon. Dominic A. Cavicchia and Hon. Mildred A. Preen.

The Chairman opened the hearing and the hearing proceeded as follows:

MR. SCHROEDER: We will open the hearing as scheduled on Article V, the Judicial Article of the Proposed Revision of the New Jersey State Constitution.

At this time I would like to appoint a Committee of our Constitutional Hearing Committee to call on the Governor and escort him to the Assembly Chamber, and I herewith appoint Senator O'Mara from Hudson and Assemblyman Cavicchia from Essex.

Governor Edison was then escorted into the Assembly Chamber by the Committee.

It is my honor and privilege to present to you the Governor of the State of New Jersey, the Honorable Charles Edison.

GOVERNOR EDISON: Mr. Chairman and Members of the Committee:

It is one of the most important privileges and duties of citizenship to take part in constructive discussion of the basic law of our State. I welcome this opportunity to appear here to discuss constitutional revision. If the pressure of duties on my office had permitted, I should have enjoyed participating as a citizen in your weekly hearings on each of the Articles of the Proposed Revision of our Constitution. I feel, however, that as Governor I have a

special duty to speak, not only for myself, but also for the long line of holders of the office.

I am, therefore, going to ask you to try for the moment to think of me not as Charles Edison, but impersonally as the voice of the many Governors who have tried, in spite of great handicaps, to serve the people under the 1844 Constitution.

For more than seventy years, dissatisfaction with the working of the Constitution drawn up in 1844 has been chronic. Let me testify, first, in the language of New Jersey's Civil War Governor, Joel Parker. Governor Parker paid his respects to the Constitution of 1844, in his annual message (January 14, 1873) in the following words:

> "The present Constitution of the State of New Jersey was adopted nearly thirty years ago. The convention by which it was framed was composed of able men, among whom were many distinguished jurists, and the work which came from their hands was thought to be as good as human wisdom could devise; but experience proves that with increasing population, wealth and enterprise, and with new subjects of legislation constantly arising, some amendments of our organic law are needed."

Since Governor Parker's time, twenty men have been elected Governor. Of this number, more than one-half are on record, either in official documents or in published statements, as recognizing the need for further substantial changes in our 1844 Constitution.

Repeated unsuccessful attempts have been made by way of the cumbersome method of submitting specific amendments to carry out some of the objectives that these Governors had in mind. Reform of our antiquated and intricate system of courts, extension of the terms of the Governor and of the legislators, and other important changes of a fundamental character, have failed of realization. At least eight Governors have concluded that the best way to give the 1844 Constitution the modernization which it required, was by a general revision.

Governor Robert Green, in his inaugural message in 1886, speaking in the light of the experience of the Constitutional Commissions of 1873 and 1881, urged the need for a revision of the Constitution.

Asking how this was to be accomplished, he answered:

> "The plan of a Commission has been tried—it is far from satisfactory. The only method, reading the whole case, is by a Constitutional Convention."

Governor Green's advice went unheeded. Another futile commission reported and further attempts at piecemeal amendment collapsed.

Consequently, Governor Franklin Murphy in 1905 reminded the Legislature in these words that:

> "It is now more than sixty years since there has been a Constitutional Convention in this State. Amendments were made by vote of the people upon recommendation of a commission in 1875, and upon legislative resolution in 1897. Attempts have been made to effect other changes from time to time, but have failed. A representative body chosen by the people, with responsibility to the people alone, has not considered the whole subject of constitutional law since 1844. In that period the population has multiplied nearly five times, the relations of the State Government to the Federal Government and to the citizens have changed; business conditions have been revolutionized; legal methods are no longer the same; taxation is greater and more varied in application, and the State as our fathers knew it has altered in all respects. It is my belief that the time has arrived when a representative Constitutional Convention should be summoned to give the people the opportunity to revise their fundamental law."

Once more, the voice of the Governor was ignored.

Attempts to secure fundamental constitutional changes advocated by Governor Stokes and Governor Fort also ended in failure.

Governor Woodrow Wilson, therefore, echoed the long experience of his predecessors when he advocated general revision by convention.

Governor Wilson said:

> "The Constitution of the State needs reconsideration in a score of parts, some of them of the first consequence. No doubt, its provisions were considered wise and suitable at the time of its adoption, but that was quite two generations ago and the circumstances of our life have altered fundamentally within that time, politically, socially, economically. I urge upon you very earnestly indeed the need and demand for a Constitutional Convention. The powers of corrupt control have an enormous and abiding advantage under our constitutional arrangements as they stand."

We know that this attempt also failed.

The need for revision continued, however, and increased in intensity.

Fourteen years later Governor A. Harry Moore, in his annual message to the Legislature in 1927, reechoed the pleas of his office.

He said:

> "I am opposed to piecemeal changes or amendments to our Constitution. That instrument is so archaic and so inadequate to meet the conditions of the present day as to require a complete revision. That can only be effectively secured through the medium of a Constitutional Convention, and I urge upon you the creation of the necessary agencies to formulate a complete, whole and harmonious program making the required changes in the organic law."

The case was never put more succintly than in these words I have just quoted from Governor Moore.

Advocacy of a constitutional revision did not originate with me. Students of government, members of the Legislature, and State officers have also been conscious of this need. The more deeply they have become acquainted with our 1844 Constitution, the stronger has been their appreciation of the necessity for revamping it.

We Governors can testify from personal experience that our 98-year-old Constitution fosters wasteful, complicated, and irresponsible State Government.

The need for revamping our state executive department and our judicial systems is most obvious. The need cannot be met without thoroughgoing revision.

Then, too, without a general revision, the Legislature cannot be freed of the burdens of annual elections, or from inappropriate executive duties; nor can it be given adequate powers of investigation or provided with the proper pay.

Your committee will remember that I advocated a Constitutional Convention just as earlier Governors. But the Legislature disagreed with me. Instead of providing for a convention it passed a resolution, which I approved, setting up The Commission on Revision of the New Jersey Constitution.

This Commission consisted of seven members; two appointed by the President of the Senate; two by the Speaker of the House; two by the Governor; and the seventh was chosen by the other six members. May I emphasize for the record that this commission plan was the plan of the Legislature and not the original plan of the Governor.

Let me say here that I think they did a very good job. They met every week, and they put in long hours in study and discussion. Without receiving any compensation, aside from the satisfaction that comes from the performance of a public service, they worked conscientiously to perfect a satisfactory report. The result is not perfect, of course, but it is infinitely better than the 1844 Constitution. Here and there in the new document are provisions I might object to, or you might. But the over-all judgment on the work of the Commission must be that their unanimous report stands as a landmark in the history of constitutional progress in New Jersey.

I have given most serious consideration as to whether this whole matter of revision should be postponed for the duration. It is my considered judgment that in the midst of a great world war, upon the outcome of which the future of the democratic form of government is at stake, we can make no greater contribution to our form of government than to do our part here in New Jersey in improving our own instruments of democracy. This action is imperative so that future citizens may obtain efficient service and simple, prompt justice under a less complicated and less expensive State Government. These results can only be obtained by a thoroughgoing revision. A series of makeshift amendments cannot do the job, as our history clearly shows.

There is a most solemn obligation upon us to correct the serious deficiencies of our Government, so that when our soldiers return home they will find that we have not failed to do our part to make this a better State in which to work and live.

They must not be able to point a finger at us and say, "While we were away risking our lives for democracy, you people back home in New Jersey sat down and did nothing to make democracy more efficient and workable. You did nothing to preserve the kind of democracy that is worth risking our lives to preserve."

There will be many problems of reconstruction after the war. These can be more quickly solved if there is not superimposed upon us at that time the additional problem of modernizing our State Government.

I wish to make clear to the members of this Committee and to the citizens of this State that my strong recommendation that our State Constitution should now be modernized, will not be of the slightest advantage to me personally. As Governor I will not benefit from the additional powers which will be vested in the executive under the proposed new Constitution. By the time such a new Constitution is in operation, my term of office will have ended. I do not, however, want future Governors and future Legislatures to suffer under the ineffective and irresponsible government imposed by the 1844 Constitution.

I personally will not derive any special benefits from a simpler, more expeditious and less expensive system of justice in this State. These are benefits that will accrue to the rank and file of all our citizens, many of whom are inarticulate, many of whom, because of the pressure of their everyday work, have been unable to attend your Wednesday hearings.

Thousands of our citizens sense and know that there is something vitally wrong in our State Government. They may have difficulty in understanding exactly what is wrong. Even the experts are sometimes baffled, although in this case there is remarkable agreement on the broad outlines of what needs to be done. It is therefore incumbent upon the Legislature and the Governor

to give guidance, direction and leadership to a sound and effective modernization of our State Constitution. This is a matter in which we have more experience and fuller knowledge than the average citizen.

The voters have elected us for the very purpose of giving guidance in governmental matters. They did so at the recent election under the solemn promise of both major parties to do something about constitutional revision. They have a right to expect leadership in this matter from us. It is our solemn duty to give it.

The record shows that capital and labor, individuals and civic groups, organized and unorganized voters, have taken active, positive, and favorable interest in the hearings of your committee. The matter has been widely discussed outside this chamber. There has been almost unanimous newspaper support for revision.

If the opponents of the change in the 1844 Constitution are sincere in their contention that there is insufficient interest in a constitutional revision and that the people of New Jersey do not want to revise the 1844 Constitution, then I challenge them to test their sincerity and their contention by a showdown at the polls in November; I challenge them to aid in seeing to it that this showdown is truly representative of the people and not just the expression of the henchmen of political machines; I challenge them to place on the ballot the simple question which they have tried to hide; I challenge them to get a "yes" or "no" vote from each voter in November on the question:

> "Shall the 1943 (167th) Legislature be directed to submit for the people's adoption or rejection at the 1943 general election a revised Constitution, altered or revised as the Legislature deems the public good requires?"

If the people of the State show by their votes that they do want an opportunity to pass upon a reformed Constitution, then the next Legislature will have most of the year to study the record of your hearings; to weigh all the factors involved in every proposed change; to examine not only the proposals of the Commission, but also any other suggestions that may be advanced.

During the year, popular education in constitutional problems may be continued.

Constitutional reform is not a partisan issue. It should not become material for party politics. A Constitution is not a matter for political advantage, but it is a document intended to last for years to come. Because of the present interest in constitutional reform, our generation has an extraordinary opportunity to provide a more efficient and responsible State Government for future citizens of New Jersey. We have a duty to democracy that we must not shirk.

I am confident that your Committee will recommend that this

question be placed on the ballot in November. If you do, it is my firm belief that the work of your Committee will stand side by side with the work of The Commission on Constitutional Revision and will be another important milestone in the reform of the 1844 Constitution.

MR. SCHROEDER: Governor Edison, the Committee is very happy to have you here this morning, and certainly wishes to express to you its appreciation. Thank you very much.

We will proceed to hear the proponents of Article V who did not have an opportunity to express their opinion before this Committee. The first speaker will be Mr. Walter J. Bilder.

MR. BILDER: Members of the Committee, ladies and gentlemen:

I am in favor of the provisions of the proposed new Constitution on the subject of judiciary, and I desire to speak on two phases of that matter, one concerning the Court of Errors and Appeals, and the other concerning the proposed merger of equity and law systems.

Three structural features of the Court of Errors and Appeals combine to make it probably the most extraordinary and anomalous tribunal in the land. These features are:

(1) Its numerous membership, unlimited by any constitutional provision;

(2) The inclusion in its composition of the entire membership of an inferior tribunal which is subject to its review; and

(3) The constitution of almost one-half of its membership by persons left free to pursue their private gainful occupations and not required to be specially qualified for judicial office by legal training or experience.

Endowed with such a combination of organic infirmities, a Court might be thought destined to an extremely brief existence. The endurance of our Court of Errors and Appeals for nearly a century, seems, therefore to defy the laws of reason and common sense.

But, as history teaches only too well, the laws of reason and common sense count for little in the mortality of social institutions. The truth is that, from the mere fact that it exists, it forms part of a status quo, a social institution derives a seeming naturalness and rightness that wins for it the stout allegiance of all but the most critical and astute members of society. It is on this account principally that those persons who have a special interest in the perpetuation of an institution, a private stake in its survival. find it so easy to establish for it a good title to its place in the existing social scheme.

Nevertheless, the stubborn survival-power which an institution acquires from this primitive source is vulnerable to one technique

of criticism, and that is the technique of historical examination; for by this method is revealed whether its seeming qualities of naturalness and rightness are inherent in the institution or are merely imputed to it. Let us, therefore, submit the Court of Errors and Appeals to a brief historical examination, to find out, in the vernacular, "how it got that way."

In 1702 the "Instructions" of Queen Anne established in New Jersey a Court of Appeals consisting of the Governor and his Council. This was, so to speak, a small-scale reproduction of the British Court of Appeals, which for a long time had consisted of the King in Council. Those colonial officials continued to comprise New Jersey's highest Court until 1776, when New Jersey ceased being a British Colony. In that year the State's first Constitution provided for a Court of Appeals composed of the Governor and the Legislative Council, the upper house of the Legislature. This change altered the Court of Appeals in form but not in substance, for the Legislative Council was invariably chosen from the same class and type of persons which had supplied members to the Colonial Governor's Council, namely, men of wealth and prominence. All of these officials were chosen annually; the Council by the people and the Governor by the Legislature. This appellate body continued to exist until 1844. In that year the present Constitution was adopted and it created the Court of Errors and Appeals as it exists today.

Out of the records of the convention which framed that Constitution and created that Court in 1844, certain major facts emerge.

1. The general demand for a reconstruction of the Court of Errors and Appeals in 1844 arose chiefly, if not solely, from the fact that the Court was composed of persons who were (to quote Chief Justice Hornblower) "elected on political grounds * * * elected as politicians but never as judges." "The Court," said he, "has become a by-word. * * * They (the Judges) may be approached by everybody without any delicacy of feeling. Family friendship, prejudices and partialities influence them. * * * In more than half of the cases which have been decided in that Court for forty years past * * * *the causes* have not been tried but *the parties* or *the tribunal* from which the appeal has come." The Court, to quote Mr. Green, was one "in which politics mingle" and "from its peculiar organization, party first must touch it."

2. The popular demand for a reconstruction of the Court of Appeals did not arise from the fact that the Court was a body of laymen. On the contrary, the forces of tradition and custom-born prejudice created a strong presumption in favor of a lay composition of the Court, and placed upon those who advocated the inclusion of lawyers in the Court the burden of justifying such an innovation. Thus, the propriety of having laymen as

members of the new Court was freely conceded by Chief Justice Hornblower. Voicing his expectation in that regard, he said: "Who will be selected? Our farmers, mechanics and merchants—men of intelligence, experience and character." "Give me," he exclaimed, "a judge of the greatest acquirements in the law—a Stockton, Marshall or Washington or one who is no lawyer at all but full of sound common sense and integrity of purpose * * * We have men in whom I have confidence and whom I revere who have never read Blackstone or opened the pages of a law book." Mr. Thompson (a lawyer) acknowledged readily that "in a mere matter of dollars and cents, a lay Court of Appeals could no doubt decide as well as the Judges of the Supreme Court," but not so in cases involving questions of constitutional law.

On the other hand, the lawyer-delegates in the convention felt called upon to put forth the most strenuous arguments to show the desirability and the advantage of introducing into the Court persons whom the lay delegates continually and with invidious intent referred to as "legal gentlemen." How formidable and bitter was the opposition they had to overcome, is attested by samples of the hostile sentiment. Thus Mr. Ogden said: "It is said upon the other side of the question * * * that the Court in the last resort should be divested of members who may be led away by the technicalities of the law." "Legal gentlemen," said Mr. Ryerson, "are too apt to be prejudiced by technicalities instead of by reason and law"; and he urged that the Court of Appeals should be composed of the Chancellor and six laymen. Said Mr. Ewing: "I am not willing to ascribe all the talent and virtue to a particular profession." Said Mr. Stokes: "The gentleman seems to think that the law is reduced to a science and if this Court is composed of members of the profession, all one has to do is to put a cause in it and it will come out all right." Mr. Naar insisted that, since Supreme Court Judges often differ as to the law, there was no "safety" in having them in the Court of Errors; and he made his sentiments perfectly clear by declaring: "I go to a lawyer for his opinion and not for justice." Mr. Parker took vigorous exception to the view that "no one is fit to be a judge but a member of the Bar"; and he defiantly declared: "The Bar shall not govern the whole State while I can prevent it." The final action taken at the convention on this matter still showed an irreducible minimum of insistence on a lay court, as indicated by the impressive vote of eighteen to thirty-five.

3. None of the delegates in the convention ever suggested that the size of the new Court of Appeals was a matter to be considered. Indeed, the point was made emphatically in favor of the new Court, by Mr. Ogden, that it would be smaller than the existing Court (which had nineteen members) and therefore would be more economical. Said he: "I am willing to go before the people on this ground." The proposed new Court, be it noted, would only have twelve members, since there were only four associate Supreme Court Justices in 1844.

4. None of the delegates in the convention objected to the inclusion of the members of the Supreme Court in the Court of Appeals on the score of its logical incongruity or psychological disadvantage. So far from that being the case, the Supreme Court Justices were taken for granted as the best material available for the highest Court, if the latter Court was to include "legal gentlemen" in its membership. What is more, the services of the Supreme Court Justices upon the Court of Errors and Appeals were considered to be all the more acceptable because those services could be had without additional expense. Said Mr. Ogden: "I consider that the cheapness of the system * * * will recommend it to the people. * * * There are but six judges who are to receive pay and that is to be a per diem allowance." (He was here referring to the six lay judges.) Mr. Marsh advocated the proposed Court "as being economical and a saving upon the old system of $2,000.00 per annum." How influential in the convention was the consideration of economy, is evinced by the fact that the original constitutional provisions for the appointment of an additional Supreme Court Justice was struck out by amendment, although it was recognized that, to quote Mr. Van Arsdale, Chairman of the Committee on Judiciary, 'There are not now Justices of the Supreme Court enough in proportion to the amount of business carried on." The sponsor of the amendment said that if the additional Supreme Court Justice were appointed "the people will say it is only for the creation of fat offices."

5. It was the intention and expectation of the framers of the new Constitution that the six judges to be specially appointed would never be lawyers. This is the true significance of the constitutional provision for the per diem compensation of those judges. They were to be part-time judges. They were to be, as Chief Justice Hornblower said: "farmers, mechanics and merchants." As Mr. Ogden said: "they were to be selected from the body of the people." As other delegates expressed it, they were to be the "people's representatives" upon the Court. In truth, these six lay judges constituted one of the two components of what might be called "the great compromise" of the convention; the other component consisting of the professional members of the Court. And in this connection be it noted, incidentally, that these two components were then in numerical balance, since there were six lay judges as against the Chancellor, the Chief Justice and four associate Supreme Court Justices. (No explicit advertence to this balance, however, appears in the debates in the convention.)

6. To the lawyers in the convention, the improvements of the new Court of Appeals over the old one were apparently so dazzling

as to blind them to its patent imperfections. Chief among these improvements was the introduction of "legal gentlemen" into the Court, whereby it was enabled to administer justice according to law, through the fact that some of its members, at least, would know the law. Of the old Court of Appeals, Mr. Green had exclaimed: "Has anyone heard a decision of the Court of Appeals cited as authority? Has that Court ever settled one principle of law or equity?" Another improvement welcome to the lawyers was the fact that the new Court, not being like the old one subject to a change of personnel with each annual election, had "stability" and would therefore tend to uniformity of decision. Finally, and of supreme importance, was the fact that the new Court fitted completely into the constitutional scheme of a "separation of powers." Especially, in this connection, the new Court would not contain members who would have to pass on the constitutionality of laws which they themselves had helped enact. In the brilliant light of these accomplishments, it is understandable that the lawyers in the Convention of 1844 should fail to note the impracticability of a Court whose size was unreasonably excessive to begin with and was constitutionally capable of unlimited enlargement, and that they should fail to be struck by the logical absurdity and psychological harm of including in the Court of Appeals all the members of a lower tribunal which was subject to its review. As to the provision for a lay component of the Court, perhaps it is to be suspected that the lawyers at the convention anticipated that feature would undergo the neutralization in practice which a number of the lay delegates expressly apprehended. But misgivings as to the intellectual and moral ability of a man to sit as judge upon the highest court part of the time and to follow his own private gainful pursuits for the rest of the time, seems never to have entered the minds of any of the delegates, lawyers or laymen. To them, apparently, sufficient unto their day were the evils in the court which they had actually experienced; and, pre-occupied with those evils, the delegates failed to conceive or to forsee the new evils implicit in their own handiwork.

This summary historical review yields conclusions that seem highly relevant and useful to the present purpose. These conclusions are:

(1) That the present structure of the Court of Errors and Appeals represents first, an epoch-making effort, in the language of Chief Justice Hornblower, to remove the members of the Court of Errors and Appeals "from the common platform of everyday politicians," and represents, second, a revolutionizing overthrow of the ancient idea that the supreme judicial power should be lodged ex officio in the possessor or possessors of supreme political authority. More than this, it does not represent, in terms of social and, in particular, juristic progress.

(2) That the present structure of the Court of Errors and Appeals is in large part the embodiment of inept historical survivals, and in its entirety is a conglomerate of incongruous ideas fused together by the heat and pressure of a strenuous and urgent compromise.

These conclusions may perhaps tend to clear away some of the underbrush which now impedes the pathway to a single-minded and well-conceived reconstruction of our highest court.

And now I ask leave, if I haven't exceeded my allotment of time, to add a few words on the subject of merger of the Court of Chancery and the law court, which I have not prepared in advance. I am in favor of the merger of the equity and law courts of this State as proposed in the new Constitution, and I wish to make several points in support of my position.

1. It is not a fact now that the law courts and the court of equity in this State are separate and distinct. They are merged in the New Jersey Court of Errors and Appeals, and have been, since 1844. That court reviews law and fact in equity suits and as everyone knows, no important litigation in the Court of Chancery ever fails to reach the Court of Errors and Appeals. We haven't got a separate and distinct equity system apart from the law system in this State. They are merged. Let the truth be known.

2. The original separation of the Court of Equity from the law courts in this State is owing to the historical fact that under the first Constitution in 1776, the Governor constituted the Chancellor. As I recall it — my recollection may be faulty here — it was not until 1799 that provision was made for appeal from the Chancellor to the Court of Errors and Appeals. Thus, it is clear that the separation of the two juristic systems until then was not grounded in any legal policy or public policy or social wisdom, but purely a historical acceptance.

3. In the debates in the Convention of 1844, there was a great deal of debate on this matter of proposal to merge the systems, and there was tremendous sentiment in favor of merging the Court of Chancery with the law courts. The principal argument, as I recall it, made against it was the argument that — I think this was made by Chief Justice Hornblower, who was most competent to speak on the subject—that the law judges did not know any equity law. Today that is just plain nonsense. The law student who goes to law school gets a course in equity as thorough and complete as he does in the common law, and no judge sitting in the law court today would permit anyone to say, to his face at least, that he didn't know equity law. So much for the historical reason.

Finally—more points might well be made—the traditional hold which the supposed—I say "supposed" because I say it isn't true that there is a dual system here—the traditional hold which the supposed dual system of law and equity has upon the predispositions of much of the Bar of this State is owing largely to the personal eminence of the line of learned and illustrious members of that court in the past. I wish I could elaborate upon that; I won't take time to do it. It needs only to be mentioned that I think the affection of the older members of the Bar in favor of the Court of Chancery is most strongly grounded in the fact that we have had such illustrious members of the Court of Chancery. Is that a reason for keeping the two systems apart? Is New Jersey, with four million men and thousands of lawyers, incapable of producing good law judges who would also know the law of equity? Can one name a member of the Court of Chancery more illustrious in the field of equity than Chief Justice Beasley was in both equity and law, or Mahlon Pitney? Of course, we have had illustrious common law lawyers and men who have sat on the Court of Errors and Appeals and decided equity law as well.

I thank you.

MR. SCHROEDER: Mr. Paul.

MR. PAUL: I would like first, Mr. Chairman, to give the Committee the benefit of a statement from former Judge Black, which will be read by Mr. Mortimer Eisner.

MR. EISNER: Mr. Chairman, may I just say that Mr. Justice Black has been a Justice of the Supreme Court of this State and also a Judge, for many years, of the Circuit Court. With this short letter which I would like to read, I should like to incorporate in the record the report of a committee of the New Jersey State Bar Association on the judiciary amendment of 1909, which Mr. Justice Black sent me. The letter is addressed to me, dated September 14, 1942.

"My dear Mr. Eisner:

I received a copy of the proposed New Jersey Constitution which you kindly sent me, with a request that I send you in writing my views as to Article V, Judicial. I am, with this, sending you a printed statement, a written statement by me in reference to the proposed judicial amendments of 1909. Article V is somewhat more comprehensive and radical than the amendments of 1909, but for the purpose of this dicussion they may be considered from the same point of view. My subsequent service in the Circuit Court and as Justice of the Supreme Court amply demonstrates, to my satisfaction, the soundness and desirability of the present proposed judicial amendments, Article V.

It may not be amiss to recall the creation and structure

of the Court of Errors and Appeals, which was created under the Constitution of 1844. At that time the Supreme Court consisted of four Justices and a Chief Justice, a Chancellor, and six judges appointed for six years; as no case on appeal could be brought before the court, except from the Supreme Court or the Court of Chancery, when one or more of those judges would be disqualified from sitting, the six judges appointed would always be in the majority. While no qualification is required, they were for many years all laymen, i.e. not lawyers. From the creation of the Court there always have been in the Supreme Court one or more judges of long service, lawyers of learning, industry and a high standard of public duty, who guided the court and largely controlled the decisions, thereby gaining the confidence of the public; otherwise, the court would have been like a boat without a rudder, in a sea of legal confusion.

One other point not germane to these amendments is the fact that in the case of In Re Hague, 150 Atlantic Rep., the Court held that the Legislature had no power to investigate the alleged misconduct of municipal officers, that this was the exclusive province of Grand Juries.

This decision of the Court of Errors and Appeals should be annulled, the functions of the Legislature should not be limited by the courts except by an express constitutional mandate.

My reading of the proposed Constitution, Article II, Section II, and Article X, Section II, rectifies and covers this point.

I am sincerely,

CHARLES C. BLACK."

ISSUED BY THE SUB-COMMITTEE OF COMMITTEE OF NEW JERSEY STATE BAR ASSOCIATION ON JUDICIARY AMENDMENT, JULY, 1909.

COMMITTEE

Charles H. Hartshorne, Chairman.....Jersey City
Charles E. Hendrickson Jr., Secretary .....15 Exchange Place
Jersey City
H. C. Pitney .....Morristown
Bennet Van Syckel .....Trenton
J. Kearney Rice .....New Brunswick
Alan H. Strong .....New Brunswick
John S. Westcott .....Atlantic City
George M. Shipman .....Belvidere
Chauncey G. Parker .....Newark

Nelson Y. Dungan ..... Somerville
Thomas E. French ..... Camden
Craig A. Marsh ..... Plainfield
Isaac W. Carmichael ..... Toms River
Alfred E. Skinner ..... Newark
Winfield S. B. Parker ..... Long Branch
Francis B. Lee ..... Trenton
Eckard P. Budd ..... Mount Holly

SUB-COMMITTEE

Charles H. Hartshorne — John S. Westcott
Charles E. Hendrickson Jr. — Francis B. Lee
H. C. Pitney — Bennet Van Syckel

The following article by Circuit Court Judge Charles C. Black was written and published by him before the appointment of the sub-committee. The committee calls special attention to it as giving valuable information repecting the character and effect of the Judiciary Amendment and because the office of Circuit Court Judge, which Judge Black holds, will be abolished by the proposed amendment at the expiration of his term.

(*From the Jersey City Evening Journal, June 24, 1909.*)

"I have been asked to give a concise statement of the proposed constitutional amendments affecting the judicial system of the State to be voted upon by the people on the fourteenth of September next. As these proposed amendments are not a political issue such a statement can be made for publication without violating that unwritten and good old time-honored principle observed in New Jersey that judges should refrain from participating in the turmoil of political discussion.

What the Judicial Amendments Propose.

They propose that:

The judicial power shall be vested in a court for the trial of impeachments, a Supreme Court, County Courts and such other Courts inferior to the Supreme Court as may be established by law, which inferior courts the Legislature may alter or abolish as the public good may require.

The Supreme Court shall be organized in three divisions, namely, The Appeals Division, presided over by a presiding justice styled a "Chief Justice"; the Law Division, presided over by a president justice styled a "Presiding Justice"; and a Chancery Division, presided over by a presiding justice who shall be styled the "Chancellor."

The Appeals Division shall consist of the Chief Justice and six other Justices of the Supreme Court.

The remaining Justices shall be assigned to the Law or

Chancery Division, as the business of the court may require.

The Appellate Division shall have and exercise the appellate jurisdiction, and such original jurisdiction as may be incident to the complete determination of any cause on review.

The Law Division shall exercise the jurisdiction heretofore possessed by the Supreme Court and Circuit Courts, in accordance with rules of practice and procedure prescribed by statute, or in the absence of statute by the Supreme Court.

The Chancery Division shall exercise the jurisdiction heretofore possessed by the Court of Chancery and the Chancellor, in accordance with rules of practice and procedure prescribed by statute or, in the absence of statute, by the Supreme Court; but the Justices of the Division shall be under such control and supervision by the Chancellor as shall be provided by the Supreme Court.

The Supreme Court may provide by rule for the transfer of any cause or issues from the Law Division to the Chancery Division, or from the Chancery Division to the Law Division of the Supreme Court, or from the County Courts to the Law Division or the Chancery Division of the Supreme Court, and for the giving of complete legal and equitable relief in any cause to the Court or Division where it may be pending.

The Chancellor and Chief Justice of the Supreme Court and the Vice-Chancellors and Associate Justices of the Supreme Court in office, when these amendments take effect, shall be Justices of the Supreme Court until the expiration of their respective terms.

To those familiar with the judicial system of the State, it is clear that if these amendments are adopted by the people, they will abolish a long list of existing courts, viz., the Court of Errors and Appeals, the Supreme Court, the Prerogative Court, the Court of Chancery, the Circuit Court, the Common Pleas Court, the Court of Oyer and Terminer, and the Court of Quarter Sessions, and substitute in their place a Supreme Court composed of three divisions with appellate, common law, and chancery jurisdiction, the same as now exists in the several courts abolished, and county courts.

A common law suit, or a suit to be tried by a jury, then as now, may be brought either in the Supreme Court, tried at the county seat with a jury, or in the County Court. The procedure shall be in accordance with the rules of practice and procedure prescribed by statute, as now or, in the absence of statute, by the Supreme Court, a most im-

portant provision for the prompt and effective disposition of litigation, because the court itself is the best qualified expert body to regulate the mere formal procedure of a law suit developed by actual experience as observed in the trial of cases. This is modeled after the present English system.

What Will the State Gain?

First—Reasonable certainty as to jurisdiction by the court of the proposed litigation, which now is confused and uncertain in a considerable class of litigated cases, sometimes requiring a protracted litigation to ascertain whether the litigant is in the right court before the real controversy over the subject matter of the law suit is actually commenced.

Second—A greater elasticity and flexibility in the formal procedure. The unwary and inexperienced cannot be so easily checkmated; the court itself will have the power to prescribe the practice and procedure in the absence of a statute.

Third—Greater simplicity.

Fourth—Preventing unnecessary delays on appeal. One appeal only from the trial court; now there may be two in a large class of cases, in which the litigant of moderate means predominates, one by writ of error to the Supreme Court and then a second appeal by writ of error to the Court of Errors and Appeals. So now two appeals may be had in some cases from the Orphans' Court.

Fifth—A greater volume of business can be transacted by the same number of judges than is now possible. This will be true especially in the Appellate Court, and in those parts of the State where the trial work is congested the judges can be readily adjusted to the business.

Sixth—The sweeping away of many of the meaningless cobwebs which hang over the courts and the unnecessary formalities.

Seventh—By those who have made the calculation, it is said that it will be a saving to the State of $35,000 per year for judges' salaries.

Eighth—The proposed amendments will give unity and balance to the judicial system of the State, which now is top-heavy, and the duty to see that the judicial work of the State is properly carried forward will be lodged in one court, and that court will have the power to have it done, and it cannot evade responsibility.

Ninth—They leave untouched the method and procedure of administering equity and common law, separate and by different judges, according to the long established practice

in New Jersey; also the Orphans' Court and the Criminal Courts except in name, presided over by the same judges as now, the County Judge, and they leave also untouched our present excellent system of District Courts, giving the Legislature power, as now, to establish or abolish inferior courts.

All this is but saying that the proposed judicial amendments are in the line of progress, though conservative, for a progressive growing State for the purpose of expediting justice. The northern part of the State is gaining in population, which will bring increased litigation. The proposed amendments represent the conservative and best digested thought of the State after ten years of discussion and agitation, having received the sanction of two consecutive Legislatures.

What Opposition, if any is there to the Judicial Amendments?

None that has been openly stated; undoubtedly preference will always exist for a different system than the one proposed, owing partially to a thorough and accurate knowledge of the subject, and partially to that feeling that what has been good enough in the past should not be changed; but the real opposition, if any, should and will come from those litigants—aggregations of wealth—who find in the present confused system of courts a ready and powerful weapon in the hands of trained and skillful lawyers to tire their less fortunate adversary by appeals, delays, uncertainty and confusion, until the deserving litigant may be ready to take what is offered in settlement, without much regard for the justice of his demands. This class of opposition, if any, will not assert itself in the open, but will use the inertia and indifference of the people, aided by individual opponents, and doubtless under cover of some organizations, to accomplish the defeat of the amendments. If there is one thing more important than another for the State to provide, it is that the means of obtaining justice should be prompt and expeditious, with no unnecessary delays and uncertainty. It is believed by those who have given the subject the best thought that the adoption of the proposed judicial amendments will greatly aid in this object and tend to keep New Jersey up to her ideal standards of Jersey Justice.

MR. PAUL: Mr. Chairman and Members of the Committee, I would like to call next on Mr. Richard Hartshorne, Judge of the Court of Common Pleas of Essex County.

MR. HARTSHORNE: "New Jersey has more kinds of courts than any other State * * *. Our system of courts at present is the most

antiquated and intricate that exists in any considerable community of English speaking people (not alone in America but throughout the world) * * *. Its fundamental architecture is English of the Fourteenth and Fifteenth Centuries." Those are not the words of one of the present proponents of changing our State Constitution. They were uttered before most of these estimable gentlemen had graduated from grammar school, let alone become interested in governmental matters. They appear in a little volume published in 1905, which I hold in my hand, entitled "Courts and Procedure in England and in New Jersey," which compares our "curious old judicial system," as this volume says, with those of our sister States and that of England, a country which has long since modernized its ancient and complicated judicial setup, upon which ours has been based since early colonial days.

As a single instance of its antiquated architecture, and not the most important one by a long shot, note that one set of our judges, such as the writer, sits in no less than five different courts. Three of them try cases of the same general kind, criminal, and bearing such historically interesting but esoteric and anachronistic title as Oyer and Terminer—I doubt if most of you gentlemen can tell us accurately what that means—Quarter Sessions, and Special Sessions. Another, the Court of Common Pleas, tries both civil and criminal causes alike, criminal in the broad sense of the term, while the last, the Orphans' Court, is occupied but little with the affairs of orphans as that term is generally known. But this complicated situation which I have seen to be confusing and costly to legislators, lawyers and laymen, is relatively unimportant compared with the antiquated and complicated architecture of the rest of our court system, which others have discussed so fully that I will not take your time further in that regard.

Furthermore, various defects in the New Jersey legislative and executive structure have become apparent to me over a period of many years, during the course of my lectures on constitutional law at the New Jersey Law School and during the course of my work on Interstate Cooperation throughout the States of the Union. It was therefore a distinct pleasure to read the report of the Commission on the Revision of the New Jersey Constitution and to find that our antiquated, cumbersome court system had been simplified in a most logical way, and that, in addition, outstanding defects in our legislative and executive structure had also been overcome. The legislative provisions, for instance, for biennial sessions, successfully adopted, and with such relatively few exceptions, by our sister States, and let me stop right here—I am inclined to think, gentlemen, that most of us confine our attention as to what is right and wrong in governmental matters to the Hudson on the east and the Delaware on the west, and that we do not stop to consider that there are forty-seven of our sister

States which have learned something during the course of the last hundred years and more since our Constitution was adopted, and if we look to them, as I have perforce had occasion to do on many occasions, I think we may find some improvement, and we certainly will find that forty odd of them differ with us in our biennial sessions. Again, the correlative with the biennial session, but modest increase in the terms and salaries of our legislators, the creation of a Legislative Council, which is now beginning to sweep the country itself, so essential to a constructive legislative program, are all admirably contained in this Proposal. The executive provisions increasing the term of the Governor and placing on him both full power and at the same time full responsibility to the people for all administrative action by the State seem equally valuable. Provisions of similar importance pro bono publico are included in other of the proposed articles.

Of course, the proposed Constitution is not perfect, and if desired, I have certain suggestions which I might make at an appropriate time in that regard, but it seems to me, gentlemen, that we are not so much faced here with the question of how this particular proposal may be improved. We are faced here primarily with the question of whether our century-old Constitution is perfect in the light of the present day, because if it is not, you gentlemen are vested with the power to recommend that the people be given the opportunity to express their views on whether they desire a change in this century-old document in the light of the experience of the entire United States during the past century and to that it seems to me there can be but one answer; and may I remind you that nothing made by human hands can be expected to be perfect. Even "the greatest instrument ever struck off at a given time by the brain and purpose of man" had to be amended twenty-one times to date. But all students of constitutional law will doubtless agree that had this country not adopted the United States Constitution, with all its defects, but remained under the old Articles of Confederation, our Government, if not our United States, would long since have gone on the rocks.

In fine, due to his past and present, not to say inherited, interest in government, finally and particularly due to the fact that the proposed change will not affect your speaker one iota personally, your speaker is glad to respond to the request both as a civic duty and a pleasure and to state that on the whole he considers the proposed Constitution an admirable instrument, the adoption of which will greatly benefit the people of the State of New Jersey. But even more, admitting its imperfections, it lies within your power to cure those imperfections and reach perfection in due course and to permit the people of the State to say that they desire that perfect document.

MR. SCHROEDER: Thank you, Judge.

MR. PAUL: We will next have the pleasure, Mr. Chairman, of listening to a man who has been recognized for many years as Dean of the Bar of New Jersey and who is now President of the Mutual Benefit Life Insurance Company. Mr. John R. Hardin.

MR. HARDIN: Mr. Chairman, I am glad of the opportunity to say a word on this occasion. I do not know whether my approach to it is just what would receive universal approval. I do not come here with any arguments on the particular details of this proposed Constitution. I am not at the minute particularly interested in the machinery suggested for its adoption. There isn't anything ideal about the old Constitution and what is the use of talking about a new Constitution from a purely ideal standpoint? I have been forty years in the business—and at times very active personally in the business—of endeavoring to do something in the way of changing the Constitution of the State of New Jersey as adopted in 1844. I never got anywhere with it, and certainly I have reason to be deeply stirred on the subject matter of ideality of constitutions. As a matter of fact, constitutions are seldom ideal. Usually, they are compromises, sensible compromises, and by no means at all times ideal. There seems to be one thing conceded about our present Constitution. I haven't heard any voice raised anywhere that it is what it ought to be, and therefore it isn't necessary to make any particular defense of the old Constitution. I don't hear anybody wanting to do that. I certainly don't want to. I approach this question absolutely from the practical standpoint. I have seen failure after failure in the methods that have been attempted to make changes at specific times. There have been some changes made which have been worth while; there have been some changes made that were not worth while. A constitution ought not to be too rigid; it has necessarily to be, and ought to be, a practical document. What I want to say here will take me but very few words, and I confine myself solely, then, to that view. I bring no analysis of the old Constitution or the new; I am not giving you historical reasons for change or for the adoption of the new ideas. I am merely suggesting that this present effort for a new Constitution in the form in which it is presented, subject to amendment as has been explained by Judge Hartshorne, this new effort of the Constitution, taking that as is, is so much better than what we have, it just seems foolish to me to talk about any idealism on the present occasion. It should be approached from a purely practical standpoint. If you will pardon a personal word, I have been a lawyer for almost fifty years. During the last fifteen years I have not been particularly active at the Bar, but during the preceding time of my life I was very active in all the courts of New Jersey, County, State, Supreme Court, Appeals, everywhere where lawyers go in New Jersey, even including appearances before legislative commissions. I was something of an idealist when I was younger.

The older I have gotten, I have become more and more practical. I haven't forgotten the ideals, and I don't decry the ideal, but I say it is foolish to try for the ideal when there is a practical opportunity to get something better than we have got. That is all I have to say. That is a practical proposition. What this opportunity offers the State of New Jersey is such an advance from what it has, it ought to be supported by everyone.

MR. AMLICKE: Mr. Paul.

MR. PAUL: The Honorable William A. Wachenfeld, Prosecutor of the Pleas of Essex County.

MR. WACHENFELD: Mr. Chairman, I should just like to state, for the purposes of the record, the Essex County Bar Association has already adopted a resolution approving the need for a revision of the New Jersey Constitution. That association has likewise appointed a constitutional revision committee, of which I happen to be chairman, and last Monday night we sponsored a public hearing for Essex County lawyers, which was well attended. I think the attendance record will show there were approximately two hundred lawyers there. They expressed themselves variously in reference to the various provisions in the suggested revision. The hearing was limited to the judiciary and the Bill of Rights. These various lawyers expressed the short comings of the present court setup and discussed the present provisions as contained in the Revised Constitution. My purpose in appearing before you is to inform you that the Essex County Bar Association has gone on record as being in favor of a revision; that the lawyers of the County of Essex feel there is improvement in our judicial system; and to assure you that the report of this committee, when completed in the near future will be submitted for your consideration, in the hope that it will be of some help to you.

MR. PAUL: The Honorable Ralph Wescott, former President of the Bar Association of Camden County, presently Register of Deeds of Camden County.

MR. WESCOTT: What I can say, gentlemen, at this time, must of necessity be a hasty distillation of how the man in the street feels about this question as a lawyer comes in contact with him, and how fellow members of the Bar feel.

No Jerseyman in the long history of our Bench and Bar was more closely identified with our trial and appellate practice over a longer period than the late Robert H. McCarter. Warmhearted, broadly educated, skilled in forensic art, and the acknowledged leader of our Bar, he was what our radical friends would call a Tory of the Tories; yet this grand old conservative strove manfully and repeatedly for a common-sense revision of the Judiciary Article of the State Constitution, because he knew from experience that it needed revision—and he was a man of such integrity that he had to voice his honest convictions. In that sense, he was a scientist,

rather than a politician. In that sense, I am proud to take my stand beside and upon the record of Robert H. McCarter.

If this problem of revamping our court system in New Jersey is approached from the nostalgic, the sentimental, the wholly emotional angle, nothing will be done. And this is the angle from which two types of opponents are sure to approach it. I mean those who feel they have a professional interest in the status quo, and those having a perfectly realistic political interest in it. There are no other bases upon which to oppose the reforms proposed in the Commission's Report. If the object of the Legislature be to serve the commonwealth, it cannot do other than disregard, as well, those arguments which are blindly reactionary because of honest sentiment and devotion to accustomed institutions, as those equally reactionary because of personal interest in keeping in effect processes that have been long studied and fully mastered. And let us be almost equally as skeptical of those proposing modification. A favorite device of obstruction is to say, "I am for a revision, but not this revision."

But what, on the other hand, do we find on examining the proponents' case? No motive but to replace an antiquated, ineffective and needlessly expensive apparatus with one that will better serve the purposes of speedy and impartial justice. And this verb "will" can be used here without qualification, because the experience of practically every other State, as well as the Federal jurisdiction and the British courts since the Judicature Act of 1873, has demonstrated the possibility and the social usefulness of applying to the business of the courts the administrative aids developed in the world of business itself. The evidence outside New Jersey is overwhelming; the data—incomplete though it needs be—collected, tabulated and summarized in Ralph R. Temple's recent report, (p. 1057) is convincing to unprejudiced minds that a business-like reorganization of our whole judicial structure is due and long overdue.

There are probably no better plans than those before you. However, men say, wait: we are at war. But I ask why we are at war and for what are we fighting? Those are hard questions, but I think the answers are relevant and are to be felt and known in our hearts and memories. We are at war because of our national sins of omission and commission; because of our economic ignorance, and neglect of our neighbors' welfare, both at home and abroad. An economic hurricane swept over the world, generated out of the ominous calm of the exhaustion following the first World War and out of the victors' failure to grasp and act upon the economic consequences of the peace. Today we are half-stripped for war. Maybe soon we will go all out for victory. But I deeply believe and insist, as a lawyer, a veteran and an American, that we must strip ourselves simultaneously for action on the social front at home; that only by demonstrating to a doubting world of neighbors near and far that we are unified within, sincerely cooperating for democracy in action here, can we generate the will to win and the will to guide a broken and disillusioned civilization after the order to cease firing.

Here is our immediate sector that must be taken now by the people's representatives for the people's benefit. If then they choose to abandon it, at least it cannot be said that they were deprived by their Legislature of the opportunity to demand and to hold this gain to themselves.

MR. PAUL: Mr. Chairman, I would like to introduce next former Judge Francis Lloyd of Hackensack.

MR. LLOYD: Mr. Chairman and Members of the Committee:

First, may I say that I think the Commission has done a splendid job. I favor the Commission's Proposal for Revision of the Constitution, and particularly that part of the revision having to do with the judiciary. What faults seem to exist appear to me to be minor, going largely to form and not to substance. I am sure the Legislature can scrub up those little matters readily enough if it has the wish and will to do so. My ideas concerning the merits of the proposed judiciary setup have been echoed and re-echoed many times by the proponents of the measure, and I shall not further amplify the record in that respect. I do want to point out, however, that the proposal for appointment, confirmation and tenure of the members of the judiciary fills a long wanted need. I urge that the matter be submitted to the voters at the November election in 1943.

Now, if you will permit me to step out of my character as a member of the Bergen County Bar Association—and I am a member of the New Jersey Bar, but I do not speak for the Bergen County Bar—and step into the character of Vice-President of the Bergen County Chamber of Commerce, and while this may not be directed to the judiciary provision, I think you will bear with me and let me read to you a resolution of the Bergen County Chamber of Commerce, which the Secretary has asked me to enter in the record in his place:

> "*Be it Resolved*, that this Chamber approves the efforts of the Commission on Revision of the New Jersey Constitution and commends them for the splendid results they have accomplished and the Report submitted by them to the New Jersey Legislature; and
>
> *Be it further Resolved*, that the New Jersey Legislature be and they hereby are urged to place on the ballot at the general election in November, 1942, the question whether a Revised Constitution should be submitted to the people in the general election of November, 1943."

And in closing, I might say, and I think I can safely say, that

there are thousands of people in Bergen County who favor revision of the Constitution and want the opportunity to vote on that.

MR. PAUL: Mr. Louis B. LeDuc of Camden, New Jersey.

MR. LEDUC: Ladies and gentlemen of the Committee:

Section III of Article V of the Proposed Constitution provides that the Superior Court, which is vested with general original jurisdiction, shall be divided into two sections, one of law and the other of equity and probate. One consequence of that provision, the elimination of the Court of Chancery, has, I take it, provoked more opposition from members of the New Jersey Bar than any other provision of this Article. It is because of that that I have chosen the consolidation of law and equity as my theme in the few words I have to address to the Committee today.

The sympathetic interest felt by our Bar for the Court of Chancery is, of course, readily understandable, for the very reason that the court, being something apart from other courts, is unique. Its decisions have been widely publicized. They have been given greater prominence because they emanate from a court which has devoted itself wholly to the jurisprudence of equity. For instance, the equity decisions of the New York law courts do not receive as much attention in the legal world as the decisions of our own Court of Chancery, although New York decisions deal, and have dealt, with far greater issues, at least from the financial standpoint. Therefore, New Jersey lawyers, taking a natural and proper pride in the reputation of their courts, have tended to feel that in any judiciary reorganization that court must remain as an essential part of the new system. That is a question we must deal with today. It is a question that may not properly be decided by mere sentiment, nor should we retain an institution that is now outgrown simply because it has become a tradition. The English Parliament in 1873 broke with tradition when in the Supreme Court of Judicature Bill it abolished by one stroke the four great courts of Kings Bench, Common Pleas, Exchequer, and Chancery, in order to form a unified system of justice. Similar steps had been previously taken by many of our American States and the English example was followed by other American States until today only New Jersey and its little sister in the southwest, the State of Delaware, retain the ancient form of a Court of Chancery. That fact alone, ladies and gentlemen, would suggest that the burden is upon those who claim to retain the Court of Chancery to justify their contention by proving necessity for that retention.

The only solid consideration that I have heard advanced in favor of retaining the court in a judicial reconstitution is that this court, dedicated solely to the jurisprudence of equity, is better equipped to administer that branch of law than are judges who sit alternately at law or in equity, but this argument presupposes that the equity judge must have special qualifications which the average

common law judge does not possess, and I venture to oppose this notion as wholly erroneous. Equity jurisprudence consists of general principles, not of specific rules, and those general principles are such that any competent judge can readily administer them. Equity was not separated from the common law because of any distinction in principle. It was the result of a historic accident. I am going back to the history of our own Chancery Court, which Mr. Bilder has so aptly touched on. I want to remind you that the origin of equity as a separate jurisprudence in the Anglo-Saxon world was the failure of the English common law courts, during and after the reign of Edward I, to give effect to the statute of Westminster II, which, you will recall, provided for devising new writs to meet all wrongs. Because the common law courts failed to administer that statute, the Court of Chancery came into being. Centuries later, when the artificiality of separate courts became apparent, the English people abolished that distinction and tore it down, so there is nothing particular or peculiar to this great field of jurisprudence which we call equity. It is a natural branch of the whole body of the law taught in our law schools and familiar to every lawyer and every judge.

Then, the proponents of the courts say that a law judge is not sufficiently familiar with equity to administer it in the same tribunal. The answer to that is the equity judge administers law because, as we all know, equity follows the law and the equity judge must daily interpret and expound statutory and common law principles. He can do it as surely as the judge who sits on the bench of a common law court can administer equity when called on to do so. The great Chancellors of England, after all, would have been equally great if they sat at common law, men like Hardwicke, Campbell, and Camden. The same thing is true in reverse. The great common law judges like Coleridge and Reading would have graced the Court of Chancery. Mr. Bilder has already mentioned the fact, which I intended to bring out, that many of the greatest decisions of Chief Justice Beasley are decisions on appeals from equity. The same may be said of the appeals of Depue, Dixon, Garrison, and many other of our judges. The only marked difference in function between an equity judge and a law judge is that the equity judge must determine fact without the aid of a jury, but, ladies and gentlemen, all lawyers and all judges are trained in the ascertainment of facts, and it would be fantastic to regard this function as a specialty reserved to those judges who must sit on the woolsack.

So, analysis would seem completely to dispose of the notion that the administration of equity calls for a special type of judge or special type of experience. Practice elsewhere, since the merger of law and equity in other tribunals, has demonstrated conclusively that there is no loss of prestige of the equity judge and no diminu-

tion in the judicial quality of his decisions. Take one instance alone: The distinguished committee appointed by the United States Supreme Court to draw up the new rules of civil procedure considered well and long the existing practice of combining law and equity in the Federal courts, and decided that it must continue.

On the other side, there is more than one distinct advantage that can be put forward in favor of the combination of the two branches of our jurisprudence. I have in my office today two cases quite familiar to the practice of any lawyer, which substantially amount to this state of facts: A litigant having a cause of action at law on contract and also for specific performance in equity chooses the form of law, loses below, takes his case up on appeal to the Court of Errors, and while waiting for a decision, the statute of limitations runs. Is he going to lose his cause of action in the other courts if the Court of Errors denies him a remedy? That is a problem every lawyer must face and wrestle with, but under the revision that is no problem because if he is denied one remedy, he can pursue his remedy in the other branch and secure such relief as the body of the law has made open to him. That is only one advantage which comes, of course, with the advantage of economy and time and expense in prosecuting any litigation. Equity of course is part, an essential part, of the jurisprudence of any modern State. It has been aptly defined as preventive jurisprudence. It is an essential part of every system of law; we must have it; we are not going to lose it by combining the functions of law and equity judges. To preserve the Court of Chancery in the new judicial setup, it therefore would seem to be to preserve an anachronism. It would be a mere obeisance to sentiment and tradition. Nothing would be preserved that would not be preserved by the combination of law and equity in one tribunal. The able judges of our present Chancery Bench would administer equity then as they do now, only under different titles and in a court with a different name. True, there is one distinction, and that, I think, is in favor of the amendment. Those judges in deciding equity cases each would act as a Chancellor and would sign his own decrees instead of going through the rigmarole of advising a superior, as they must do today. Equity as heretofore administered would be preserved in its intrinsic affection as an essential part of our entire municipal law. To cling to the outworn form just because it is an adored form, and I admit when we have to part with what we are used to it is a pang—there would be a real wrench in my case, feeling that we can't go into the Court of Chancery as such—but none the less we are trying to be realistic in adopting an organic law for the people of this State, and we must not let sentiment control our decisions. To cling to this outworn form, the Chancery Court, seems to me is just like when we try to outfit someone with a new set of clothes, a new up-to-date

set of clothes, retaining an old coat with the cut of 1844, and calling that a complete outfit.

I submit, ladies and gentlemen, that if we are going to do this job, it has got to be a thorough job.

MR. PAUL: Mr. Chairman, I would like to present next former Judge Joseph M. Degnan.

MR. DEGNAN: Members of the Committee:

We heard from what Mr. Hardin told us that he, for over forty years, has contributed his great ability to change the archaic Constitution of 1844. Now, if we will read back in the old pages of the New Jersey Law Journal, we will see that numerous efforts have been made and able arguments have been set down, around the turn of the century particularly, for a change of the courts of this State, but they have all been of no avail. I think there were about ten official attempts to change the Constitution of 1844. There were numerous attempts that never got past the Legislature. In other words, what I am getting at is that there has been an unrest among the people of this State and among the members of the Bar to rectify the strait jacket of the Constitution of 1844. What has been the cause of its not getting anywhere? Every effect, magicians tell us, has its cause; there must be some reason for it. Every movement for the betterment of mankind has had to battle from the days of the Magna Charta up to this question before this State today. It has been a struggle of those who would better mankind against those who worship the god of things as they are. Alexander Hamilton had this in mind, in his first papers on the Federalists, for he said, "Among the most formidable of the obstacles which the new Constitution will have to encounter may readily be distinguished the obvious interest of a certain class of men in every State to resist all changes which may hazard a diminution of the power, emolument and consequence of the office they hold under the State establishment," and that argument holds good today. Certain interests in this State don't want a change. They are getting theirs under the present setup. As Mr. Wescott so aptly stated, "They will say, 'We need a new Constitution but not that one that is presented to us; no, that isn't it.'" They used to say, in the debates some twenty-five or thirty years ago in the House of Commons on the Irish Home Rule Act, when Their Lordships in the Upper Chamber there would want to stifle all opposition and want to kill a motion, one of the high and mighty men would get up and say, "Well, now, I think, milords, that there should be a membership of ninety in the Upper House in Ireland," or another noble Lord would get up and say, "Oh, I think it ought to be seventy-five," and then they would debate on that for a month and kill the question. That is what is going to happen here. We have got to take this Constitution. The revisers of this Constitution, the Committee, have presented a workable, a modern,

streamlined document that is in accordance with the age in which we are living, 1942. There are lots of things in there that I don't like but it is a step in the right direction. Let's move and let's level off the rough places and rough spots later on.

Now, as Judge Hartshorne said when he was up, as Common Pleas Judge, County Judge of Essex County, he sits there in four courts, and I suppose there are those who like to go up there at the opening of the Common Pleas and hear the court crier start off. Those gentlemen desire that. They are against the new Constitution; they are against anything that interferes with their particular play. Now, I am not going to take up your time and point out all the objections that we lawyers have against this 1844 Constitution. Those of us who were privileged to be at the last two meetings of the Essex County Bar Association received a liberal education, and I imagine the Report of the Committee will reflect the views of the lawyers as expressed.

But, getting down to change, not for change alone but for progress, just look at what the Federal Court has done within the last five years. I think it was in 1930—later than that—I think it was in 1934 that Chief Justice Hughes appointed a committee to revise the rules of civil procedure for the Federal courts. Chief Justice Hughes selected lawyers from all parts of the country, experienced, able, cultured men, and they went to work and they cut out all the persiflage and all the legal fictions that we love. They used one word where they used to use five before, and they have got down a rational, workable, efficient system of procedure. not without a struggle. There were some, even among those cultured gentlemen, who still believed in the old forms, and I am reminded of a little comment on that, that I read in the book of Dean Dobie, former Dean of the University of Virginia Law School and now Federal Judge of the Fourth Circuit Court of Appeals, and he says, with reference to the love of old forms, etc., ad nauseum, "Absence of procedural distinctions between actions at law and suits in equity will doubtless bring bitter grief to lawyers who worship with fiery reverence the technical subtleties and archaic asininities"—get that word, asininities—"inherent in an outworn system of procedure."

Now, any man who wants a change is usually used to being referred to as a Socialist, and now he is referred to as a Bolshevist, a Red, or an anarchist, or something else. I leave it to any fair-minded man whether, by any stretch of the imagination, anybody could call Dean Dobie a Red, a Socialist, or an anarchist, and there is a man who was just writing a book, a law book to be read and used by students of law. If that is the view of men trained and learned in the law with reference to simplifying the procedure and getting down to a matter of fact, day to day judicial system, then I say we shouldn't have much difficulty, and this Committee and the people of this State should not have much difficulty, in adopting a system of jurisprudence that, after all, will give a man or a woman a chance for his or her day in court without any rigmarole, without any hocus pocus or anything else—give them a chance to be heard, give them a right, if they are aggrieved by the decision, to appeal and have it over with.

As Mr. LeDuc says, we all revere the Court of Chancery, and all of us whose hair is a little gray and who have been over the walls and battlements for years have a regard and an affection for the present Court of Chancery, but "the world do move" and even the Court of Chancery must move. As a matter of fact, the answer to those who prayed so much about the peculiar ability of a man dealing solely in equity procedure would be that every equity judge's decision in this State is subject to appeal to law judges, the Court of Errors and Appeals.

We in this State and in these days are at a crisis, living in the State lying between the Hudson and the Delaware Rivers that used to be known as The Garden State. It was in 1844, but not today. New Jersey today is an up-to-date industrial and manufacturing State, and we need all the streamlined, high-powered steel tools, whether they be in metal or whether they be in procedure, which will protect the rights and liberties of the residents and citizens of this State, and I think we are going to lose a great opportunity if we pass up at this time doing a great service to the people of this State by adopting this Constitution or, as they say over the radio, a reasonable facsimile thereof.

MR. PAUL: Mr. Chairman, just a very brief comment with reference to the Temple Report. I am going to ask Mr. David H. Yonneff to speak very briefly with reference to the Temple Report.

MR. YONNEFF: Members of the Committee, ladies and gentlemen:

Any mere superficial study of the judicial system of our State, immediately reveals that it is the most complicated, inefficient and costly court system surviving in any English-speaking State today. It is our outmoded inheritance from our Mother Country. Indeed, its origins are traceable to the Mediaeval Era, since which time it has hardly been dusted off. It is the appalling paradox of the century that our court buildings though streamlined and often air-conditioned, should house judicial machinery that is of the same vintage and inefficiency as the tallow candle and quill pen.

Most of you, no doubt, are familiar with the exhaustive and scientific survey which Dr. Temple recently made of our Constitutional Courts. In his report following that survey, he enumerates these ten challenging defects:

"1. A costly and inefficient organization of the court system resulting largely from a complete lack of any coordination between the several separate courts in the State.

2. A part-time and unusually large court of last resort, whose judges have unfortunate combinations of duties, and whose contribution to the sound administration of justice is therefore largely ineffective.

3. An uneven distribution of the volume of litigation amongst the judges within each court.

4. A lack of adequate control and management of available court facilities, which seriously impairs the judicial standards of service to the public.

5. A wasteful and very uneven use of judicial manpower.

6. A complete lack of a responsible and accountable head of the judicial system.

7. A marked and serious failure within the judicial system to record and report, even in the most elementary fashion, the work data necessary for intelligent public review and control of the judicial services of government.

8. Inflexible expenditures by the court system which do not diminish with decreases in court business.

9. Unsound practices in budgeting, accounting and fiscal procedure prevalent throughout the system.

10. A striking reduction in volume of the business of the courts over the past ten years."

The Proposed Constitution will overcome all these defects with reference to the judicial system by fundamental changes, which have stood the test of time in other jurisdictions.

For a most complicated scheme of courts, there is substituted (1) a Supreme Court of seven justices selected from among the judges of the Superior Court and appointed during good behavior, with appellate jurisdiction only in capital cases and in cases involving the constitutionality of statutes, ordinances or administrative rulings, and cases that may be certified by an appellate division of the Superior Court to it, or certified by it from an appellate division, (2) a Superior Court of general trial jurisdiction with judges appointed first for a term of seven years and, if reappointed, with tenure during good behavior, this court being divided into a law section with civil, criminal and matrimonial jurisdiction, and an equity and probate section exercising all other jurisdictions, each section having an appellate division of three justices to which an appeal from any decision may be taken as of right, and (3) lower courts of limited jurisdiction such as the district courts and the recorder's courts, which continue to be within the control of the Legislature but which may be integrated with the Superior Court by appropriate legislation.

The Chief Justice is given the power to assign the justices of the Superior Court annually to the end that each judge may be delegated to the type of work for which he is best fitted by temperament and training. In this manner all of the advantages of judges with specialized training are retained, without the disadvantages of a cumbersome scheme of courts. Each judge will function in but one court at one time.

The Supreme Court is given complete power (and responsibility) with respect to making rules as to administration, pleading, practice and evidence in all of the courts of the State.

The Chief Justice is made the administrative head of all of the courts and empowered to supervise their work. He is authorized to appoint an executive director of the courts to serve at his pleasure. This executive director shall assist the Chief Justice in all matters of the administration and personnel of the courts, publishing annually a statistical record of judicial services, prescribing reports and audits for all the courts.

If the Supreme Court fails to hear any case within two months after an appeal is perfected, or fails to decide any case within two months after it has been argued or submitted, the Chief Justice is required to certify that fact to the Governor and the Governor may appoint a special term of the Supreme Court from among the justices of the Superior Court to act until the congestion of cases has been overcome. Under the same conditions the Chief Justice may request the Governor to appoint a special term of the Superior Court for temporary service not to exceed one year.

On December 1st of each year the Chief Justice shall file with the Governor and Legislature a report of the work of the courts for the preceding court year. This public document will be the accounting of the courts to the people of the State.

The Proposed Constitution seeks to simplify the judicial system, to avoid conflicting judicial duties, to provide a responsible head, to insure the selection of experienced and independent judges, and to provide for speedy trials and prompt appeals.

All of these serious errors can be remedied by the Proposed Constitution. It is conceivable that the public, and I speak now as a citizen as well as a lawyer, if they were to be told that there is a remedy and an escape from the throttling and choking effect of our present antiquated Constitution, would, because of either apathy or sentimental devotion to an antiquated instrument, still cling to it. Gentlemen, we urge you to submit this question to the public. Let them know that there is a remedy and that they can have it, and let us then see whether we cannot make "Jersey Justice" synonymous with true justice.

MR. PAUL: The last speaker, Mr. Chairman, is Mr. William E. Holmwood, Chairman, Draft Appeal Board Number Three.

MR. HOLMWOOD: Mr. Chairman, Members of the Committee, ladies and gentlemen:

By joint resolution of the Legislature a Commission was appointed to formulate a suggested Revision of the Constitution and

report thereon to the Legislature. That Report has been made and my understanding is that this Committee today is granting a further Public Hearing for discussion of Article V of the Proposed Revision relating to judicial officers and the administration of justice. Apparently the proposals have aroused considerable interest amongst members of the Bar and the matters have been discussed before the State Bar Association and various county associations. It was my privilege to attend the two meetings held by the Essex County Bar Association and the impression I gained from those meetings and from discussions in the press indicates that most members of the Bar favor a reformed judiciary and a more simplified judicial procedure. Most of the States of the Union and the Federal Government have provided for such reform and, while there may be a few things in this Proposed Revision with which I, or other members of the Bar, may differ, I do not believe there are any objections or suggestions to the proposals which cannot be reasonably determined by your body.

Judge Van Riper, a member of the Commission, has stated publicly that he would be glad to have full consideration given to all constructive suggestions and amendments to the proposals made. As I take it, therefore, there are two questions which can fairly be raised before this Committee—first, have sufficient reasons been advanced for a revision of our judicial processes; second, if the case for a revision has been made out to the satisfaction of the Legislature, whether the Revision submitted by the Commission, with certain minor changes and amendments as may be deemed necessary by the Legislature, be adopted.

Perhaps the principal document submitted by the Commission bearing upon the question of the necessity for change is the report by Dr. Ralph R. Temple (Appendix V, pp. 1057-1124). In that report a summary is given in which ten reasons are advanced to support the proposition that the present organization and administration of the business of the courts are completely inadequate. The first reason given states that it is a costly and inefficient organization of the court system resulting largely from a complete lack of coordination between the several separate courts in the State. This reason in effect summarizes the entire first nine reasons given and, if supported by the evidence, establishes that the courts as presently operated are costly and inefficient. The tenth reason given is the striking reduction in the volume of business of the courts over the past ten years.

As a practicing lawyer for the past thirty-two years and as one who has had experience in every court in the State, I can say without hesitation that the first reason given by Dr. Temple, which includes the next eight reasons, is probably true, judged by present standards of business administration and effectiveness. This being so, and justly recognized as so by most members of the Bar,

there should not be much objection to any honest effort to correct so deplorable a situation affecting the administration of justice. The ten reasons presented by Dr. Temple constitute a veritable indictment of our system of courts and the manner of their management. Stress is laid upon the business of these courts having fallen off approximately fifty per cent in the last ten years. The reason for this falling off of business would afford an interesting study and perhaps the investigation of such reasons would aid the Legislature and the people in deciding the issue. What can be the reason for such loss of business in the courts? Are the people dissatisfied with the courts or have they become less contentious and less desirous of resorting to legal remedies? In common with most lawyers who have been affected by this situation, I have discussed the matters with other members of the Bar and with laymen and, while I do not pretend to know the answers to these questions, I can suggest to you some of the most prominent reasons advanced by lawyers and laymen alike as illustrating a greater reluetance upon the part of the people to refer their disputes to court.

Perhaps the most persistent and insidious reason advanced is embraced in the word "politics," and we have all seen the eclipse of well equipped and fairly connected members of the Bar by so-called political lawyers. We are in an era where much of the executive work of the State is carried on by bureaucrats from whose decisions there are no appeals and whom the courts steadfastly, except in rare instances, refuse to regulate or check. We have all heard stories from lawyers and laymen of their difficulties in obtaining action by the bureaucratic heads of such departments, unless and until they retained the services of certain political lawyers who alone seem able to set the machinery of government in motion. Beginning with the killing of tickets in the police court and so on through the State Government, the feeling has become more and more prevalent with the general public during the last ten years that the average legal practitioner is unable to help them and that they must seek relief through political channels rather than through the courts. In addition to this it is well known to lawyers and laymen alike that some of our courts are quite clubby and that unless a member of the Bar happens to be in good standing with the club, he may not be able to as efficiently handle his case before such a clubby court. At least his client would get that impression from seeing the court in operation. In fact, some of our courts have been so clubby that it has developed that they had been engaged in business operations and had financial transactions, such as borrowing and lending, with the lawyers practicing before them, to whom they had granted lucrative assignments, fees for which services were to be fixed by them. In the Temple Report, page 12, (p. 1062) it is pointed out that the Chancellor and the Vice-Chancellors conduct but a small percentage of the real business of the Court of Chancery. The report states:

"In addition to these judicial officers, the Chancellor appoints from amongst members of the Bar an unlimited number of Special Masters. At the present time, there are several hundred Special Masters who are paid by the litigants for their services in matters referred to them from time to time by the court. To these officers of the court, namely the Vice-Chancellors, Advisory Masters, Special Masters and Masters, are in fact delegated the judicial duties of the Chancellor in his capacity as the Court of Chancery.

Only about 8% to 15% of the cases filed in the Court of Chancery are handled by the Vice-Chancellors, the rest being farmed out to Advisory Masters, Special Masters and Masters."

It has always been maintained that the Court of Chancery consists solely of the Chancellor and the power of the Chancellor to organize, assign the work of the court, and manage the affairs of the court is supreme. See decision of Chancellor Walker in re the Vice-Chancellors, 105 Eq., p. 759.

It will be seen from the foregoing that each Vice-Chancellor is in effect a little Chancellor and devotes himself principally to administrative functions, signing orders, hearing motions, granting references, fees, etc. Therefore, the real work of the court is not being performed by those upon whom it should be placed by law but upon Masters appointed by the Chancellor and to whom the business is referred by the various Vice-Chancellors. These appointments of Special Masters are not necessarily made from the ranks of the oldest and most experienced of the practitioners before the court, but to a large extent have been made for political reasons, the appointments going to Assemblymen, ex-Assemblymen, and others, irrespective of age or experience, rather than as a reward for merit or experience at the Bar. The fees of these Masters are paid by the litigants and therefore the litigants actually pay twice for the same service, and this brings me to another reason why, in popular fancy, the courts are losing ground.

The practice of the Court of Chancery in granting large fees to successful litigants and penalizing the unsuccessful litigant because his solicitor guessed wrong, and the increases in attorneys' fees which have been necessary because of competition and of rising prices, all tend to discourage applications to the courts. It is true that the depression was, to a considerable measure, also responsible for the lack of business in the courts but there likewise the response of the courts to the needs of the people was not inviting. The treatment of the small minority stockholder, the small creditor, and investor by our courts during the recent liquidation period left much to be desired, and the high cost of justice and the impracticability of settling many disputes in court have resulted in early settlement of most litigation and the discouragement of a great deal more. The thousands of investors and depositors in closed banks throughout the State who suffered severe loss during this period because of the administration of the bank's funds by directors as their own private fishing ground rather than as trustees for the depositors still rankles in the public mind and those who were deprived of their savings in this manner will never forget; nor will they forget that in the face of the widespread misuse of funds and breaches of trust there were very few criminal charges made and only a few of the guilty were punished. Merely because many members of the public decide to take their licking and upon the advice of counsel settle matters out of court does not necessarily mean that the public is satisfied or that justice has been done. For all of these reasons most members of the Bar, I believe, and I also believe that a large proportion of the general public, favor judicial reform.

Upon the questions as to whether or not the proposals made by the Commission should be accepted, it is my belief that most lawyers would accept them in toto, if necessary to do so, rather than have the movement for reform of the judiciary fail. There is one matter, however, which I believe should be called to the attention of the Legislature, and that is as to the provisions of the proposed revision for the appointment of judicial officers, the reappointment of those officers now upon the Bench, and the provisions whereby most of them will be automatically frozen to their jobs for life.

Section V, Paragraph 2, states that each Justice of the Supreme Court, shall, prior to his appointment, have been a Justice of the Superior Court for at least one year. This section, taken in connection with Article XI, Section IV, Paragraph 1, would effectually tie the hands of any future Governor, so far as appointments to the Supreme Court are concerned, so long as any one of the present sitting members of the courts shall live. In other words, the last section mentioned provides that all the present Justices of the Supreme Court shall be reappointed and such of them as are not appointed to the Supreme Court shall be appointed as Superior Court judges, that all Vice-Chancellors, Circuit Court judges, and Common Pleas judges shall likewise be made Superior Court judges, and that from that time on no member of the Supreme Court may be selected by the Governor unless he selects a Superior Court judge for the position. The sole beneficiaries of the limitation are the present sitting judges, and I do not believe that a future Governor should be limited in the selection of a member of the Supreme Court to the promotion of judges from the Superior Court. Had we had such a limitation in our Constitution we would in the past have been deprived of the services of jurists whose names we all hold in high esteem such as Justices Kalisch, Pitney, and many others.

Another matter for serious consideration in connection with Section V is that Supreme Court Justices would in effect be appointed for life and Superior Court judges, if given a second appointment, would likewise acquire tenure of office for life, subject to good behavior. I do not know what would be considered bad behavior on the part of a judge or under what circumstances, short of a criminal act, such judge could be removed. Certainly, there should be higher qualifications for the Superior bench or the Supreme bench than amiability and good behavior. Certain questions of professional ability, experience, and adaptability to the work of the court should likewise be considered and these could only be considered by the appointing power at the time when such officer comes up for reappointment. It is my sincere belief that this section should be changed to give a seven-year term to Supreme Court Justices and a five-year term to Superior Court judges. If this is not done and the Revision is passed as written, the court appointed by the next Governor, whomever he may be, may serve for the balance of our generation with practically no change. The public will wonder why, a commission or a Legislature, which makes a finding that a change is necessary based upon the Temple report with its scathing indictment of inefficecncy, high cost, and wastefulness of the courts, and the loss of public confidence by the people in the courts, believing a change to be necessary because of the inadequacy and inefficiency of the courts, should turn about in the same document and freeze most of the members of those courts into their jobs for life. I am willing to concede that most of the members of our courts are men of high character, keen discernment, and ability, but no one will contend that all of them are fitted by experience, temperament, and past performances to remain members of our highest tribunals when their availability is contrasted with the availability of other members of the Bar of equal ability but who may have enjoyed less political opportunity.

I have been unable to find anything in the proposed judicial section which disposes of the question of Masters in Chancery, Special Masters in Chancery, Supreme Court Commissioners, Supreme Court Examiners, and other similar officials. I assume that, with the merging of the Court of Chancery into the Superior Court, the commissions theretofore granted by the Chancellor would be automatically abolished, and that the new court would have to appoint its own agents to hear matters of reference. Much litigation would be saved and uncertainty eliminated if this matter was made clear in the Revision. This brings me to a suggestion for the Revision in this regard which will be received with a smile probably, and as highly Utopian.

Much of the criticism of the courts arising from politics and undue clubbiness has been due to the patronage which the courts have been free to distribute. This patronage consists of references

to Masters, Commissioners, Examiners, etc., and appointment of Commissioners in Condemnation and Examiners, Court Commissioners, etc. It seems to be the regrettable experience that most of these appointments go to the politically anointed or to the exclusive members of the clubby-court. Perhaps the time has come for the people to write into their Constitution the officials to whom are to be delegated the work of their courts when for any reason the court is not so constituted as to be able to hear the matter personally. It is my belief that all references should be made to, and commissioners and receivers appointed from, those members of the Bar who establish their fitness and availability for such service by passing competitive examinations which should only be open to counsellors of at least five years' standing, and that such appointments should be made from panels filed in the county in which the counsellor practices and appointments made from that list and in consecutive order. Please do not take from my remarks the impression that I believe that our courts of justice are in a bad way or that we have retrogressed. The troubles from which we now suffer have been endured by every generation and, in spite of the machinations of politics and the greed of man, the law is constantly working toward a higher and finer concept of human justice. May I in conclusion quote from Dr. John M. Zane's recent popular book "The Story of Law," at the conclusion of which this statement appears:

> "But as we look back for almost a thousand years the law, public and private, has steadily improved. We may praise the good old times, but would anyone be willing to go back to them? The blots we see upon the law are all made by human hands and by those hands they can be taken away. The two things of which we can most justly complain, the ineffectiveness of the administration of the criminal law and the corruptions in municipal government, are constantly meeting an awakened public sentiment. The great bulk of the law and the differences in law among the various States are steadily being corrected, while at the present time the disinterested lawyers of the whole country are engaged in the gigantic task of restating in smaller bulk, and in simplifying, the law. There never has been a time upon the earth like the present, when men could look around them not only at their own land, but over the whole civilized world and be so well satisfied with the future of law."

I close on this note in spite of the present anarchy in the field of international law, with the stout hope that our present conflicts will end with the triumph of justice, local and international.

MR. SCHROEDER: I will declare a recess until two o'clock.

(Recess)

PUBLIC HEARING

September 17, 1942

Afternoon Session

on

Proposed Revision of the New Jersey Constitution.
Article V. "Judicial"

also on

Methods of Submission of Changes in the Constitution to the People.

The Joint Legislative Committee re-convened in the Assembly Chamber at Trenton on Thursday, September 17, 1942, at two o'clock P. M., pursuant to announcement previously made.

The Chairman opened the Hearing and the Hearing proceeded as follows:

MR. AMLICKE: The Hearing will please come to order. The regular list of proponents of Article V has been exhausted, and I would like to ask whether there are any others who wish to be heard in favor of the proposed Article V.

MR. PAUL: Mr. Herbert J. Hannoch has appeared since lunch, Mr. Chairman.

MR. AMLICKE: In favor of Article V?

MR. PAUL: Yes.

MR. AMLICKE: Mr. Hannoch.

MR. HANNOCH: I speak in support of a plan of revision of the judiciary system. Not being familiar with what transpired here this morning, I could, if I wished, go into a considerable amount of detail as to the plans and the reasons and what-not, but it seems to me that the problem before the Legislature at this time is not whether what the Commission sent out requires changing here or changing there or whether specific items should be modified, but that the Legislature should rather be concerned with the problem that there seems to be a considerable demand for submitting to the public the question as to whether the Legislature should submit next year a revised Constitution, and during the course of the year such odds and ends of changes, some of them important, some of them unimportant, could very well be worked out. The demand throughout the State for some changes is considerable. I have yet to hear anybody object to a change in the system relating to the Court of Appeals. I would be very much surprised if any of the Supreme Court Justices themselves would object to it. Quite

recently, in trying to ascertain how much time they have to decide a case, one of the Justices told me that if you were to eliminate the sessions in the Supreme Court and in the Court of Appeals and eliminate from his time the days he is required to charge juries and hear motions, the time left was so slight he was required to decide one and one-third cases each day. Now, the very statement of that would seem to indicate that something should be done to modify that plan.

The question which you have to discuss this afternoon as to how to submit that plan is something which I assume, from the nature of the inquiry you asked me, should not be taken up by me at this particular time, and I therefore, with your permission, will reserve it, but I do say that from my inquiry among the members of the Bar and such laymen as I have had an opportunity to discuss tnis problem with, there exists a demand for a change, and inasmuch as whenever any person asks a member of the Legislature as to the policy or propriety of a statute, he is anxious to find out what the public wants, I fail to see how the Legislature cannot answer the present inquiry by giving the public an opportunity to say whether or not they wish to have this Constitution submitted to them, and I therefore speak, as I say to you, in favor of the plan.

MR. AMLICKE: There being no other proponents, we shall now hear from those in favor of modification. The first speaker will be Mr. James D. Carpenter of Jersey City.

MR. CARPENTER: If it please the Committee, I for one agree with all the speakers of this morning that there should be submitted to the people the question whether or not they wish to have the Constitution revised, but I do oppose this draft which has been publicly circulated. I don't want to be in the position of one of the wreckers of a building; I prefer to be in the position of an architect who sees that the building, when part way up, is defective and wants to tear out part of it, the defective part, and have it properly built. I have had printed and handed to each of you a criticism of some of the provisions of the proposed Constitution for 1942. Some of those in my opinion are so bad that if this draft were submitted to the people in its present form I would be compelled to oppose it. That provision, for instance, for putting a person to trial for any crime other than a capital crime or a heinous offense without a Grand Jury is something I would never yield on, and the provision that, in Paragraph 7, Article III, Section VI, any provision of federal public law or any federal administrative rule or regulation relating to the regulation of industry, commerce or taxation or establishing technical standards of any kind could be inserted by reference in any bill passed by the Legislature is nothing less than vicious. That would mean that if the Federal Government should pass a sales tax, that could

be incorporated in any bill passed by this Legislature on the subject of taxation, and if incorporated by reference, would become a sales tax of this State. I don't know whether or not that was contemplated by the drafters of this Proposed Revision, but if it was contemplated I say it is nothing less than vicious. I won't go into the other provisions, which are set forth succinctly, and my criticism is short—you can read it in a few minutes, and if there is merit, I hope those items will be considered.

Now, with reference to the courts, which you are particularly concerned with today, I think you will find a very small minority of the people in this State in favor of retaining the present Court of Errors and Appeals as now constituted. There is hardly any use of going into the discussion. I don't think you will find anyone seriously supporting that court as now organized. Then, when you take up the other provisions—I have criticized them to some extent. In the first place, I think they are too restrictive to compel the court to have ten terms in one year and to compel it to sit in Trenton and no other place. It is too confining, too restrictive, and ought not to be there, when you consider that the Supreme Court of the United States and the Circuit Courts of Appeals of the Federal system have one term a year, hear cases as business requires, and then adjourn to consider them, and then meet again. It answers the need of the times.

As to the form of the courts, I greatly oppose that form of the Superior Court as proposed. In the first place, it seems to me, as I said in this memorandum, almost as though there is an attempt by false pretense to fool the public into believing we are retaining a court of equity and a court of law, whereas that court is divided into three parts, as proposed. The first is a part taking care of appeals, two appellate divisions, which is all right. Then there are two other parts; one is called a law part, to take care of criminal matters, law matters, and matrimonial matters—that is the law side. The other is to take care of all equity matters, all probate matters, and other matters. The other matters would be all the prerogative writs, quo warranto, mandamus, certiorari, which have always been matters of law considered exclusively by the Supreme Court in the past. I think this is nothing but a scrambling of our present court system into a court which you would call the superior court. Now in 1909, as I remember the date, there was submitted to the people of this State a plan for a system of courts which would be ideal for the court below the top court, whether it be called Court of Appeals, as I think it should be, or Supreme Court, as it is called here. That plan of 1909 provided for an appellate division of the Supreme Court, a law division, and an equity division. You would have a separation of law and equity. Then you would have in each county a county court. Now, that is almost ideal. What they omitted at that time

was a Court of Appeals, and had that been there, a separate appellate court to which all appeals from lower courts could be taken, you would have an ideal system, so I submit that for your consideration.

As I said before, I am satisfied that the people should be given an opportunity to vote in favor of a revision. I think there should be a revision, but these matters I have spoken of can be readily corrected; they should be corrected. We have always in this State had a separation of the courts of equity from the courts of law. It is a bad thing, I think, to too closely tie those up. We certainly don't want to lose our equity decisions, and we don't want to have them too much commingled with the law decisions. I think there is sound reason for keeping them separate in separate divisions, and this draft seems to indicate a desire to keep them separate, and yet they are scrambled all together with the courts of law and criminal courts.

I am sure that Mr. Hardin and all these gentlemen who spoke in favor of revision this morning have in their minds a mental reservation about some of these things I have spoken about. If you just correct those—and I think the Legislature will—I have great confidence they will—if those things are corrected, I am sure we will have a great improvement in the courts of the State.

Thank you very much.

MR. CAVICCHIA: Mr. Chairman, I would like to ask Mr. Carpenter a question.

MR. AMLICKE: Mr. Carpenter, will you submit to a question?

MR. CARPENTER: Surely.

MR. CAVICCHIA: Mr. Carpenter, I just read your third point in your brief. I am trying to understand the distinction you make here. I think it is pertinent to today's subject matter because it deals with the judiciary branch, too. I don't understand what distinction you make here when you call the phraseology in this proposed draft something that is productive of the Fascist idea. Would you mind elaborating on that point?

MR. CARPENTER: The present Constitution provides this: "The powers of the Government," the powers, now, "The powers of the Government shall be divided into three distinct departments," departments, they call them, "the Legislative, Executive and Judicial." In the draft now proposed they have added to that phrase these words, "The functions, powers and responsibilities of the Government of this State shall be divided among three distinct branches—the Legislative, Executive and Judicial." Now, it has always been the democratic concept from the time of 1776 that the powers of the Government shall be divided into three branches, whether it is under the Federal system or the State system, but that the responsibilities for government are in the people, and not until that disgusting little paperhanger, with the loud voice, from

Austria put over this idea that the powers, responsibilities and functions of government are in the State did we have all this trouble arise.

MR. CAVICCHIA: Mr. Carpenter, I see the point you are making, but I think it is not well taken, because you are trying to read into this draft these words: "The functions, powers and responsibilities of the people of this State shall be divided among the three distinct branches of Government." Had the wording been that, then I would agree with you, but it doesn't seem to me this changes the sense at all. It says, "The responsibilities of the Government," and certainly, if the Government has powers, it has responsibilities to somebody, and those responsibilities are to the people. I can't catch your distinction.

MR. CARPENTER: My distinction is this: The Fascist concept is that the State is everything and the individual is nothing.

MR. CAVICCHIA: That is true.

MR. CARPENTER: The democratic idea is that the people are the Government and that they delegate to the people they put in office certain powers and responsibilities, not to the State.

MR. CAVICCHIA: That is true.

MR. CARPENTER: I don't know how this thing ever crept in, but this language, the functions, powers and responsibilities of the Government shall be divided among these branches—that puts the whole thing in the State, whereas I think it should be kept where it always has been, and leave the old language, the powers of Government shall be divided among the three departments. That is the thought I had. I lay it on the table. You mull it over and see whether you are right or I am right.

MR. AMLICKE: The next speaker in favor of modification is Mr. William W. Evans of Paterson, former Speaker of the House of Assembly.

MR. EVANS: Mr. Chairman and Members of the Committee:

Somewhat like Mr. Carpenter, I am in accord with most of the provisions of the Proposed Revision, but there are certain phases of the judiciary article with which I personally differ. I have been engaged, from time to time, in efforts to revamp the Court of Appeals, and while in the Legislature I was successful in steering an amendment to the Constitution through two sessions up to the point of getting it to the Senate, and then something happened.

My objection to this proposed judiciary amendment is that it is too embracive, and I speak to the proposition that it calls for an opposition which will be, I believe, so powerful that you can't possibly put it through the Assembly and Senate. You endeavor, in this program, first of all, to set up a new Court of Appeals. With the general principle of a new Court of Appeals, I am in sympathy, because I feel that with our present setup there is too much diversity of duties attendant upon each member of that court. I have had personal conferences with these men, and I know that it is too great a responsibility to saddle on those men to sit in all the various branches of activities on which they are called to sit, and I feel that a Court of Appeals whose only duty it is is to consider ultimate appellate matters is the proper setup, which has been adopted by practically every court in the United States, including our own national setup. That, I think, would make for a more ideal situation than we have at present and give greater ground for the display of the talents that reside in our present Court of Appeals.

When we get into the general classification of a superior court in which is cast all of the circuits and county courts, then I think you are going too far afield. I hear little, if any, criticism of the circuits. I think, with the exception of a few individual cases where possibly a judge takes too long to try a case or takes too many recesses or comparatively trivial criticisms, that the circuits are performing a fine job.

With the Court of Chancery, I have had many years of experience, and while I see many things to criticize, I see no reason for tearing down that great structure which we have so carefully reared over all these years. My good friend, Mr. LeDuc, presented his arguments in favor of the consolidation of the two branches and the elimination of the distinctions, and he said that any equity judge should be able to practice in the law courts because of the fact that in the law schools you get the teachings of equity and of law. Well, I want to tell him if he only has the opportunity to go through Pomeroy's Jurisprudence, and see the few points raised in Pomeroy and then goes into Newman's or any of the other criminal books upon the practice of criminal law in the county courts, he will find such a tremendous range in the subjects covered by those particular judges that he will find that particularity in a man's practice is required in order to get the fine degree of knowledge that is expected in the rendering of decisions on important questions that come up in the criminal courts and in the equity branch.

What is the criticism that comes of the equity branch? Well, there is too much politics; there is too much favoritism; there is too much delay. All of these things we have heard from time immemorial. There has never been a time in the history of the English courts or in the history of the American courts that they haven't leveled the charge of politics in practically every instance when a decision goes adversely to a litigant, or favoritism, or that the courts take too long. To me, the criticisms of our courts are a matter of personnel largely. It is not with the intrinsic formation of the courts or the practices in the courts, but it is due to the

fact that some judge is delinquent, or he may be somewhat politically minded, or charges of that character. Well, all we have to do is go back to the appointing power and the confirming power. Of course, in the Court of Chancery we then go back to the Chancellor, but we find it is largely a question of administration. If questions of that sort come up and we require speedier action in the Court of Chancery, very well—take it up with the Chancellor, with the purpose of having speedier decisions rendered, or take it up with the Legislature for the purpose of exacting a requirement that the decisions be promulgated within a certain time after hearing or that hearings proceed within a certain time. Most of these matters can be dealt with from the standpoint of the Legislature, because so much of it deals with administration. Did we have to have a new Constitution of the United States of America when the United States Courts appointed a Civil Administrator of the courts to see whether the courts were performing their functions? No, the Congress enacted a law and permitted that to be done and the Supreme Court took upon itself the appointment of a civil administrator, who has compiled statistics showing the production of every judge, and he keeps upon the tail of every judge to see that he is constantly employed and isn't taking all his afternoons off to play golf. That is a matter of simple administration and most of our difficulties come from administration. It is not so much the framework of the thing as it is administration, other than, I believe, in our Court of Appeals, and I only speak for that for the reason I feel that those men in that court are overburdened with a tremendous volume of work. They can't possibly humanly go through the volume of work placed before them and hope to give individual attention to every case that comes before them.

As to the Temple report, I have had somewhat of an opportunity to scan it, and I find that although I don't know Dr. Temple, nor have I had any experience with respect to his previous knowledge of our courts or his experience with our courts, I am just going to take his findings as being entirely truthful and worthy of credence, but I find that in the sum total of his recommendations, found in the Summary on page 9 of the Report, (p. 1058), it practically entirely deals with failures of administration or failures in the appointing power. For that reason, I feel that we ought to center our efforts upon that phase which practically everybody agrees should be cured, because if you will look back upon the history of efforts to modify our courts, you will find that the great bulk of the effort was directed to the revamping of the Court of Appeals, and if you center your efforts on that, that, I think, will be a job of itself, without stirring up the opposition of the great number of the lesser courts and their officials, their functionaries, and their presiding officers, who are well content to carry on the functions for which they have been originally designated and who are, in the great majority of the cases, efficiently performing them, but don't, for heaven's sake! just simply for the purpose of making a change, throw everything into a hodge-podge and hope to evolve, out of the mere fact you are calling them different names or visiting upon them different responsibilities, an ideal system of jurisprudence.

I thank you.

MR. AMLICKE: The next speaker in favor of modification will be Mr. Arthur S. Corbin.

MR. CORBIN: Mr. Chairman and Members of the Committee:

In order to cut down the time you will have to spend this afternoon, I will condense my remarks as much as I can. I want to say, in the first place, that I read Mr. McCarter's brief on behalf of the committee of the State Bar Association, and I am quite in accord with what he says there and what is recommended by that committee in the form of modifications to the Proposed Revision. I want to refer to two or three things that were said here this morning: One, that the business of the courts has declined some fifty percent in the last ten years, and the question that that raised. In passing, I just want to say I don't think it necessarily, or perhaps at all, means lack of confidence or the other reasons that were assigned, but that it means something not mentioned at all, and that is, the amount of administrative law that is now being practiced before the various bureaus and boards of our State and our Nation. There have been statistics compiled which show the tremendous extent to which questions of law have gone from the courts before these administrative bodies, and I think if it were not for that, the volume of business in the courts today would be just as much as it ever was.

Also I heard it said this morning that the law schools turn out men who are well educated in the equity branch, as well as the law branch, and that any man is equally fitted for both of these functions. I think that is quite in error and I think it is well known to be so, that there are men who by temperament are fitted to be law judges; there are men who by temperament are fitted to be equity judges. I remember very well when the late Judge Jonathan Dixon spoke at the dedication of the Passaic County Court House. The subject of his address that day was the difference between law and justice. He read a very startling paper, the text of which was this: Courts of law are for the administration of the law and those courts are supposed to administer the law just as it is written, universally intended to cover all classes of cases that can come within the scope of the provisions of the law; intended, but not necessarily competent, to reach every individual case where there are special circumstances which would ordinarily come under the jurisdiction of the court of equity. He said it is a great popular fallacy that a law court will of necessity always administer justice. It will administer the law

if it functions as it is intended to do, but there may be cases where injustice will be done and courts of equity are for the purpose of correcting that, wherein the law, by reason of its universality, is deficient. That is an axiom with which you are all familiar, but the point I want to make is that there are men who by temperament and nature are designed, and history has shown it to be so, to be equity judges, and there are men who by temperament and nature are designed, and history has shown that to be so, to be law judges, and so, for one, I desire to be recorded as opposed to this merger of the Court of Chancery with the courts of law. I heard Vice-Chancellor Pitney, some years ago, holding court in Newark, pound the desk and say, "As long as I sit on this bench, I intend to administer the law in accordance with the principles of equity." That was the Vice-Chancellor's view of his position and his duty, and he did, as someone said here recently, administer the law. True, but he administered it according to the principles of equity.

Then, I wanted to say one word about the Governor's remarks this morning, or one particular remark. He said he had given great and serious thought to the question of whether this amendment, this series of amendments, the Revision, should be submitted to the people during the war, and he said he had come to the conclusion that it ought to be, and he gave his reasons. I would like respectfully to differ with the Governor on that subject. I think that this country, and I believe you will agree, is engaged in the most terrible struggle in its history. I have heard people say we are going to win the war. I heard Congressman Hatton Sumners, at the annual meeting of the State Bar Association, disagree with Mr. Leonard Dreyfuss, the Director of Civilian Defense, who made the statement he is sure we will win this war. Mr. Sumners was Chairman of the Judiciary Committee of the House of Representatives. He said, "I must disagree with Mr. Dreyfuss. I think that is a great mistake. We are not sure to win this war. We are not winning this war. We are losing this war." And it has been said by many men, who have had the courage to come out and say so very recently, that it will take every ounce of strength, every bit of energy, every resource at the command of the people of this country to win this war, and when you consider what is going to be involved in the submission of this amendment, or this Revision, to the people of this State in November of 1943, you must realize that the greatest amount of distraction, the greatest amount of dispute, the greatest amount of argument you can conceive of in a complete Revision of the Constitution, the most complete that has been undertaken in a hundred years, that that must be brought to a head, that must be decided by the people of this State in the November election of 1943. Why the November election of 1943? I agree with many of the provisions of this Revision—the Court

of Appeals—I don't believe anybody in this room or anybody in this State will object to the creation of a new Court of Appeals—and by the way, why call it a Supreme Court? Everyone I know calls it a Court of Appeals. If it is a court of appeals, Court of Appeals is a very good name for it.

By the way, I am not an office holder, nor connected, so far as I know, with any movement or association committed to any position on this subject. I am a plain citizen, a lawyer to be sure, and like Mr. Hardin to the extent of having practiced for something over forty years, but I say now, to put on the ballot now, "First, do you want a revision of the Constitution? Second, do you want a revision of the Constitution to be brought before the people at the November election of 1943?" as to number one, I wouldn't hesitate a minute. The people of this State want certain improvements in the Constitution and should have them, and I am in favor of that going on the ballot in 1943. I seriously doubt that this whole State should be thrown into an uproar over whether we shall or whether we shall not adopt a revision of the Constitution containing eleven articles, thirty sections, and 175 paragraphs, in November, 1943. I think that is a great wrong to the people of this State and a great wrong to the people of this Nation and a great wrong to the men who are over seas and in all part of the Country, serving in the Army, the Navy, and the Air Force. I think it is a wrong thing to say that that thing must be decided. It has gone a hundred years in the form it is now. It needs corrections and improvements but to say that should be done in November, 1943, I think is near to a crime.

MR. BILDER: Senator Schroeder, I rise to a point of order, without any disrespect to the speaker, and ask leave, because of the departure from the order, to submit a question to the speaker. The point of order is the speaker has discussed not what goes to judiciary or what we have so far discussed, but what goes to the question of the advisability of this whole submission. May I ask a question of the speaker?

MR. SCHROEDER: Yes, you may.

MR. BILDER: Has the speaker calculated the number of man hours that would be lost to the country by requiring the voters in New Jersey in November, 1943, to say yes or no to the question "Do you wish a revised Constitution to be submitted to you"?

MR. CORBIN: I understand that the question is to be submitted in 1942 as to whether the Legislature shall put before the people, or place before the people, the Revision, and that that is to be voted on in 1943.

MR. BILDER: I change my question to ask how many man hours would be lost to the productive effort carried on in New Jersey, the productive war effort, by having the voters in November, 1942,

write yes or no to the question, "Do you wish a Constitution to be submitted to you"?

MR. SCHROEDER: Will the gentlemen submit?

MR. CORBIN: I don't understand that that is the question, but I will say this: I haven't counted the number of man hours, but if a revision of this Constitution, a proposed revision of this Constitution, is placed before the voters in November, 1943, in order for the voters to intelligibly vote on that question, the number of man hours will be countless and run into the millions.

MR. CAVICCHIA: Mr. Corbin, on the question of nature and temperament for members of either court, your point might be well taken if we had qualifications dealing with nature and temperament. Now, when does a judge acquire the temperament to be a law judge and when does a member of the Court of Chancery acquire the temperament to be an equity judge?

MR. CORBIN: I would say at his birth.

MR. CAVICCHIA: But are those qualifications considered when appointments are made?

MR. CORBIN: I should think they ought to be.

MR. CAVICCHIA: Well, are they?

MR. CORBIN: I can't answer that question. I have never appointed any, but I should say they should be. However, a speaker this morning said we ought to revise this Constitution; there is too much politics, too much of this and that—killing tickets, judges lending money and going into real estate deals—are you going to amend the Constitution to correct those?

MR. CAVICCHIA: That isn't my point, Mr. Corbin. The point I want to bring out is this: Isn't it possible for a man to acquire, as now he acquires, either as a law judge or equity judge, after years of service on the bench, that peculiar temperament? Isn't it possible for a man to acquire both temperaments?

MR. CORBIN: I should not think he would have equal facility in both. I know this is the age of specialization. I know that in the medical schools they take general courses in medicine and after a while they branch off into specialities. The men may be equally qualified to branch into one specialty or another, but I say that when they do they acquire great facility in the specialty to which they devote themselves.

MR. CAVICCHIA: Do you mind if I ask whether you practice in both courts, Mr. Corbin?

MR. CORBIN: I have. I have practiced more in the Court of Chancery than I have in the law courts.

MR. CAVICCHIA: Aren't there lawyers who are at home in Chancery as well as in the law courts and are reputed to be very good at the Bar?

MR. CORBIN: Some of our ablest lawyers are practicing in both but I think you will admit that we have lawyers in the State of New Jersey, distinguished lawyers, who are known for their peculiar and special ability along equity lines, and others who are known for their peculiar and special ability along strictly legal lines.

MR. CAVICCHIA: Won't you agree with me we have had lawyers and do have lawyers, known for their peculiar ability in both?

MR. CORBIN: Yes, sir, and they are few, comparatively.

MR. CAVICCHIA: Isn't it true that a judge or chancellor or vice-chancellor will predicate his decisions largely on what memoranda or briefs are submitted by counsel in either court?

MR. CORBIN: Yes, sir.

MR. SCHROEDER: The next speaker will be Mr. George W. C. McCarter, representing a special committee of the State Bar Association.

MR. MCCARTER: Mr. Chairman, Members of the Committee:

As the Chairman has just stated, I speak not only for myself but for a special committee of the New Jersey State Bar Association. This committee was already in existence, considering other matters, when this report of the Commission on Revision was made public, and at the annual meeting of the State Bar Association last May or June, in Atlantic City, our committee was instructed to study the proposed revision and make recommendations to the mid-winter meeting of the State Bar Association. We have studied it. We let neither the hot weather nor the vacation season interrupt us, any more than your Committee permitted the same interruption, and we have now reached our conclusion, and we thought it proper that without keeping the report up our sleeves, so to speak, it should be submitted to your honorable body. You all have copies, and I am not going to read my brief, so to speak. What I shall say will be strictly to the point, and I don't think I shall take as much time as I wrote down this morning that I might take.

The State Bar Association, ever since the turn of the century, has been actively interested in accomplishing a constitutional reform of our courts. If I may interject a personal element, the first vote I ever cast was in 1909 in favor of the 1909 amendments. My father, whom Mr. Wescott referred to so kindly this morning, was an enthusiast for the reform of our judicial system through constitutional change, and I was brought up, when I was a boy, to wish that, and have kept it up ever since. I am confident that any man here who has been in the State Bar Association in the intervening time will confirm what I say; namely, that the State Bar Association has been consistently in favor of constitutional reform of our courts. It was, therefore, a matter of great disap-

pointment to our committee that when the judicial article was read, we found we could not approve of it as written. We are still in favor of a proper constitutional change, and in order that I may disabuse the minds of those gentlemen who spoke this morning, who are fearful that everybody who doesn't swallow it hook, line and sinker, is really stalling and doesn't want any change at all, I will point to the fact that we have in the last few pages of what I will call our brief or memorandum, or whatever you want to call it, set down in black and white a modified amendment which we can wholeheartedly support.

The trouble with the change proposed is that a change as such has no value; it must be an improvement, and in the opinion of the committee for which I speak, there can be no improvement in our constitutional setup of the courts unless the change conforms to at least six fundamental canons.

The first of these is a separate court of appeals in the last resort, with a permanent membership of not more than seven, all to be learned in the law and to have no time-consuming other duties. The proposal does conform to that canon.

The second canon is there should be one great state-wide court of original and intermediate appellate jurisdiction, exercising the jurisdiction now vested in the Supreme Court, the Court of Chancery and the Prerogative Court, sitting in a Chancery Division and a Law Division, but with power to do full justice in any one cause.

Thirdly, in addition to the foregoing, in the language of the present Constitution, "such inferior courts as now exist and as may be hereafter ordained and established by law, which inferior courts the Legislature may alter or abolish as the public good shall require."

Fourth, the absence of any provision permitting the Governor to establish a temporary court or appoint temporary judges.

Fifth, to the end of minimizing future litigation over jurisdiction, the Constitution should wherever possible, instead of taking a fresh start, refer to or take over the well understood jurisdiction of the existing courts.

Last, but by no means least, the Constitution should not go into too much detail.

The Proposal violates many of those canons. In the first place, after you get below the court of last resort, which I, like everybody else I have heard here today, think should be called the Court of Appeals, you have, instead of one great state-wide court, twenty-one courts. It is practically as if you conferred upon the present Court of Common Pleas all jurisdiction whatsoever and made it state-wide. That, we do not approve of. We think that the great and tremendous power of injunction, the great and awful power of taking a man's property away through the appointment

of a receiver, should not be handed out to every Common Pleas judge. I say that with respect to those gentlemen, some of whom I number among my friends and whose duties are no less important than any other duty performed by anybody in the State, the view of our committee is that there should be retained the value and benefits found in our old system of the separate Court of Chancery and we should do away with the evils of that. It is not wholly good but it is by no means wholly bad and should not be scrapped.

We believe that the Commission should have paid more attention to the 1909 amendments, which were proposed by the then leaders of the Bar and adopted by two Legislatures of New Jersey but unfortunately, as happens to so many of our amendments through the amending process, were lost in the shuffle. Be that as it may, not only is there the 1909 standard to look at but the Commission seems to have completely overlooked the English Judicature Act. The proponents paid lip service to that great work this morning, but the draftsmen utterly ignored it. That English system, which I think is the envy of the rest of the common law world and has been the model of much and should be the model of more, retains in its chancery division the equity specialists but does provide that, subject to the convenient assignment of causes, all justice may be done in any one case. That is what we think should happen. We think it is absurd that if you have an action on a promissory note and you want to interpose an equitable defense you should not be able to interpose it right in the division in which that cause is being tried without getting an injunction from somewhere else, but we also think that there are certain types of causes which can be properly assigned, at least in the first instance, to what I will call equity specialists and we feel that by providing for them and providing for a system whereby the office could be shifted and transferred and different types of assignments may be made as the future may show to be wise, you have a system which we can be proud of and not one which is ill considered and really—I don't wish to be supercilious, but I think it is—sort of half-baked.

Then, another thing is the Constitution should not attempt to do too much. We should remember we are making a Constitution; we are not drawing a practice act. The inferior courts can be left to the Legislature, as they are now. There is no reason why the Constitution should go down and interfere with them. Judge Hartshorne brought tears to my eyes this morning when he said how terrible it was he had these four different courts that he had to sit in. The Legislature can change that in one act by providing that the Oyer and Terminer courts, Special Sessions, Common Pleas, and Orphans' courts shall all be merged in a court—you can call it County Court, if you want to. Nothing has to be done with

the Constitution to do that. I think something like that should be done, but we don't have to go through the birth pangs of producing a Constitution in order to accomplish it.

In like manner, we should not attempt, in the Constitution, to try to play God. We should not foresee everything for the future. Stake out the great framework and leave the rest to be done in the future by rules of the court and by the Legislature. Far too often people who are making constitutions try to tie the hands of subsequent generations. Times change. The Constitution seems to have a faculty in our State of remaining unchanged. Therefore, let's do not, when we make a new one, make it too difficult to alter the traditional situation as changed circumstances may require.

Then, there is another thing: For years after the adoption of the Constitution of 1844, we had a mass of litigation over what this or that meant. Jurisdiction of our courts is pretty darned well settled now, and I think this is purely a question of draftsmanship. The draftsman should, so far as possible, transfer existing jurisdiction, making necessary changes, instead of taking a complete fresh start which will result in thirty years more of litigation over what the meaning of this or that phrase is.

There is one thing in particular in the draft as proposed that the committee does not like, and that is what I called at the Atlantic City meeting "the court packing plan." There is a provision in the Constitution whereby in the event a decision does not come down within a certain length of time from the court of last resort, the Governor can appoint a temporary court and appoint temporary judges. I think that is bad. I think that gives great possibilities to political courts, particularly in the case of very contentious litigation with great political phases to it. The court of last resort should be unassailable. The great and only weakness in the Supreme Court of the United States is that there is no top limit to the number of judges, and therefore it was possible for the President, back in 1936 I think it was, to advance and suggest his "court packing plan." If we have a court of appeals of seven members, which I think everybody agrees is plenty, that should not be capable of enlargement by the Governor. If, however, for some reason or another there is no quorum, through sickness or anything you can possibly think of, the Court of Appeals should be able to summon up from the court below an additional judge, much like the United States Circuit Court of Appeals can summon a District Court Judge to aid them. It would get the summoning power out of the political hands and into the judicial hands.

My brief, or memorandum, goes into, in considerable detail, particular criticisms of the plan. I don't think it either advantageous or fair to others who want to be heard to go into that now. It

is there and can be read by the Committee and by members of the Legislature at their leisure. I shall say only one more thing: If this debate here today was later on in the history of this proposed revision, if we were deciding whether or not to adopt this as written or vote no, that would be one thing, but we are not at that stage. His Excellency, the Governor, himself, this morning said there was still the possibility of improvement. I think Mr. Hardin also indicated that there was still a possibility of some change, and of course there is. This document as written is not going before the people. There are going to be modifications. I have no doubt that some of the members of the Revision Commission themselves would be the first to say that on further thought they think this or that might be changed. That being the case, let's by all means get the best modification that we can. The committee of which I have the honor to be chairman has worked long and hard on this, and we earnestly submit for your committee's consideration, and for the Legislature and ultimately the people, the improvements in the judicial system, improved but containing very many of the suggestions, embodied in the report of the Revision Commission.

MR. CAVICCHIA: Mr. McCarter, were judges of the Courts of Common Pleas always appointed by the Governor?

MR. MCCARTER: No, at one time they were appointed by the Legislature in joint meeting.

MR. CAVICCHIA: How was it changed?

MR. MCCARTER: There was a constitutional amendment.

MR. CAVICCHIA: How do you reconcile that with your statement that we can change by law these inferior courts?

MR. MCCARTER: You can; the Constitution says so. The Constitution of 1844 provided in so many words that the Common Pleas Judges should be elected by the Senate and Assembly in joint meeting. Then in the 1875 amendments that was changed to provide for appointment by the Governor, but there isn't any reason in the world that I can see why the Legislature could not tomorrow pass an act combining into one court the several courts held by the Common Pleas Judges.

MR. CAVICCHIA: Except that I am trying to read in the schedule of the 1844 Constitution a prohibition against changing those courts by reason of the fact that under Paragraph 11 of the schedule there is mention of the Courts of Common Pleas and Quarter Sessions in relation to the Clerks of the Counties.

MR. MCCARTER: I think it is generally understood, at least I always did understand, that a schedule in a Constitution is merely a carryover proposition. It takes care of the existing situation until you get going under the new, and provides for a temporary shifting of duties.

MR. CAVICCHIA: I agree with you on that.

MR. MCCARTER: The Constitution of 1844, as plain as the nose on your face, has the clause I quoted.

MR. CAVICCHIA: I know the clause you quoted. I am just trying to work it out.

MR. DEGNAN: Mr. Speaker, may I interpolate at this point?

MR. AMLICKE: What do you wish to interpolate?

MR. DEGNAN: I just want to make a correction in what he said on the point Mr. Cavicchia has raised. I think the question has been decided adversely to the position taken by Mr. McCarter in the case of *Schalk* v. *Wrightson* in 58 Law.

MR. MCCARTER: I disagree with Mr. Degnan.

MR. AMLICKE: The next speaker in favor of modification is M. Lester Lynch, President of the Hudson County Bar Association.

MR. LYNCH: Mr. Chairman and Members of the Committee:

Let me first express the thanks of the Bar of Hudson County to you men for having considered my telegram during the vacation period that you continue this hearing on the judiciary article so that the lawyers in the State, particularly in our County, might be heard. We appreciate your consideration. It is significant that today is Constitution Day. Today throughout the Nation we celebrate the 155th anniversary of the signing of the United States Constitution. I submit that that live, active, forceful document speaks stronger and more forcefully than any words that I can command to the effect that old age alone is not a good and sufficient cause for doing away with the Constitution. The subject matter under consideration today, in comparison, is young; it is not a hundred years old yet.

No one doubts or questions that our present State Constitution is in need of definite changes. Some like the term "reform," others "revision," and still others the modern "streamlining." I will not quibble as to words, but I am here to present to you a few thoughts concerning that part of the proposed new Constitution which deals with the change in our courts.

I was fortunate enough, at the spring meeting of the State Bar Association, to have heard the address of Mr. George McCarter in giving his report as chairman of the Committee to Study Judicial Reform by Legislation, of the State Bar Association, and to have listened to his remarks concerning the proposed court changes in the new Constitution, in which he found serious defects, both of form and substance. His address on that occasion was well received. It was substantially to the same effect as his remarks today, but in greater detail.

To us of the Bar who have known Mr. McCarter for many years and who know of his reputation before the Bar of this State

and the Nation, it seems but fitting and logical that a great deal of weight should be given to his expressions.

As I said before, it is true there should be some changes in the Constitution but, to me, change means to alter, to qualify, to temper, to modulate, to modify. It does not mean to completely destroy and build a substitution therefor. Most of us who are trained in the law as clerks were given the sage advice to read Lord Blackstone at the commencement of our legal education, because in it are stated the principles of common law upon which all law, since that time, has been founded. And, running concurrently with our study of the common law, we learned that our courts were patterned after the English judicial system, that system which so definitely provided a cleavage between the courts of law and equity. Since the time of Lord Blackstone there have been changes and modifications, both in law and procedure, but this has been the slow result of growth and not the sudden innovation of theory.

We have come to recognize fully the value of tradition and habit as the great allies of permanence and stability. This new proposed court reform shudders at tradition and preaches the doctrine that before you can effectuate a change, you must first destroy the basic Constitution. That, I submit, is wrong. Today is well recognized by all as a day of specialization. I think the committee appointed to revise and to submit a revision of the Constitution recognized that principle. We find in the proposed new Constitution a setup of the Supreme Court that will be exclusively of appellate jurisdiction. I think the committee, through that, recognized that specialization today will result in a more efficient and workmanlike job, whoever is handling it. I submit that, carrying out that same principle of recognition of specialization, the committee should have set up a Court of Chancery that would specialize in equity, and a Court of Law that would have to do exclusively with law. I submit there is an inconsistency in the reasoning and the thought that provoked and submits this proposed new Constitution.

A great makeup artist changed Helen Hayes, in the well known "Queen Victoria," from a young girl to an old woman in the course of several hours on the stage. Did he have to destroy her body in order to effect this change? To give a more streamlined example, which seems to be the method of procedure outlined by the Commission on Revision of the New Jersey Constitution, modern science has given us high-test gasoline with which to drive with great speed and dispatch on our highways, but war, the great leveler, is bringing us back to the basic principle of traveling by our own locomotion and is returning us, of necessity, to those so-called "horse and buggy days" which the proponents of the new Constitution seem to regard with aversion and antipathy. Should we cease

to do our daily tasks because they will now have to be performed through old-fashioned methods?

It amazed me, upon listening to Mr. McCarter's speech at the State Convention, that this new Constitutional Committee, having called the representatives of the State Bar Association before it for an expression of views, proceeded to entirely disregard them. I am wondering if, when they sought this advice and counsel of our Bar, upon whom will devolve the practicing before these new proposed courts, it was with their tongues in their cheeks and a recollection of that old definition of "advice," which, as I remember it, was "something which everybody is ready to give but which nobody is willing to follow, except when in a particular case it accords with their own wishes and desires." Yes, the Constitution needs changes as far as the courts are concerned, but certainly, I don't believe in violent changes, nor do the people expect them. Things in possession have a firm grip. It is a conviction that will not be surrendered except by compulsion, and wise men should look to it that this compulsion be not put in force. It is not many years ago that we had an example of what the American public will do when an attempt is made by anyone to alter or change our court system.

The history of our Republic—yes, the very beginning of our country—is fraught with instances where the American people have rebelled when compulsion was placed upon them. This proposed court amendment is not a proposed amendment at all but an absolute destroying and tearing-down of beloved traditions of law and procedure that have come down from the time when "the memory of man runneth not to the contrary." If the Constitution is to be changed as far as the courts are concerned, then I feel, and urgently recommend, that it is imperative that the State Bar Association of this State, which recognizes this necessity, should be the guiding consultant as to the manner in which those changes should be effectuated. I heartily disapprove of the court changes in the proposed new Constitution.

MR. AMLICKE: The next speaker in favor of modification is Mr. James A. Major, prominent member of the Bergen County Bar.

MR. MAJOR: Mr. Chairman and members of the Committee:

At the outset of my remarks may I say to you that I hold no office in the State of New Jersey; I seek none. I do not speak for anyone other than myself.

The proposed plan for an independent Court of Appeals is one with which everyone heartily agrees. I have heard no digression or dissension on that point here today. As to the other part of the proposed plan which would abolish the Court of Chancery and put it into a superior court with a so-called Equity Division, I heartily disagree. I think that anyone who has ever practiced law in the courts recognizes that in the course of time a judge who is assigned

to a special branch of the law, whether it is as a Supreme Court Justice hearing appellate matters or as a Vice-Chancellor hearing equity matters or as a Judge in the Quarter Sessions or Oyer and Terminer presiding in a criminal matter, acquires what we can properly call a sixth sense. By training along those lines he is able to see a point very much more quickly and accurately than one who must of necessity charge his mind with knowledge of the law of homicide, injunction, specific performance, will probate or what have you. I have heard the question asked here, when does a man acquire this ability. Obviously, he acquires it when he has had opportunity to function as a judge. If this proposed plan goes through, a man can act as Vice-Chancellor this year and hear murder cases next. Now, there are men qualified to do that. There are not very many of them. Of the men who spoke here today as proponents and in favor of modification, some I have seen in court. Some of them I know have never handled a criminal case in their lives. Whether they would know anything about the practical mechanics of a case after spending a lifetime before the Chancery bench, no one would know. I do know, however, that this plan has somewhat of a prototype in the plan that is now in force in the State of New York where they have an independent Court of Appeals and a Supreme Court divided into an appellate division and a trial term, and that will give the answer to the question, whether a man can sit properly one day trying a murder case and the next day a suit for specific performance. The practice over there is to assign members of the Supreme Court to sit in the equity division and there is where they stay. It is rare indeed when they take a man from the equity side and put him in, we will say, the criminal courts or to hear ordinary negligence cases, and I am not speaking out of turn when I say that they try to take their best justices to sit on the equity side.

The Court of Chancery has functioned in this State for years, I think, efficiently and well. I see no reason why it should be changed.

In the memorandum submitted by the State Bar Association reference is made to the fact that if the Superior Court plan were adopted, we would have twenty-one separate courts, and I think that that is so. In view of the fact that it is mentioned there, I will not take up the time of the Committee any further on that point.

It is said that litigation is expensive, costly, too long delayed and that this plan will change that. I call the attention of the members of the Committee to Section IV, Paragraph 2 of this Article, which says that an appeal can be taken as a matter of right from any order of the Superior Court to the appellate division. The present practice prohibits such appeals until after final judgment. Under this plan, every interlocutory order made by the

court is subject to appeal and unnecessary delay. So that you will know I am not being unduly alarming on this point, that unfortunately is the situation in the State across the Hudson River, where they are so bedevilled by matters of practice and there are so many appeals taken to the appellate division from orders concerning bills of particulars and interrogatories in the examination before trial, that of necessity a man must be a specialist in practice and pleading.

In the fourth paragraph of the same section, the appellate courts are given the right to set aside judgments where the finding of fact is against the weight of evidence or the verdict is excessive or inadequate. At the present stage of our law, if you are dissatisfied with the jury's verdict, you apply to the trial judge who allows you an order to show cause and rules on it accordingly, whether or not the verdict is against the weight of evidence, or the damages are in excess or inadequate. There is some slight modification of that in cases arising in the Supreme Court that are not material for our point. I think anybody who has ever practiced law knows that you have the most complaints about the verdict. There doesn't seem to be much doubt as a result that the law was correctly understood, but the application of that law to the facts is the thing that annoys. If this gives a right of appeal on the question of damages, the question of whether the verdict was or was not against the weight of evidence, instead of discouraging the litigation, you are going to encourage litigation because everyone will say, "Well, let the appellate court take a crack at this and see if they agree with the jury's findings." One further point, turning to Section VI in Paragraph 4, it states that if the Supreme Court shall not decide a case within a period of two months, the Governor may appoint a special term of the Supreme Court which will have concurrent jurisdiction; so, instead of having one court of last resort, you will have two. A similar procedure was tried out in the State of New York where they had a Court of Appeals and a Commissioner of Appeals, and the same was true in Nebraska where they had two Courts of Appeals. I think that the logic of having a court of last resort is to have a court of final say, not that they necessarily know more law than anybody else or that their opinions by virtue of intrinsic logic cannot be assailed, but because you can't go higher. The result is, we have appeals from the Supreme Court to the Court of Errors and Appeals, and if a Federal question is involved, to the Federal Supreme Court. Under this plan you can very easily have a situation where one Supreme Court would say "Yes," and one Supreme Court would say, "No." I certainly think that that is hardly conducive to a change in your court setup. As I said, I think we are all in agreement on the necessity of having a separate Court of Appeals, because of the fact that under the present setup there is a certain judicial camaraderie involved,

which should be eliminated, men in that court should not be passing on the acts of their fellows, but on the acts of those below them, so that they can give an independent judgment.

For those reasons I submit that before this proposed article is submitted to either the Legislature or to the people for vote as to whether they want it or not, these amendments should be made.

MR. SCHROEDER: The next speaker will be Mr. Samuel Koestler.

MR. KOESTLER: Members of the Committee, while I am in favor of constitutional revision, I want to address my remarks particularly to one subject and only one, and they will be very brief. I oppose that part of Article V which would eliminate the Court of Chancery from our system of jurisprudence. I am not, as others have said, a politician or an office seeker. I am a plain lawyer who has been practicing in our courts for more than forty years, and by far the greater portion of that work has been in the Court of Chancery. My fellow lawyers recognize me as having standing as an equity lawyer. When I started you had such Vice-Chancellors as Pitney, Stevens, Emery, and Stevenson; before them you had Chancellor Green, all eminent equity jurists. In recent times you have had other good men and I recall very distinctly that in speaking with late Vice-Chancellor John Backes, he said to me more than once, "Equity is something you must feel. There is a feeling; there is something more than you learn in books." It is true that in law school a student will learn law and equity, but he cannot sufficiently apply it to become an equity jurist. It is true that law judges may pass on cases that come up from the equity court, but deciding those cases when the witnesses are before them on equitable principles is something entirely different. It is something you must feel. I do not feel that this Court of Chancery should now be abolished. It has been said by previous speakers that those of us who want to have, in this Constitution as prepared by the Committee, certain changes and amendments want to kill constitutional revision. That is not so. Those who propose Article V want to slay the Court of Chancery. The Court of Chancery is an honorable court, an institution that has long been recognized by many jurisdictions.

If I may, I will read to you from 78 Atlantic Reporter, an opinion of the Maine Supreme Court, where that judge said: "No State court is entitled to greater consideration for the perfection of its rules of equity procedure and the force of its equity decisions than that of New Jersey." New Jersey has always been recognized as being fundamental in the advancement of equity rules and jurisprudence.

I, therefore, ask, and want to go on record now, that Article V in the respect mentioned should be changed. That is the only point I am here about. I feel the Court of Chancery should be main-

tained. Dividing a court into two divisions will not give the same force and effect as a separate Court of Chancery. In other words, you would have one judge sitting one day, and another, another day. It is true that a judge appointed in the Court of Equity either is an equity man when appointed or by experience may become such, but if a man is changed from division to division, he will not have that feeling or touch with equity. Equity is something which should be administered by experts. While it is true that disrepute has been brought in some respect in years gone by by several of our Vice-Chancellors, those men are no longer on our bench, and I am sure that our Court of Chancery will once more reach the high repute that it had in times gone by. I, therefore, am very much opposed to any constitutional amendment which will eliminate the Court of Chancery.

MR. SCHROEDER: Mr. Emanuel Wagner.

MR. WAGNER: Mr. Chairman and Members of the Committee:

I feel the same way with respect to the Court of Chancery, but to repeat again the arguments advanced by others would be merely repetitious and a waste of time. However, I should like to address myself to two phases of this which have not yet been discussed. One is the Section of Article V which provides that the judges, when the court is first organized, shall be drawn from a certain category. Within that category there are thirty-seven judges, which consist of nine members of the Supreme Court, the Chancellor, the ten Vice-Chancellors, fourteen Circuit Court Judges, and three lay judges, who have been counsellors at law for ten years. Of necessity, the first twenty-seven or, rather, the first thirty-two judges which it is contemplated that this court shall organize with will be drawn from these. The section of the article provides that there shall not be less than twenty-five judges of the Superior Court, of whom six shall be appellate judges. Seven judges shall be members of the higher court, the Supreme Court. That would leave a maximum of nineteen to commence with, to perform the duties that are now being performed by the judges throughout the State. That doesn't mean that we will not require more than twenty-five judges of the Superior Court, nor does it mean that the Commission in making its Report did not contemplate that more would be required, but it seems to me that if they were looking into the question as to how many judges should be required for that purpose an estimate, and a reasonable estimate, should be made of the number required. Now, the duties that will be performed by nineteen judges of the Superior Court, providing we commence with the minimum as provided for in this Section, would be duties taken over from nine members of the Supreme Court, the Chancellor, ten Vice-Chancellors, eleven Advisory Masters, fourteen Circuit Court Judges, and thirty-three Common Pleas Judges, which means that nineteen judges would be doing

the work now being done by seventy-eight judges. It is hardly conceivable that that would speed up processes in our courts, and I don't think that the Bar is generally interested in cheap judges. We want to pay our judges well, but we want good judges, and we certainly are going to need more than nineteen.

I think this Commission, which has made a greater study of this subject than anyone else possibly has, should have estimated the number of judges required, and instead of putting them at nineteen trial judges to do the work of seventy-eight judges, it should more nearly approach the actual number needed. We have a number of good judges. If we place seven on our Supreme Court, of necessity a number of those will be on the Superior Court. Their duties will run from trying petty cases, such as larceny cases, and although those are necessary and in their proper sphere are taken care of by the judges of the county courts, I respectfully submit that we have some very eminent judges in this State who would be—I won't say lowering their status—but whose talents would be wasted if they spent their time on such matters when there are graver matters that should be handled by them.

One other question, with all due deference to the Governor and the proposal that he made this morning—as had been said before, we all want a change and we are not trying to get it by setting up suggestions merely for the purpose of delay. At least I don't feel that way but I submit this, that the suggestion made by the Governor is not in conformity with our true democratic principles. We have based our Constitution by dividing the powers and those powers are given by the people themselves, and if a proposal is made to the electorate in November that they pass upon the question as to whether the Legislature should set up a Constitution next year or a revision of the old Constitution and submit it to the Legislature in the Fall of 1943, they will be delegating to the Legislature the powers that are inherent in the people themselves. The Legislature is just as personally interested in this new Constitution as the judges would be and, with all due deference to this or next year's Legislature as well, we know that legislators, to some extent, are politically minded. We know that the Governor himself has complained that some of his powers of appointment have been taken from him by the Legislature. We are not concerned only with courts. We are all citizens. We are concerned with the other provisions of the Constitution, and it would be very dangerous for the Legislature to determine the setup of our courts, as well as the setup of the Legislature, as well as whatever rights the Governor may have. That would be placing with the Legislature, to some extent, I may say, a political body, the rights that should be in the people, and why this Commission or the Governor himself has departed from the original objective, I can't understand, because the answer was there, it was in the Report, and it was merely one, "Shall

this revision be submitted to the people at the primary for the purpose of determining whether it should be adopted at a general election?" That is impossible. There are many objections to this and valid objections to it. The other is in the alternative—there should be a Constitutional Convention, and that is what I think we should have.

MR. SCHROEDER: Thank you. The next speaker will be Mr. Lippincott.

MR. LIPPINCOTT: Mr. Chairman and Members of the Legislative Committee: As I understand it this Committee sits for two purposes: first, to ascertain the sentiment of the people of the State as to the various proposals and recommendations made by the Commission in its Report; and, secondly, to ascertain the sentiment of the people of the State as to whether or not they desire the fundamental law of the State to be changed. It has been suggested that the second question be put to the people of the State at the coming election. I don't see any reason for submitting that question to the people of the State because I think that the people are almost unanimous in the feeling that there should be some change in the fundamental law of the Constitution. The only question involved is when that change shall be effected and how and in what manner it should be effected.

Coming back to the first question, what is the sentiment of the people as to these changes, I shall address myself first to the elimination of the Court of Chancery of this State as a separate and distinct court. To my mind this proposed draft as submitted is ill conceived and ill considered. My friends in this part of the room have spoken as to the Court of Chancery, the elimination of the Court of Chancery. Mr. McCarter has presented an admirable brief upon the question of this change of the Constitution. I am sorry, however, that in his brief he is mistaken as to his conclusions as to the retention of the Court of Chancery as a separate and distinct court. He admits that it is necessary that there should be a separate and distinct equity division of the Superior Court, and, in so admitting, he in fact admits that the Chancery organization should be retained. It is not necessary for me to go into detail as to the services rendered to this State by the Court of Chancery. After observation as a member of the Bar of this State for forty-eight years, I know that the members of that court are performing able, efficient and competent work. The Chancellor chooses his Vice-Chancellors. He, under our Constitution, is the court and he has a natural desire and a natural pride in maintaining the dignity and the efficiency of that court for which he is responsible, and believe me the present Chancellor, Chancellor Campbell, knows how to select Vice-Chancellors. These men are selected by the Chancellor. They are not subject to confirmation by anyone. They are independent and fearless in the performance of their duties. In

my part of the State, in South Jersey, they work night and day.

This Commission proposes to discard the Court of Chancery as a separate and distinct court and substitute therefor an equity and probate division of a superior court, and what that equity and probate division will consist of, God only knows. A few days ago I attended a meeting of the Burlington County Bar Association down at Mount Holly. I am a member of that Association. The speaker of the evening couldn't be present and the president of the Association picked on me to speak. I had no subject to speak upon and it came into my mind to refer to the Proposed Revision of this Constitution. I wasn't prepared to speak, but I did the best I could, and I opposed the elimination of the Court of Chancery as a separate and distinct court. There was one gentleman present who in reply to my statement stated that there was another side to that question, and I may confide to you that that gentleman spoke here this morning and he comes from South Jersey. He said that my support of the Court of Chancery was founded upon sentiment. Well, it is founded upon sentiment, but that sentiment is founded upon reason and is the result of the observation of the Court of Chancery through nearly half a century. This morning that gentleman said the Court of Chancery has become a tradition, a time-honored tradition. May I call your attention to the fact that marriage is a time-honored tradition and it is founded upon sentiment, but would you do away with marriage? The Court of Chancery is a time-honored court. My sentiment toward the Court of Chancery is not an idle sentiment, but it is a sentiment resulting from the knowledge of the good work that that Court of Chancery is doing. Those men are specialists. If I have something physically wrong with me, do I remain with my family doctor in order to right that wrong? No, I go to the specialist. If you have a difficult question in equity, do you want to go to a law judge to decide that question? No, you want a Vice-Chancellor who is a specialist to decide that question. Getting back to the meeting at Mount Holly, after that meeting I conceived the idea of taking a poll of the Burlington County Bar Association to ascertain how they stood on that question, on the question of the elimination of the Court of Chancery. I sent out fifty-eight postals. On those postals were to be answered:

1. I oppose the elimination of the court.

2. I favor the elimination of the court.

3. Vice-Chancellors should be appointed by the Chancellor as heretofore, without the advice and consent of the Senate.

4. Vice-Chancellors should be appointed by the Chancellor by and with the advice and consent of the Senate.

5. Vice-Chancellors should be appointed by the Governor by and with the advice and consent of the Senate.

I sent out in Burlington County fifty-eight postals. I received twenty-six reply postals. Twenty-five of those twenty-six voted Number One. They opposed the elimination of the Court of Chancery of New Jersey as a separate and distinct court. There was one vote cast in favor of the approval of this Proposed Revised Constitution in that respect, the elimination of the court as a separate and distinct court. Twenty-four of the twenty-five who voted for the retention of the Court of Chancery voted in favor of the appointment of Vice-Chancellors by the Chancellor as heretofore. One voted for the appointment by the Chancellor with the advice and consent of the Senate and one voted for the appointment of Vice-Chancellors by the Governor by and with the advice and consent of the Senate.

I did the same thing in Camden County. I sent out 368 postals. I received 128 replies. One hundred and seven of the 128 votes were in favor of the retention of the Court of Chancery as a separate and distinct court, in favor of Number One. Twenty-one voted for Number Two. Ninety-nine voted for Number Three, the appointment of Vice-Chancellors by the Chancellor without the advice and consent of the Senate as heretofore. Nine voted for appointment by the Chancellor with confirmation of the Senate, and five voted for appointment by the Governor with the advice and consent of the Senate. Now, gentlemen, about thirty-three and one-third percent, just about one-third of the Camden Bar, voted in favor of the retention of the Court of Chancery. About thirty-three and one-third percent voted, and that was about the vote to eliminate the Court of Chancery. There was about sixteen and two-thirds per cent, just about a one-sixth vote. In Burlington County where I have the privilege of living, there was one vote for revision to twenty-five against.

I needn't take the time of this Committee to speak further upon the subject of the Court of Chancery, but I do want to refer very shortly to one or two things in this Judiciary Article which I think need consideration. There is no question in my mind that there should be a separate and distinct court of appeals. I believe that it should be called the Court of Appeals. There is a plan to give the judges of the Court of Appeals life tenure. I don't approve of that. Under the present system they are appointed once in seven years, and if they are satisfactory, if they have proven satisfactory in the past, they are reappointed for term after term. I never forgot a statement that Chancellor Walker made at Camden many years ago when he was first appointed Chancellor. He came to Camden to hear motions and we gave him a little reception after he heard the motions and he made a short address. He said this: "I hope that I shall never be accused of the insolence of office." And his hopes were fulfilled. But, gentlemen, I think it is a very salutary plan to have the judges—much as I respect them—realize

that once in seven years they come up for reappointment and for consideration as to their abilities and their defects, if any, and I think that reappointment once in seven years is a good thing in any court, no matter whether it is high or low.

I want to call your attention to the fact that a life appointment for a judge, if he isn't what the Bar wants him to be, means a life sentence for the members of the Bar who appear before him. One of my good friends, a prominent member of the Bar of New Jersey, wrote to me last year discussing the appointment of judges, and he said in his letter: "You know there is such a thing as an educated jackass." He was referring in his letter to the appointment of judges. Now, I haven't in mind any member of the judiciary of New Jersey who fills that description, but sometimes unfortunately such an animal does creep in by appointment of the appointing powers and escapes the scrutiny of the Senate as they pass upon his qualifications and he does get into a judicial position and he may do that thing twice. Gentlemen, I don't think he should be given life tenure. He should take his chance.

There is one other thing and I won't detain you further. There is a provision in the Proposed Constitution about a two-month limit upon the filing of opinions by the Court of Appeals. I think that is asinine. That may be designated as a sentence for the punishment, the harassment and the embarrassment of the judiciary of the State of New Jersey, and if we are to take it or leave it, as is suggested by this Commission which has proposed this Revised Constitution, then the inevitable result is that we must leave it, because any Constitution which contains in it these provisions as to a two-month requirement for the filing of opinions and the two-month requirement of the hearing of a case after a case is put to trial, is noticed for trial, is simply plain foolishness and every practicing lawyer in the State of New Jersey knows it and the members of this Commission ought to have known it. I thank you for the opportunity of appearing before you.

MR. SCHROEDER: We will now hear from Mr. Arthur J. Edwards.

MR. EDWARDS: Mr. Chairman and Members of the Committee:

I merely wish to add a footnote to Mr. Carpenter's comment. I wanted to make it while he was here and I did out in the hall. In discussing Article II, Paragraph 1, "The functions, powers and responsibilities of the Government of this State shall be divided among three distinct branches—the Legislative, Executive and Judicial," he imputed fascist motives to the Commission. I merely want to call attention to the fact that the language in the old Constitution is practically the same, the powers of the Government shall be divided into three distinct departments, and according to my recollection there is a decision of one of our higher courts (*Ross* v. *Essex*, 69 N. J. L., 291) that that little word "the" is

extraordinarily important in there, that the Government is the framework of administration which is set up under the Constitution. The powers of that frame work are specified here. If the "the" was absent, my recollection is they say the powers of government would mean the abstract philosophical powers that go with it, and the powers of the Government and the powers of the people are two different things.

MR. SCHROEDER: We will now proceed to hear the opponents to the Judicial Article. I will now call on Mr. R. Robinson Chance, representing the Manufacturers Association of New Jersey.

MR. CHANCE: Mr. Chairman and Members of the Committee:

The only reason that I rise at all upon this occasion is that when we were going thorough the discussion of the Article before, there came into the midst of the discussion a report on the constitutional courts of the State of New Jersey by Ralph R. Temple. I sat up all that night and prepared myself to cover one hundred and five subjects of this report. The next day I asked if I might have leave to speak about that upon a later occasion and it was then said that I might, and I rather intimated then that I would do so. I rise now to say that I am not going to trouble you with the discussion of those one hundred and five points that I had. I merely note now, as I think I did before, that I find nothing in the report of Dr. Temple in which he says anything about whether the court system set up by the report of the Commission will be any superior to the one which is mentioned in his report on the constitutional courts. In other words, his report is more as the Chairman of the Commission said, something that is deserving careful consideration of all persons who are interested in the improvement of our constitutional courts as presently organized and administered. Consequently, being directed more to what the present court is rather than to what the new system would be, I do not propose to discuss his several recommendations in detail. I merely want to note this: The gentleman and I approach governmental problems quite differently I think, because I look in that book of his, "A Functional Outline of American Government," by Ralph R. Temple, and I see that he says here in speaking about the defects of State judicial administration: "The Grand Jury serves no useful purpose. The trial jury system is antiquated, the selection of jurors being cumbersome and the position of the judge being too independent of the jury in the trial of the case." His cure is this: "The Grand Jury should be abolished and indictments supplanted by information. The jury system should be modernized and the authority of the judge increased." In other words, where there are defects the judge is too independent of the jury in the trial of a case; whereas, in the proposed remedy, the authority of the judge is increased. So the doctor and I approach the subject from different points of

view, and with that I close my comments with respect to the fifth Article.

MR. SCHROEDER: We will now hear the individuals who wish to express their opinion on the methods of submission of changes in the Constitution to the people. The first speaker I will call on will be the Chairman of the Commission on the Revised Constitution, the Honorable Robert C. Hendrickson, Treasurer of the State of New Jersey.

MR. HENDRICKSON: Mr. Chairman and my colleagues of recent date:

It is a great pleasure for me to be able to come here and speak as a Member of the Commission, as the Commission's Chairman. It is quite an honor and I assure you that I am not going to impose unduly on your time because I know that you have been through a great deal this summer.

Mr. Chairman, in its Report to the Governor, the Legislature and the people of our State, the Commission on Revision of the New Jersey Constitution offered a procedure for altering and reforming the State's fundamental law, whereunder, the will of the people can be ascertained efficiently, speedily, economically, and last but no less important to the Joint Legislative Committee and the Legislature, in conformity with the best accepted American constitutional theory and tradition.

I joined in the Report because I believed then, as I believe now, that the submission of the question for a legislative mandate and the subsequent submission of a Revised Constitution fully meets every test in juridical and governmental science where logic or sound argument can be offered in opposition.

For guidance, let us see what our present Constitution has to say on this important question. At the very outset of Article I, the Constitution, by now well quoted, provides not by implication but expressly as follows:

> "All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people and they have the right at all times to alter or reform the same, whenever the public good may require it."

As to the method by which the alteration or reformation in question may be attained, the present Constitution is silent. This clearly means that its framers did not want to risk the imposition of confusing limitations which might operate to impair the sovereign rights of the people. That those same framers did expressly limit the method of amendment is most significant on this point for here they recognize the difference between alterations by piecemeal amendments and revision by the substitution of a new Constitu-

tion. Those who would argue that we are permitted only the process of amendment described in Article IX because there is no other prescribed procedural device to "alter or reform" the Constitution, have yet to meet the test of popular sovereignty which is so eloquently recited in the Bill of Rights and upon which all representative government is founded.

Conceding then, as we must, that we live under a Government which exists only for the people and that they have the right to change their Government as they will—we must turn to the next question which presents itself.

How should the acting Government proceed to make effective that right which is inherent—the soverign right of the people to their own choice of government?

That the existing Government can proceed on the plan of Article IX by providing specific amendments on each separate phase of the Proposed Revision no one denies—and by the same token no one will deny that sound, constitutional revision can never be attained by this method—I speak as one who originally argued in favor of this device fully believing, prior to the Commission's studies, that the process afforded a practical solution.

What then, the solution of the problem? Should the Legislature ignore an ever-growing public demand for unselfish and courageous treatment of the subject? Should the war be used as an excuse for postponing action in a matter so important to the future of those who are defending with their very lives, the right to self government? Or—should the Legislature recognize that it is the servant of the people—and the only agency through which the people in the absence of a convention—or complete revolution, can be heard to speak on this important question?

The Commission's answers to these questions are a matter of public record. As to our reasons—that the people are entitled to be heard on this question so vital to their future well-being is sufficient in itself.

Various people have repeatedly raised the question as to what authority the Revision Commission has to support the method of constitutional revision which it has recommended. There are many possible replies to that kind of question. Some of them you have already heard, and I assume that others, both for and against, will occur to you. The simplest, and in my opinion, the most persuasive authority to support the recommended method of constitutional revision, is the authority of a sovereign people to determine for themselves the nature of their government.

It is not difficult to describe methods of constitutional change that have been used in the past, but I do not believe that any enumeration of categories will contribute to a better understanding of the method that is proposed. It is also possible to make an excellent legal argument in support of the Commission's recommendation, and for that I need only refer you, for example, to the memorandum that has been submitted by Mr. Arthur J. Edwards, who generously volunteered his learning in the course of the Revision Commission's work. I have no doubt also that it is possible to make a legalistic argument against the validity of the Revision Commission's method. As to a choice on the merits of such arguments, my position is of course plain, and I trust that I may be sustained by the sense of your Committee.

I do not propose to burden you by repeating any legal analysis of the issue involved. That task is, I am sure, being discharged to your satisfaction by Mr. Edwards, Mr. Watson and other persons, who are appearing before you. In my thinking, however, judicial decisions in other States to which you may be referred, and with which I am familiar, need not be persuasive upon our New Jersey situation. Our own constitutional history is so meager that it can furnish no guidance one way or the other. Our first Constitution was, as you know, a revolutionary document which never had the sanction of a popular vote of approval. There was no precedent in the history of this State for the procedure whereby our present Constitution was adopted in 1844. If you prefer citation of judicial authority, its validfty "rest solely upon the public will," and its life may be terminated whenever "the people shall think proper to lay it aside and to establish a better one in its place."

In my view of the issues involved we need not necessarily brief the legal technicalities. There is no compelling question of constitutional interpretation. There is no need to apply conventional techniques for finding the common law. There is no question of stare decisis. We do not even wish to sustain the proposition, if it is not inherently logical, no matter how long a list of adjudicated cases might support us.

No imposing array of legal precedent, however weighty, could have persuaded the Revision Commission to recommend its method of revision unless the members were convinced that this method was fundamentally sound. The Revision Commission, upon which served respected leaders of the Bar, of the science of government and of public thinking generally, was and still is unanimously convinced of the practicability, the legality, and the inherent soundness of the recommended method of achieving constitutional revision.

Whether we need a new Constitution, how we should achieve one if needed, and when would be the appropriate time for action are, in my opinion, all political questions. By their very nature, these questions arise outside the scope of our present Constitution, and for their solution we should look elsewhere than in the present Constitution. As political questions they are beyond the legitimate scope of judicial decisions. As political questions their solution

falls solely within the political theory and practice of our State Government. For these we do not have far to seek. It is generally recognized without question that sovereignty of the people is the sole basis of State Government, and that the exercise of a portion of that sovereign power has been committed to the Legislature. The courts have repeatedly recognized their incapacity to pass upon questions of legislative judgment which are political in nature.

Those who would look for precedent in our limited constitutional experience can find only a record of legislative assumption of responsibility, of solely legislative discretion as to the manner of calling a constitutional convention and its composition, as to the effect of its recommendations, and the qualifications of those who were permitted to vote upon its work. Even in those States whose Constitutions require the question of holding a convention to be submitted to the electorate at fixed intervals, it has been recognized that the Legislature has inherent power to submit the question at any other time it deems in the public interest.

It is for those who would oppose the method of constitutional change recommended by the Revision Commission to find anywhere in the jurisprudence of this State a limitation on legislative discretion, which restricts its choice of method to the device of a constitutional convention. Quite to the contrary, New Jersey has been the one State in this country that has in the past most favored the constitutional convention. Those who still hold to the now discredited opinions that the people have no right to adopt a new Constitution, by convention or otherwise, are, of course, free to rest upon their denial of the sovereign right of the people which has gone unchallenged since the Declaration of Independence.

The representative character of State Government plainly implies the initiation of common action of the people through their chosen representatives. The preliminary popular mandate which the Revision Commission has recommended, fully answers the argument which points to the supposed fallacy of a Legislature acting as a constitutional assembly to displace the very document under which it operates. In brief, there can be no logical or theoretical objection to the recommended procedure, whereby the people may exercise their recited right to alter and reform their government if the voters determine that the public good so requires.

The Legislature has honored the report and recommendations of the Revision Commission by referring them to this Joint Legislative Committee for public hearings. As Chairman of the Revision Commission, I think it is proper that I acknowledge the splendid public service that the members of this Joint Committee have rendered in conducting these hearings through the discomforts of the summer.

Whatever action the Legislature may deem appropriate, upon

receiving the report of your Committee, will, in our opinion, be subject to review by no higher authority. Our Revision Commission, of course, has recommended a particular document to the Legislature. But we also recognize the duty of the Legislature to take for its own only so much of that document as in the judgment of the people's chosen representatives is in the best public interest.

You have heard some arguments directed against particular portions of the proposed Constitution, as well as arguments against even some phases of its explanatory statement. I leave it to your good sense to segregate those arguments which were offered as a sincere contribution to legislative thinking from those arguments which, unfortunately, bear the stamp of improvisation, opportunism, or irresponsibility. I will not reflect upon the good judgment of this Joint Committee by stopping to refute some of the specious claims which you have heard, even if the Chairman were kind enough to permit me to do so.

In conclusion, I wish to reiterate that the choice of a method of constitutional revision involves questions purely of political science, that the Commission's recommendations therefore need no legal authority to sustain them, although legal authority there is aplenty, and that the next step, after your report, depends solely upon the conscience and the good judgment of the members of the Legislature.

It is my sincere hope that in your good judgment you will seek the guidance of the people on this important question with all due speed. I am grateful for your time.

MR. SCHROEDER: We will now hear from another member of the Commission on the Revised Constitution, Senator Crawford Jamieson.

MR. JAMIESON: Mr. Chairman, I have read Senator Hendrickson's statement and I am in accord with his statement of the feelings of the Commission on this question of submission, which I undertand this particular session of the Committee is directed to. I have been an advocate for many years of a constitutional convention and I still think that it would be the best way to meet the demand for modernizing our administrative and judicial systems in the State Government. I feel, however, that the recommendation of our Committee is a good alternative to a convention. In other words, if we cannot get a convention, I think that it is advisable to try to do something about revising the Constitution, and the people are given a proper opportunity by the method suggested by our Commission.

I don't see how anybody can logically oppose putting a question on the November Election ballot as to whether or not the next Legislature should be directed to present a revised Constitution to the electorate at a later date. All of the opposition that has been presented to our report, it seems to me, has no bearing

upon whether or not a question should not be submitted to the people. As one of the opponents of the Judicial Article stated this afternoon, Judge Lippincott of Camden, the people of the State want revision. I think he used the word "overwhelmingly" want it. Now this is a method of finding out whether or not such a statement is true. I think that regardless of whether or not the people are overwhelmingly in favor of some sort of revision, there certainly has been enough public sentiment shown during the past two years to justify letting the people have an opportunity of voting on whether or not they want some sort of a revision. It seems to me that opponents of the Judicial Article or any other article, who are fearful of letting this question be voted upon, put themselves in the position of being opposed to letting the people of the State of New Jersey make a decision.

I think that this method will be accepted, assuming that there is a favorable vote, as a mandate for the next Legislature to give further constructive thought as to how the Constitution should be revised and to present a document. It may not necessarily be the same in all respects as the one that the Commission has presented, but it at least will answer what I think to be the will of the people, that there be some revision; and, if that isn't the will of the people, then they will so vote next November and that will end the question.

There is just one more thought that I would like to express here because it has been brought up previously by a speaker, and that is the fact that the State Bar Association—and to quote his remarks—after careful study is opposed to any revision of the Constitution. The State Bar Association within one week of the time that the revision report was made public took an action of opposition. All of the leading papers in the State criticized such action. I think the State Bar Association or any other association has a right to take a stand one way or another after careful study. I can't help but comment, as long as there has been such a public statement in one way, that the action of the State Bar Association this year was disgraceful, and as a member of such Association, I am ashamed that they should be brought to such public ridicule. There was less than seven percent of the lawyers of the State at that meeting. In my county, for instance, there was one and one-half percent of the lawyers present, and when the action was brought up at a County Bar Association meeting here, it was unanimously rejected pending further study. I have asked lawyers throughout the State that I bump into how many of them have read the report, and I think I can say definitely that not five percent—and I think that is giving them a break—or one out of twenty lawyers in the State has read the report. I think I can make the further statement that not one percent of the lawyers

who voted at the State Bar Association meeting had ever read the report.

MR. SCHROEDER: Thank you, Senator. The next speaker will be Mr. Arthur J. Edwards of Montclair.

MR. EDWARDS: Mr. Chairman and Members of the Committee:

1. Intervening in the colloquy of the last Hearing, I should say that it is fundamental that the people are sovereign. "All the political power is inherent in the people," says the Constitution. The instant problem is, how are the people to assert that sovereignty, which, they are assured, gives them "the right at all times to alter or reform" their government "whenever the public good may require it." "Lex inaniter nunquam loquitur"—the law never speaks in vain. Though the Constitution gives no blueprint of how this alteration or reformation is to be brought about, it provides nevertheless, that "the Legislature shall pass all laws necessary to carry into effect the provisions of this Constitution," Art. X, Par. 12. The sovereign cannot deprive itself of its sovereign powers—abdicate its birthright—and failure of the people in adopting the Constitution of 1844 to prescribe how revision is to be accomplished, cannot nullify this power of the people "to alter or reform" their government "whenever the public good may require it." The people must themselves be the judges of when this necessity arises, and consent to and approve the method by which it is being done.

2. The answer as to how the power of the people is to be exercised is not without difficulties in New Jersey. However, the absence in the Constitution of exact directions leaves a freedom of choice of methods limited only by the specifications of Chief Justice John Marshall:

> "Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but are consistent with the letter and spirit of the Constitution, are constitutional." *McCulloch* v. *Maryland*, 5 Wheaton 316, (1819).

3. The Commission on Revision has outlined a sound legitimate method for the people to act, and I am anxious that the pathway outlined be followed rigorously in a manner to establish that it is the people themselves who are in command and issuing orders to their proper functionaries as to the steps to be taken. My understanding of the general scope and explanation of this procedure is fully set out in my discussion of the subject: "Constitutional Methods for Revising the New Jersey Constitution" published in the New Jersey Law Journal for August 6, 1942. I have supplied each of the Committee with a copy, and I ask that this printed discussion be entered at length in the minutes of this

Hearing, as I will only take the time to refer to some of the more important features.

4. The procedure requires a rigorous adherence to first principles and a disregard of non-essentials. Probably the most eloquent exponent and expounder of the power of the people to alter their fundamental law was Daniel Webster. In his address to the Supreme Court, as counsel for the State of Rhode Island in *Luther* v. *Borden*, 7 Howard 1 (1849), the case arising out of Dorr's Rebellion, he said, in part:

> "Another American principle growing out of this and just as important and well established as is the truth that the people are the source of power, is that, when in the course of events it becomes necessary to ascertain the will of the people on a new exigency, or in a new state of things or opinion, the legislative power provides for that ascertainment by an ordinary act of the Legislature . . . We see, therefore, from the commencement of the government under which we live, down to the late Act of the State of New York (the 1845 call for a constitutional convention without specific constitutional authority therefor) one uniform current of law, of precedent, and of practice, all going to establish the point that changes in government are to be brought about by the will of the people, assembled under such legislative provisions as may be necessary to ascertain that will, truly and authentically."

5. The Legislatures of Michigan, Rhode Island (twice) and Connecticut have heretofore undertaken of their own motion to completely revise their Constitutions and submit the product to the people for approval as an *amendment* to their existing Constitutions. New Jersey proposes the superior procedure of directing the Legislature to proceed with revision only upon receiving a command from its sovereign, the people, to act in the matter. The sovereign cannot and has not deprived itself of its powers, and the vote on the proposed question is clearly a legitimate exercise by the people of its authority to vote on the delegation of one of the necessary preliminary steps—the determination of what alterations and reformations in the Constitution the people presumably require and desire, preparatory to the later exercise by referendum by the people of their own full power to alter and reform their fundamental law. Surely the people, the sovereign, will have the authority to delegate the investigation and formulation of their requirements to their representative legislative body, the majority of whose members will have been elected with this particular duty in prospect. These duties should be detailed in the Act now proposed.

6. I think the question to be submitted to a vote on November 3, 1942, should, by its wording, make clear that it is a part of

procedure by the people to assert their right to alter and reform their form of government and should furnish "a basic plan, standard or rule" to control the directed action of the Legislature. I recommend that such a question be submitted and that it be phrased in substantially the following form:

> "Shall the 167th (1943) Legislature be directed to submit for adoption or rejection by the Electors at the 1943 general election, a revised Constitution, altered and reformed as the Legislature deems the public good requires?"

This form of question differs in essential details from the question proposed in Senate Bill No. 295 introduced May 18, 1942. I prefer and recommend the word "directed" instead of "authorized" because, in my opinion, the Legislature under its broad vested powers, is already authorized to act for reasons set out in greater detail in the published discussion filed with the Committee. If the Legislature does not already have this power so to act, when commanded by the source of all political power, then a mere referendum on authorization would be ineffective to confer the power by delegation from the people to the Legislature. A constitutional amendment would be required. If however the power is already vested in the Legislature, it would be a matter of supererogation and possible confusion to vote it again. However, authorities are of two minds as to whether, already possessing the power, the Legislature is justified in exercising it except upon a specific direction from the people so to do, as a necessary step in the assertion of the people's own right to revise their Constitution. For that reason, I think the people should be given the opportunity to command.

7. Since our high courts have consistently upheld the sovereignty of the people, but have also held that the people's will in law making "cannot be exercised directly by the people," *Paterson* v. *Society*, 24 N. J. L. 385 at p. 395, (1884), it is necessary and proper that their legislative functionary, the Legislature, step into the picture and prepare the questions upon which the will of the people—their free acceptance or rejection of proposals placed before them by their designated representative assemblies—is to be "ascertained, truly and authentically," according to Daniel Webster's formula, when they are "assembled under legislative provisions"—that is, summoned to the polls to vote in a statewide election or referendum. Either the proposal by a convention or a legislative proposal of a revised Constitution as directed by the people by their vote, may thus be made the means to "ascertain the people's will, truly and authentically." The Federal Constitution in Article V recognizes the essential representative capacities of the Legislatures to act in effecting constitutional changes by authorizing ratification of amendments to the Federal Constitution

either by the State Legislatures or by Conventions in the several States as the Congress may propose.

The words "altered and reformed as the Legislature deems the public good requires" are employed for the purpose of giving in language adopted from Article I (2) instructions from the people to their repersentatives. It is couched in language designed to furnish "a basic plan, standard or rule," adopting the test in *Hoboken* v. *Martin*, 123 N. J. L. 442 (1939) and precedents there noted, or to "furnish a declaration of policy or standard of action" in language of the Federal courts, which will guide the Legislature's directed action in revision, which appears highly desirable.

8. A referendum on the above question, if approved by the people, has these advantages:

(1.) It assures the members of the Legislature that they are acting in the premises in accordance with the people's current wishes and not in excess thereof or contrary thereto. It gives a peremptory November "go ahead" signal to the Legislature, the functionary of the people, to proceed according to the command or mandate of the people.

(2.) It solves any legal question or doubt as to whether the Legislature should take this step without prior direction from the people.

(3.) The Act submitting the question to the people will be merely a directory measure addressed to election officials and to the Legislature, and by its passage will result in no change in the basic law of the State.

(4.) It will give preliminary notice to the voters that the definitive revision is a matter for final consideration by the 167th Legislature, meeting in 1943, whose members so far as those coming up for election in 1942 will be chosen with their qualifications for this task in prospect. This will include all of the Assemblymen and nine of the Senators. The people by their vote create in effect a legislative Constitutional Convention.

(5.) The presently proposed revised text of Constitution, now under study and consideration by the Legislature, while obviously not in final form, undoubtedly gives the people a very fair idea of the extent of changes contemplated in the definite measure to be finally submitted, and an opportunity to give a tentative direction to the Legislature to carry the altering and reforming process into effect and to a conclusion.

(6.) It will serve to convince careful students of the legitimacy of this method of procedure. It will relieve the proponents from the charge of imputing too much authority vested in the Legislature, and more effectively direct the argument to the end that the final decision on the choice of methods is with the people. It will save the proponents the preliminary task of breaking down barriers in the minds of many that the Legislature ought not to assume authority in this matter without a specific mandate or direction from the people, to propose what the Legislators find and believe are the changes which the public good presently requires.

9. The query has been made, is the phrase in S-295 "a revised Constitution" sufficiently definite or adequate as a standard of action for the Legislature. It seems to me preferable that the people should direct a revision according to at least a generalized standard or rule expressed in constitutional phraseology as suggested above. A mere "revised Constitution" seems too vague, indefinite and without any publicly supported measure of its reason, necessity or adequacy. For that reason, the people in directing the Legislature should furnish a declaration of policy and a standard or a basic plan of action.

As the words "whenever the public good may require it" are definite enough and sufficiently meaningful for inclusion in our present Constitution, I think the same words may be used here in a similar context and imply a very concrete idea of the plan or standard to be applied by the Legislature in carrying out the people's wishes. A fair review of the people's desires has been obtained by the hearings before the Joint Legislative Committee to which the people generally were invited to be present personally or by representatives and express their views. Since the people's inherent political power to act when in composite agreement of minds as to the public good requiring action for their "protection, security and benefit" as explicitly stated in the Constitution, I suggest that some of these identical words can appropriately be employed to describe the people's desire and their election to exercise that power through action initiated by their functionary and representative, the Legislature. The analysis of the present requirements of the public good are to be investigated, interpreted and formulated by the Legislature to be followed by submission to ratification by the latter's sovereign, the people.

The Interstate Commerce Act authorizes the Interstate Commerce Commission to approve mergers of railroads when "in the public interest." The Federal Communications Act authorizes the Commission to grant radio licenses "as public convenience, interest or necessity requires," discussed in *Fed. Rad. Comm.* v. *Nelson Bros.*, 289 U. S. 266. Insufficient directions from Congress are discussed in *Panama Ref. Co.* v. *Ryan*, 293 U. S. 388, the first oil case invalidating the National Recovery Act. I think the phraseology suggested "furnishes a declaration of policy or a standard of action," "a basic plan, standard or rule" fully adequate for present purposes

10. The technic of constitutional changes had not progressed far in the different States when the 1844 Convention met. Their

product must therefore be interpreted in the light of the then existing "state of the Art." It is clear the Convention believed "all political power is inherent in the people" and intended to implement that declaration. It did not propose to hamstring the people by silence as to how they were to assert their sovereignty "whenever the public good may require it." The early Constitutions of over half the thirteen original States were silent as to methods of revision, yet they were *all* revised. The Constitutions of one-fourth of the States of the Union are today silent as to methods of revision —New Jersey among them. Yet *all* of these, at one time or another, have devised and enacted methods of revision and have substituted new altered and reformed Constitutions for old—and that with a minimum of litigation considering how many of these steps were taken in good faith but without specific blue prints to follow.

The 1844 New Jersey Constitution as written was not streamlined in this particular. Methods of revision devised and followed in other States, while helpful, do not now constitute mandatory precedents for New Jersey whose Constitution does not prescribe these or any other particular plan. Our State is free to choose or devise its own method of revision on lines which the Legislature deems most advantageous for the situation of the State, just so that upon close analysis the method which it elects to follow provides for, in the words of Webster, "a change in government to be brought about by the will of the people, assembled under such legislative provisions as may be necessary to ascertain that will, fruly and authentically."

The proposed designation by the people of the Legislature as their chosen instrumentality to investigate what altering and reforming "the public good may require" and to formulate the required and desired changes in the Constitution and submit them to the people for approval is not in conflict with any provision of the Constitution but consistent with the letter and spirit thereof. It is within the scope of the Constitution, appropriate and plainly adapted to accomplish a constitutional end, and therefore legitimate. It meets all the tests named by Chief Justice Marshall. The present report of the Commission on Revision has no force of law. It is merely the recommendations to the Legislature of an expert Commission appointed to advise the Legislature. The revised Constitution upon which the people will ultimately vote will be the product agreed upon and submitted by the Legislature, which may embody as many of the Commission's recommendations as the Legislature deems wise. Perhaps some other State handles the matter better. Perhaps someone can suggest a better method of ascertaining the people's will in New Jersey. However, since the New Jersey Constitution prescribes no especial procedure for revision—the substitution of a new Constitution for the old—these considerations are immaterial and will not invalidate the choice

of the Legislature, acting for and upon direction of the people of a method of procedure, so long as that method meets both the John Marshall and Daniel Webster tests, and is in fact so well adapted to ascertain "the will of the people."

MR. SCHROEDER: The next speaker will be Mr. Walter J. Bilder.

MR. BILDER: Mr. Chairman, Members of the Committee and Ladies and Gentlemen:

In March of this year I filed an extensive memorandum with the Commission on Revision of the New Jersey Constitution. In that memorandum I argued against:

> "The proposal to submit, by legislative fiat, to the voters at a general election an entire Constitution, elaborated by a Commission created by the Legislature."

I said in part:

> "In order to submit a Legislature-made new Constitution to the voters, the Legislature would have to pass an act setting forth the proposed Constitution, providing for its presentation to the voters, and providing that upon receiving the approval of a majority of the voters, the proposed Constitution should become the new fundamental law. This action of the Legislature would necessarily constitute an act of Legislation, the exercise of a function of the Legislature; and the power of the Legislature to perform this action would necessarily purport to be derived from the present Constitution."

I said further:

> "The fact is that the Constitution of New Jersey invests the Legislature with specific power related to the subject of Constitutional change. Article IX of the Constitution prescribes precisely how that power shall be exercised.
>
> What the Legislature is proposing to do is a thing of which the manner of doing has been prescribed by the Constitution. This at once is why the question raised by the Proposal is not political but judicial, and why the proposed action would be clearly unconstitutional."

On or about May 14, 1942, I obtained and studied a copy of the "Report of the Commission on Revision of the New Jersey Constitution." On the following day I wrote a letter to one of the members of that Commission, in which I said in part:

> "Permit me to pay sincere tribute to the imposing and public-spirited product of your Commission's labors. Its proposed reorganization of the executive and judicial branches is so soundly thorough-going and so inimical to strongly entrenched private interests, that its adoption,

without substantial alteration, by the Legislature would inspire in the public a large measure of confidence in the disinterestedness of its elected representatives."

On June 29, 1942, I wrote to the Editor of the Newark Evening News a letter, which was published in that paper, in which I said in part:

> "Every civic-minded citizen who studies the proposed new Constitution of this State is certain to accord to its revisional provisions his unqualified approval, and to commend its authors for a public service of the highest order."

To the argument advanced by me in my said memorandum to the Commission on Revision, there is a complete answer of which I was not cognizant when I filed that memorandum. That answer is indicated on page 16, of the Commission's Report (p. 915), where, in explanation of Article II of the proposed Constitution, it says:

> "The Legislature is definitely freed of any implication that, like the Congress, it cannot serve the people unless the power it wishes to exercise is spelled out in the Constitution. Our present theory of American State Government, that State Constitutions, unlike the Federal document, do not grant but merely limit sovereign powers, is given formal expression by the new clause."

That statement, as I learned through my subsequent examination of the cases, finds decisive and ultimate support in a pronouncement made by the Court of Errors and Appeals in the year 1869 in the case of *Harris* v. *Vanderveer's Executor*, 21 N. J. Eq. 424. Speaking through Chief Justice Beasley, the Court, in a ten-to-two decision said:

> "There are two primary principles which are always to be borne in mind in the discussion of every question touching the limitations of the authority of the Legislature of the State. The first of these is, that the legislative body is supreme in every respect, except in the enumerated instances of constitutional restraints; and next, that such restraints cannot be imposed but by plain language, or by implication necessarily springing from the co-ordination of the several parts of the established system of government."

The question in that case was as to the power of the Legislature to provide by statute for an appeal from the Prerogative Court to the Court of Errors and Appeals.

By virtue of the first-named ruling principle, I am now convinced that the fact that the Constitution of New Jersey invests the Legislature with a specific power relating to the subject of constitutional change and prescribes the method of its exercise, does not limit the scope of action of the Legislature upon that subject to the specific power thus provided and defined. Residuary, therefore, in the Legislature, as a supremely authorized agency of the people, is the power to submit to the people, in any suitable form and manner, a proposal for a change in the organic law, to be effected by the people themselves.

Yet, even if the legal principle governing the matter were in doubt, which I deny, I would not hesitate to take a firm stand, in this instance, in favor of the method of constitutional revision here proposed. For, I am no believer in a blind devotion to a rule of method, regardless of the substance of the matter to which it is related. Methods are means to an end, and rules of method are merely ways of reaching ends that have been tried and found good and, therefore, have become established. But established ways of reaching ends are such as have proved useful in the accomplishment of ends deemed desirable. So, when a rule of method will not aid in the accomplishment of an end deemed desirable but will tend to thwart its attainment, the rule of method is without value and therefore must be disregarded and rejected.

The sanction of an established rule of method should be invoked only in an effort to prevent the accomplishment of something which is deemed bad and never to frustrate the achievement of something that is deemed good. To do that would be to exalt the means above the end, the form above the substance. This thing which we now seek to accomplish, this proposed revision of the Constitution of New Jersey, is a good thing; and no man is justly entitled to oppose the method of accomplishment which it prescribes, unless he is prepared to demonstrate that the thing itself is bad. The real question, then, and the only question, to be considered, is the intrinsic goodness or badness of the proposed new Constitution itself.

During the debates in the convention of 1844, it was Chief Justice Hornblower, as I recall it, who expressed the belief that no Legislature would ever propose an amendment of the Constitution except in response to a real demand for it by the public. In all such cases, therefore, action by the Legislature is to be viewed as the reflection of a general and insistent public demand.

Anyone in New Jersey who has not been deaf, dumb and blind to public affairs and happenings in this State during the past year or more, knows that there is a deliberate and determined demand on the part of all civic-minded and public-spirited citizens and organizations of citizens, for a fundamental and thoroughgoing revision of our State Constitution. And on all hands it is recognized that the revision proposed by the Commission is in all essentials sound, expert, and, in the best and highest sense of the word, up to date.

One of the most majestical of Justice Holmes utterances was

when he said, "The life of the law is not logic but experience." I would venture to extend the aphorism by declaring that the life of social evolution is not logic but experience, and so, even where logic seems to militate against a specific social action, that logic cannot be permitted to paralyze such action where the action is deemed desirable in itself. In such a case the inexorable power of social need liberates from the imprisonment of logic. This is the ultimate law of social progress.

MR. SCHROEDER: Thank you, Mr. Bilder.

We will declare a recess until eight o'clock tonight, at which time we will continue this hearing.

(Recess.)

BRIEFS AND COMMUNICATIONS SUBMITTED AT THIS SESSION.

A CRITICISM OF SOME OF THE PROVISIONS OF THE PROPOSED CONSTITUTION (1942) FOR NEW JERSEY.

BY JAMES D. CARPENTER JR.
Counsellor at Law
75 Montgomery Street
Jersey City, N. J.

While there are many provisions in the proposed Constitution (1942) for the State of New Jersey that are an improvement upon the existing Constitution, yet there are some suggested changes which should not be approved. Some of these are so serious that unless they be changed the entire document should be rejected.

1.

Take, for instance, Article I, Paragraph 9. This provides that no person shall be held to answer for *a capital or other infamous crime*, unless on the presentment or indictment of a Grand Jury.

Since the State was founded, our Constitution has provided that no person shall be held to answer for *a criminal offense* unless on the presentment or indictment of a Grand Jury.

The proposed change would permit a prosecutor, the Attorney General, or his assistant to file in any county of the State an information charging any citizen or group of citizens with any crime less than *a capital or other infamous crime*, and put such person or persons to trial without indictment by a Grand Jury.

For hundreds of years in the English-speaking world, the Grand Jury has stood as a protector between the government on the one hand and the citizen on the other. In the heat of political controversies, and during periods of hysteria arising from passion and prejudice, the Grand Jury has always been a protection to the individual. The people should never surrender this guardian of their liberties even though in the larger counties of the State particularly there are many occasions and many instances when it would be perfectly proper to proceed against criminals by information. The matter of expediency, however, does not outweigh the need for the protection of the citizen which the Grand Jury alone affords.

2.

Article I, Paragraph 19. This is a new provision: "Any citizen or taxpayer may restrain the violation of any provision of this Constitution by a suit with leave of the Superior Court, upon notice to the Attorney General."

It seems to me this is a very unwise provision to place in the Constitution. I can picture very harassing litigation that might be brought under it. If there should be such a provision in the

law, let it be provided by an act of the Legislature. Then if the provision should be abused, the act of the Legislature could be repealed, whereas if the provision is in the Constiution, the Legislature could do nothing about it and the operations of government might well be tied up by suits of citizens and taxpayers prosecuted by leave of a judge opposed to the officials then in office, upon mere notice to the Attorney General.

3.

Article II, Paragraph 1. This section reads: "The functions, powers and responsibilties of the government of this State shall be divided among three distinct branches—the legislative, executive and judicial."

The present Constitution provides: "The powers of the government shall be divided into three distinct departments."

My criticism of the proposed new section is that it injects into the Constitution a new concept, the fascist idea, that is foreign to a democratic form of government, which our has always been. The responsibilities of the government rest on *the people*, not in the three branches of the State Government—the executive, legislative and judicial.

The theory of the present Constitution is right:—The powers of government are in the three departments, not branches, of government, but the responsibilties therefor rest in the people and not in the State. How it shall function is to be determined by the people; and when they are dissatisfied with the way that their representatives exercise their delegated powers the people are the ones who have the responsibility for a change, not the State.

4.

Article III, Section I, Paragraph 3. This paragraph provides that the two houses of the Legislature shall meet separately in regular session, bi-annually on the second Tuesday in January, *and shall adjourn sine die not exceeding ninety calendar days thereafter,* except as provided in the executive article of this Constitution.

To my mind the provision for a compulsory adjournment within ninety days is most unwise. There may be periods in the future when it will be very necessary to have the Legislature sit more than three months; yet, under the proposed provision, the Legislature would have to adjourn, to be recalled perhaps time and time again.

5.

Article IV, Section II, Paragraph 4, provides that any bill shall become a law nothwithstanding disapproval by the Governor, if upon reconsideration, *on or after the third day following the return thereof to the house of origin,* it shall receive the affirmative vote of a *majority* of the membership of each house of the Legislature.

May I point out that the necessary delay under this section of three days before the Legislature can act upon a vetoed bill or a vetoed item in an appropriation bill, may well find the Legislature adjourned *sine die* under the provisions of Article III, Paragraph 3. The Governor on his own motion would certainly not call the Legislature back to override his veto, and since a special session of the Legislature can only be called by the Governor on his own motion, or "upon petition of two-thirds of the members of each house" (Article III, Paragraph 4), it is obvious that the provision for overriding a Governor's veto by the vote of "a majority of the membership of each house" (Article IV, Section II, Paragraph 4), will be invalidated in every case of a compulsory adjournment of the Legislature under Article III, Paragraph 3, before the vetoed bill can come up for consideration.

Everyone knows that for many years a very large number of bills have been passed by the Legislature in its closing sessions. This, despite the fact that heretofore there has been no such provision in the Constitution as that requiring a *sine die* adjournment in ninety days as is contained in the proposed Constitution. We must anticipate that in this compulsory short term much of the legislation in the future would be passed just before the expiration of the ninety days. Consequently it is to be expected that in future, if this provision is adopted, there will be very few instances where the Legislature is in session to reconsider any bills or any appropriation items vetoed by the Governor.

I do not believe that this situation was observed by the drafters of the proposed Constitution. A Constitution should not contain the features enumerated above. They indicate haste in draftsmanship and lack of that careful consideration that the draft of a proposed Constitution requires.

6.

Two new provisions of the proposed Constitution on the subject of legislation are bad and should be rejected.

The first is contained in *Article III, Section VI, Paragraph 4.* This section picks up the provision of the existing Constitution providing: "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object and that shall be expressed in the title." The proposed Constitution contains this addition: "This paragraph shall not, however, be given effect to invalidate any law constituting a compilation, consolidation, revision or arrangement of all or part of the laws heretofore or hereafter enacted upon recommendation of any permanent law revision agency, *nor to invalidate any law enacted upon recommendation of the legislative council.*"

The portion italicized is bad. If improper influences may result from intermixing in one and the same act such things as have

no proper relation to each other, what difference in principle is there whether the bill be drawn by a legislative committee, a member of the Legislature or the *legislative council?*

7.

The second new provision, relating to legislation, Paragraph 7 of *Article III, Section VI,* is postively vicious. It reads as follows: "The Legislature may by law, nothwithstanding any express or implied limitation of this Constitution, *incorporate by reference* with present or future effect, *any provision of federal public law or any federal administrative rule or regulation relating to the regulation of industry or commerce or taxation, or establishing technical standards of any kind.*"

Under this paragraph the Legislature could, by way of illustration, incorporate by reference in any tax bill any or all the provisions of the federal revenue acts and any or all the federal administrative rulings made thereunder (and many of these are most involved and difficult of construction). If the Legislative Council should draft and recommend a bill on any subject of no particular interest to the public, there could properly be included by reference an adoption of the provisions of Federal Law on any of the enumerated subjects, and without warning the public would wake up to the fact that some obnoxious Federal law had been adopted under this clause. There would seem to be no sound reason for incorporating any such provision in a State Constitution if there is to be in the future the separation of the powers of State and Federal Governments as we have enjoyed them in the past.

The people of the State should rise up and oppose this as the most iniquitous provision so far presented to the people of the State.

8.

Article IV, Section I, Paragraph 5. There is an error in this paragraph which is not serious, but it does prove lack of consideration and care in draftsmanship which I find in many places in the proposed Constitution.

This section provides that in case the Governor shall accept any office under the United States or of this State, his office of Governor shall thereupon be vacant. "Nor shall he be elected by the Legislature to any office under the Government of this State *or of the United States* during the term for which he shall have been elected Governor."

It is perfectly obvious that while the Governor might be elected to the office of State Treasurer, for instance, nevertheless the Legislature of New Jersey has no power to elect a Governor to an office under the government *of the United States.* Had the proposed Constitution (1942) been carefully considered, no such provision would have been inserted.

9.

Another iniquitous provision of the proposed Constitution (1942) is contained in *Article IV, Section I, Paragraph 6.* This provides that "in case of impeachment of the Governor, his absence from the State, or temporary inability to discharge the duties of his office, the powers, duties and emoluments of the office shall devolve *to the head of the Department of Taxation and Finance* until such time as the Governor shall be acquitted, or shall return to the State, or the temporary inability shall cease. In case of any vacancy in the office of Governor caused by death or removal of the Governor, by death, or resignation of the Governor-Elect, or his failure to qualify or from any other cause, the powers, duties and emoluments of the office shall devolve *to the head of the Department of Taxation and Finance,* who shall serve until a new Governor shall have been elected and qualified. The new Governor shall be elected, in the manner provided by this Constitution, at the next general election to be held, in an odd numbered year, not less than ninety days after the occurrence of the vacancy."

This clause violates the principles of representative government. In the Constitution under which we have lived for one hundred years the provision has been that in the event of the death, resignation or removal of the Governor, the powers, duties and emoluments of the office shall devolve upon the President of the Senate, and in case of his death, etc., upon the Speaker of the House of Assembly.

The persons holding the office of President of the Senate and Speaker of the House of Assembly are elected by the people, and, therefore, when they take the office of Governor they are representatives of the people.

The head of the Department of Taxation and Finance, however, is not elected by the people. He is appointed by the Governor and confirmed by the Senate.

Under this provision of the Constitution it is entirely conceivable that the head of the Department of Taxation and Finance would hold and administer the office of Governor of this State for as long as two years without ever having been chosen by the people of this State at all. Moreover, who ever heard before of making a tax assessor and tax collector Governor of a great State by any such constitutional provision as that which is proposed?

Provisions Relating to the Judiciary.

May I preface my remarks about the provisions in the proposed Constitution relating to the Judiciary with the observation that for many years I have been publicly favoring an independent Court of Appeals in this State. Our courts need reorganization. They do not, however, need to be scrambled in the manner now proposed.

I.

My first objection is to terming the new court of appeals as the "Supreme Court." It is, in fact, a court of appeals. However, that is not vital, because our court of last resort in the federal system is the United States Supreme Court, and, other things being equal, I would not object to giving the court of last resort in New Jersey the title "Supreme Court," despite the fact that historically the Supreme Court in New Jersey has been not the court of last resort but an intermediate court of original and appellate jurisdiction.

The provision of *Article V, Section III*, that the Supreme Court shall sit at the State Capital and shall hold at least ten monthly terms each year, is absurd. Was this provision intended to make the court powerless to sit on occasion in Newark, Jersey City, Camden or elsewhere as future necessity or even casualties may compel? If the court attempts to sit any where else in the State, would not its sittings and its judgments be void? And why should the Constitution provide that this court should hold at least ten monthly terms each year? The Supreme Court of the United States and the several United States Circuit Courts of Appeals hold only one term in each year. Such courts meet as occasion requires, hear cases, then adjourn and decide them. I object to this provision as being unnecessarily burdensome to the Court.

II.

Article V, Sections III and IV, relating to the proposed new Superior Court, effects revolutionary changes in this State, which, I believe, will not improve the administration of justice. I do not object to Section IV relating to appellate divisions of an intermediate court, termed by the proposed Constitution the Superior Court. The parts that are highly objectionable are Section III, Paragraphs 2 and 3, in which fundamental changes in our judicial system are proposed.

Paragraph 2 of Section III would divide the original jurisdiction of the Superior Court into (1) a law section to exercise civil, criminal and matrimonial jurisdiction, and (2) an equity and probate section to exercise all other jurisdiction of the court. Under Section I each of the justices of the Superior Court may exercise the powers of the court subject to rules of the Supreme Court. Such rules, of course, will be limited by the provision of Paragraph 3 of Section III that "Any justice of the Superior Court may grant prerogative writs returnable in an appellate division which shall otherwise have original jurisdiction relating thereto, and shall determine in such manner as the rules of the Supreme Court may prescribe, and without a jury, questions of fact arising therein; or the hearing may be in the first instance before a single justice, whose decision, both as to law and fact shall be reviewable by the appellate division."

Since under *Article V, Section III*, it is provided that the "Superior Court shall sit in each county," it follows that in each county of the State there would be two sections of the Superior Court, one administering law and the other administering equity. Under the classification of Article V, Section III, Paragraph 2, matrimonial jurisdiction, which in New Jersey has always been under the Chancellor, will be thrown under the law division of the courts, while under Paragraph 3 every justice in the equity and probate division will have full power and authority with all the other justices of the court to grant writs of certiorari, mandamus and *quo warranto*, which have heretofore always been matters of law under the exclusive jurisdiction of the Supreme Court.

In other words, we find here almost a bit of false pretense. There would seem to be an attempt to keep separate, as we always have in New Jersey, the administration of law and equity. Yet, in fact, every justice in the Superior Court would have full and complete jurisdiction in both law and equity. We would be wiping out the time honored distinction between law and equity, while by a futile use of words pretending to preserve the distinction.

If the people of the State desire to have law and equity administered by one and the same judge, well and good. The Constitution should so provide in unmistakable words. There should not, however, be an apparent attempt to keep these jurisdictions separate when they are in fact being done away with.

III.

What is still more dangerous than anything mentioned above is the possibility for abuse of power and authority which these provisions relating to the Superior Court present. Under the proposal the Superior Court shall consist of at least twenty-five judges. They shall sit in each county of the State. Each judge will have all the powers of the court.

There will be abolished when this bill is passed the office of Chancellor and Vice-Chancellor, the present Supreme Court, the present Circuit Court in each county, and the Common Pleas Court in each county. There is at least one Common Pleas judge in each county, at present a total of thirty-three Common Pleas judges in the State. There are fourteen Circuit Court judges at least one of whom sits in each county of the State at least each term of court. There are nine Supreme Court justices, and there are the Chancellor and ten Vice-Chancellors. All of the Vice-Chancellors, all of the Circuit Court judges and all of the Common Pleas judges are now transacting the business which in the future would be transacted in the Superior Court. In addition, the Superior Court justices under the new Constitution would be handling all the cases on mandamus, certiorari and *quo warranto* that are now being handled exclusively by the Supreme Court justices. We can, therefore, safely anticipate that it will require at least

sixty-three Superior Court "justices" to do the work now being done in the State by the Vice-Chancellors, Circuit Court and Common Pleas judges. This does not take into account ten Advisory Masters in the State, whose time is principally devoted to hearing matrimonial matters. Whether or not sixty-three Superior Court "justices" I have mentioned as a minimum could, in addition, handle the work being done by the Advisory Masters at present is conjectural. The point I wish to make is that each one of these sixty-three Superior Court justices, if the new Constitution is adopted, will have far greater powers than any judge in any court of original jurisdiction in New Jersey ever had before. He will have the power to issue injunctions in labor disputes and corporation matters, grant writs of certiorari to review all sorts of state and municipal operations, writs of mandamus compelling municipal officials to perform their duties, and writs of *quo warranto* trying title to office. These extraordinary powers are in addition to the power to sit and try cases with or without juries and handle the miscellaneous business of the court.

What I fear under the new setup is giving such great power to such a great number of justices. Not only is this great power, but it is greater power than New Jersey heretofore has ever reposed in a single judge. Personally, I seriously doubt the wisdom of this change. I would far rather keep the present system under which the State is operating, than to shift to this new and untried plan fraught with so great dangers. Our present need is for an independent court of appeals. There is no need for giving such great powers to each of a great number of justices located in every county in the State.

IV.

Another provision which is very objectionable is contained in *Article V, Section VI, Paragraph 4.* This provides that if the Supreme Courts fails to hear any case within two months after an appeal is perfected, or fails to decide any case within two months after it has been argued or submitted, the Chief Justice shall certify that fact to the Governor, who may thereupon appoint a special term of the Supreme Court from among the justices of the Superior Court to exercise concurrently the jurisdiction of the court until the delay is cured.

This period of two months is too short. It may not give the court of last resort sufficient time properly to study and decide an important case. It does not take into account the temporary illness or disability of a judge. It is inevitable that difficulty in administration will be occasioned every year under this section, particularly with reference to cases heard just before the vacation period begins.

While it is true that most of the cases in our State courts can and should be heard and decided within two months, it is likewise true that in New Jersey, now as in the past, there are many litigations with such large records and with such important questions of law involved, as to make it hazardous to the rights of the parties to compel a decision within two months. This section puts a premium on speed, whereas it should be on justice.

For these reasons, I feel compelled to oppose the adoption of the proposed Constitution (1942) in its present form.

Dated, Jersey City, N. J., September 16, 1942.

JAMES D. CARPENTER JR.

Memorandum Submitted on Behalf of New Jersey State Bar Association

by

George W. C. McCarter, Esq.

We, the undersigned, are members of a Committee of the New Jersey State Bar Association, which was by resolution of that Association at its annual meeting this year instructed to study the Judicial Article proposed by the Commission on Revision of the New Jersey Constitution, to make recommendations and submit them to the Association at its next Midwinter Meeting. We have carefully studied the proposal. Inasmuch as the Joint Legislative Committee meets before the Midwinter Meeting of the New Jersey State Bar Association, we thought it proper not to hold our recommendations up the Committee's sleeve, so to speak, but to submit them to the Joint Legislative Committee.

Ever since the turn of the century the New Jersey State Bar Association has been active in advocating a constitutional change in the judiciary of New Jersey. This committee believes that the members of the Association are still strongly in favor of such a constitutional change. Certainly the members of the committee are unanimously of that view; but, by the same token, the change must be an improvement. While there are many excellent provisions in the Judicial Article of the proposed new Constitution there are many of which we cannot approve. We feel that badly as the State needs a constitutional change in its judicial set-up, no change is an improvement which will not conform to certain canons, and consequently should provide:

1. A separate Court of Appeals in the last resort, with a permanent membership of not more than seven, all to be learned in the law, and to have no time-consuming other duties.

2. One great State-wide court of original and intermediate appellate jurisdiction exercising the jurisdiction now vested in the Supreme Court, the Court of Chancery and the Prerogative Court, sitting in a Chancery Division and a Law Division, but with power to do full justice in any one cause.

3. In addition to the foregoing, "such inferior courts as now exist and as may be hereafter ordained and established by law, which inferior courts the Legislature may alter or abolish as the public good shall require."

4. The absence of any provision permitting the Governor to establish a temporary court or appoint temporary judges.

5. To the end of minimizing future litigation over jurisdiction, the Constitution should wherever possible, instead of taking a fresh start, refer to or take over the well understood jurisdiction of the existing courts.

6. The Constitution should not go into too much detail.

The proposed judicial set-up violates many of these canons. While it does establish a separate court of last resort, the next court in the hierarchy, which is called the Superior Court, is not one great court of State-wide jurisdiction, but is without any central organization, is directed to sit in every county with jurisdiction throughout the State, so that it is in effect twenty-one courts of original jurisdiction. The set-up is as if each of the courts now held by Common Pleas Judges were given equitable powers, each having jurisdiction throughout the State, and with no court between them and the court of last resort.

This Committee submitted to the Commission on Revision of the New Jersey Constitution a proposal which conforms to all of the foregoing canons. We shall proceed to criticize the several paragraphs of the proposed Judicial Article, and then append a set of paragraphs substantially the draft submitted by this Committee to the Commission on Revision, modified by further consideration in light of the constructive proposals in the Commission's draft.

Sect. 1

Par. 1

If there were no other objection we would not discuss nomenclature, still, as there are other objections, we think it would be better for the court of last resort to be called simply the Court of Appeals, and the court that succeeds to the jurisdiction of the present Supreme Court and other courts should be called the Supreme Court. Instead of the second clause in the first sentence there should be used the language found in the present Constitution "* * * and such inferior courts as now exist and as may be hereafter ordained and established by law, which inferior courts the Legislature may alter or abolish as the public good may require." Strike out the provision for integration. You cannot integrate or make a county court a part of a State-wide court. You may have the county court held by a Justice of the State-wide court, just as today, the Common Pleas or Orphans' Court may be held by a Justice of the Supreme Court; but one is essentially a different tribunal from the other.

Par. 2

This should be modified. The first clause in Paragraph 2 declares that equity shall prevail over common law. We are uncertain of the intent and effect of this provision and therefore recommend that it be omitted. If it only restates the present rule there seems no need for the restatement. If it changes the rule we would like to know in what respect. There are many cases in which equity declines to enforce an equitable right and permits the law to take its course because, for example, there are unclean hands, counter equities, or the rights of third persons have intervened. What bearing has this clause on the decision of such cases?

The second clause provides that every controversy shall be fully

determined by the Justice hearing it. If this is limited to the great court of original jurisdiction, we approve, otherwise not. No equity powers should exist in any of the inferior tribunals which may be set up. We do not want to have the District Court Judges issuing injunctions. See our draft, Section IV.

Par. 3

This is one of the provisions that makes the so-called Superior Court really twenty-one separate superior courts. In these days of easy travel (gasoline rationing will not last forever) there is no reason why the Constitution should require every part or division of the great court of original jurisdiction to sit in each and every county. The provision for ten terms a year is unwise. Some of the best run appellate courts in the country, e. g., the Supreme Court of the United States and the Circuit Court of Appeals for the Third Circuit, hold but one continuous term a year.

Sect. II

Par. 1

No objection, except the above mentioned matter of nomenclature.

Par. 2

The language of Section II, Paragraph 2, of our draft is far better. Nobody should have the right to more than one appeal, and where the great court of State-wide jurisdiction has by a bench of judges reviewed the action of one of its judges or heard an appeal from an inferior tribunal, the right to go further should, subject either to legislation or rules of court, depend upon leave of court. It is unwise to have the Constitution confer on the court of last resort the power to certiorari an indictment. That should be in the court that succeeds to the present Supreme Court, and that tribunal should also admit and discipline attorneys and counsellors.

Par. 3

Experience has shown that generally speaking throughout the country courts incline to be too conservative in the exercise of rule making power. We therefore recommend the setting up of a Rules Commission on which certainly the bar and perhaps laymen be represented. See our draft, Section IV, Paragraph 10.

Sect. III

Pars. 1, 2, 3

The Chancery Division should exercise the jurisdiction heretofore exercised by the Court of Chancery and the Prerogative Court, and the Law Division all other jurisdiction. In other words, except for such jurisdiction as is assigned to the Chancery Division, all juridiction should be in the Law Division. Nevertheless, there should be power to do complete justice in any cause in either division. The language of Paragraph 3 is obscure, and the whole paragraph is unnecessary in the Constitution.

Sect. IV

Par. 1

Paragraph 1 is all right in principle, but we submit our draft is much preferable. See our Section IV, Paragraph 6.

Par. 2

Paragraph 2 is too broad. Not every order, interlocutory or not, should be appealable. At present, at law, there is no appeal until after final judgment. So far as preference among appeals is concerned, that should be left to legislation or rules of court.

Par. 3

We agree fully with the provision that a judgment of the Appellate Division shall be final in all but exceptional cases. The Chief Justice of the court of last resort should not be the assigning judge. Our draft is preferable. Section IV, Paragraph 9. Subparagraph 1 of Paragraph 8 sounds fine, but it permits an appeal to be taken as of right, no matter how threadbare or time-worn is the constitutional question alleged to be involved. With the possible exception of capital cases the right of appeal from the Appellate Division to the court of last resort should be subject to regulation by statute or rule of court.

Par. 4

We have no criticism of this, but in our draft it is, we feel, better taken care of by Paragraph 2 of Section II.

Sect. V

Par. 1

We do not think that the draftsmen of this section meant what they said in the language "Judges of any inferior court with jurisdiction extending to more than one municipality." A borough recorder has certainly in some respects jurisdiction throughout the county.

Pars. 2 to 5 incl.

We do not criticize.

Par. 6

The Legislature may provide for this, as it has done in the past. Unnecessary in Constitution.

Sect. VI

Par. 1

There should be an administrative head of the courts. Here is found one of the reasons for the Chancellor and Chief Justice being members of both the court of last resort and of the great State-wide court of original jurisdiction, and for the administrative power being conferred on them with provision for preventing a deadlock. See our draft, Section IV, Paragraphs 9-13. The details of administration should be provided for by legislation or by rules of court. In the Constitution should be merely enough to make sure that the administrative head has the right to require cooperation from the constitutional judges.

Par. 2

Our only thought here is that the clerk of the court of last resort will have so little to do that there is no real reason why the Secretary of State should not continue in that job. This is a small matter, however, and we do not really quarrel with giving that court power to appoint its own clerk. The great State-wide court, our substitute for the so-called superior court, should appoint its clerk. There should be such a clerk, as that court should operate on a State-wide basis. He should succeed to all the duties now performed by the clerk of our present Supreme Court, the Clerk in Chancery and the Register of the Prerogative Court. The County Clerks and Surrogates could of course continue as to courts of county-wide jurisdiction only.

Par. 3

We feel that in the matter of assignments the heads of the divisions of the great State-wide court of original jurisdiction should have something to say about assignments, and definitely that the Chief Justice of the court of last resort should not solely have the power given him by this paragraph. See our Section IV, Paragraph 9-13.

Pars. 4 and 5

We are opposed to giving any Governor power to "pack" the court of last resort or to appoint temporary judges. Any judge of the court of last resort or the great State-wide court of original jurisdiction should be a full time man, who does nothing else. See our Section II, Paragraph 5. Furthemore, we do not feel that any stop-watch can with success be held upon the work of a court. No matter how prompt a court is in its work, sometimes something comes up that makes it desirable, for example, to order a re-argument.

Par. 6

This should be left to legislation or rule of court.

Art. XI
Sect. IV
Par. 1

We think seventy too young a retirement age, and prefer seventy-five.

Par. 2

Common Pleas judges should not become members of the great State-wide court of original jurisdiction. They should remain what they are, subject to legislative control,

Par. 3

As we do not approve of the so-called Superior Court, this paragraph is objectionable. The first sentence is all right. The second sentence should provide for the transfer of all causes pending in the Court of Chancery, Prerogative Court and Supreme Court to

the new State-wide court of original jurisdiction, which in our draft we call the Supreme Court. All county-wide courts should remain subject to legislative control, and transfers of causes can be attended to by legislation.

Par. 4

Consistently with our view as hereinabove expressed, all records should be turned over to the clerk of the State-wide court.

Par. 5

This should be left to legislation.

Pars. 6, 7 and 8

Minor matters.

In conclusion, we believe that the proposed Judiciary Article as drafted cannot be recommended. Nevertheless, we also believe that a constitutional change in the courts of New Jersey should be made. We respectfully submit for consideration the draft hereto annexed. That, with appropriate accompanying legislation, will effect a real advance and modernization of our courts. We respectfully ask the Joint Legislative Committee to recommend to the Legislature that it be substituted for Article V and Section IV of Article XI of the Commission on Revision's draft.

Edmund S. Johnson,
Edward A. Markley,
A. Dayton Oliphant,
Irving Riker,
Bartholomew A. Sheehan,
George W. C. McCarter,
Chairman.

SECTION I

General

1. The judicial power shall be vested in a Court of Appeals, a Supreme Court, and such inferior courts as now exist and as may be hereafter ordained and established by law; which inferior courts the Legislature may alter or abolish, as the public good shall require.

SECTION II

The Court of Appeals

1. The Court of Appeals shall consist of the Chancellor, the Chief Justice of the Supreme Court and five Justices of Appeal, or a major part of them.

2. The Court of Appeals shall be vested with all jurisdiction and power heretofore vested in the Court of Errors and Appeals, and such additional appellate jurisdiction as the Legislature may by general prospective act provide. The Legislature may by general prospective act empower the Court of Appeals to provide by rule that appeals be taken only by its leave. The Court of Appeals may by rule designate one or more of its members to pass on appli-

cations for leave to appeal, applications to continue or dissolve restraints, or other interlocutory matters.

3. The Secretary of State shall be clerk of this court.

4. No member of the Court of Appeals who has given a judicial opinion in the cause in favor or against any matter complained of shall sit as a member or have a voice on the hearing or for its affirmance or reversal, but the reasons for such opinion shall be assigned to the court in writing.

5. Whenever by reason of disability, disqualification or absence a majority of the Court of Appeals shall not be available, the Court of Appeals may temporarily assign one or more Justices of the Supreme Court to the Court of Appeals.

SECTION III

(as now)

SECTION IV

The Supreme Court

1. The Supreme Court shall consist of the Chancellor, the Chief Justice of the Supreme Court and thirty Associate Justices. The number of Associate Justices may be increased or decreased by law but shall never be less than twenty.

2. The Supreme Court shall be vested with all the jurisdiction and power heretofore vested in the Court of Chancery, the Chancellor, the Prerogative Court, the Ordinary or Surrogate General, the Supreme Court, and the Justices thereof.

3. For the more convenient dispatch of business the Supreme Court shall be organized in two divisions, the Chancery Division and the Law Division.

4. The Chancery Division shall, subject to the provisions hereof, exercise the jurisdiction heretofore vested in or capable of being exercised by the Court of Chancery, the Chancellor, the Prerogative Court and the Ordinary or Surrogate General. The Law Division shall exercise all the remaining jurisdiction of the Supreme Court as herein constituted.

5. The Chancery Division shall consist of the Chancellor and such number of Associate Justices as shall be assigned thereto. The Law Division shall consist of the Chief Justice and such Associate Justices as shall not be assigned to the Chancery Division.

6. In both the Chancery and Law Divisions all appeals from inferior tribunals and such other matters as, subject to law, the rules of the Supreme Court may provide, shall be heard before three Justices sitting together, which bench of three Justices shall be called an Appellate Court. Subject to law, rules of the Supreme Court may provide that any judgment, decree or order of a single Justice may be reviewed by an Appellate Court.

7. Without prejudice to the provisions of this Constitution relating to the distribution of business in the Supreme Court, all jurisdiction vested in the Supreme Court shall belong to each division alike, and subject to the provisions hereof relative to Appellate Courts, may be exercised by a single justice.

8. Subject to rules of the Supreme Court every controversy shall be fully determined by the Justice hearing it.

9. The Chancellor, the Chief Justice, and the Senior Justice of Appeal, or a majority of them, shall assign Justices to the Chancery or Law Division, and from time to time reassign them as the business of the Court may require.

10. There shall be a Rules Commission, consisting of the Chancellor, the Chief Justice, the Senior Justice of Appeal, four Justices of the Supreme Court, two appointed by the Chancellor and two by the Chief Justice, two Counsellors at Law and two laymen, all appointed by the Governor. All appointments shall be at the pleasure of the appointing power. The Rules Commission shall be convened and presided over by the Chancellor, or, in his absence or failure for any reason to act, by the Chief Justice. The Rules Commission shall make rules for the transfer of any cause or issue from the Law Division to the Chancery Division, from the Chancery Division to the Law Division, and from an inferior court to the Supreme Court and the appropriate division thereof; rules as to the administration of all the courts, and, subject to law, as to pleading, practice and evidence in all causes, and rules as to all matters as to which by this Constitution rules of the Supreme Court may be made.

11. The Supreme Court shall appoint and remove the Clerk of the Supreme Court who shall hold office during its pleasure. Such Clerk shall succeed to the duties heretofore performed by the Clerk of the Supreme Court, Clerk in Chancery and Register of the Prerogative Court.

12. The Chancellor shall be administrative head of the Chancery Division, and the Chief Justice of the Law Division. As such they shall have power to assign the Justices of their respective divisions to specific duties and causes, and to prescribe records and reports from them and from inferior courts and judicial officers.

SECTION V

Appointment, Tenure and Removal

1. The Chancellor, the Chief Justice, Justices of Appeal, and Justices of the Supreme Court shall be counsellors at law of ten years standing. They shall be appointed by the Governor by and with the advice and consent of the Senate. The Justices of Appeal shall be chosen from the Justices of the Supreme Court who have been such for at least a year, and when so chosen shall, except as

to those first to be appointed, create a vacancy in the Supreme Court.

2. The Chancellor, the Chief Justice and the Justices of the Supreme Court shall, when first appointed, hold office for seven years, and if reappointed shall thereafter hold office during good behavior. The Justices of Appeal shall hold office during good behavior.

3. All judicial officers shall be subject to impeachment. All judicial officers except the Chancellor, the Chief Justice, and the Justices of Appeal may be removed from office by the Court of Appeals after notice and hearing upon the issue of good behavior.

4. Anything herein contained to the contrary notwithstanding, the term of office of any judge shall end on the first day of January next after he shall have attained the age of seventy-five years.

5. Justices and judges of every court shall, at stated times, receive for their services such salary as may be provided by law, which shall not be diminished during their term of appointment. They shall hold no other office or position of profit in the Government of this State, or of the United States, or of any instrumentality or political subdivision of either of them. No member of the Court of Appeals, of the Supreme Court, nor such other judicial office as may be provided by law, shall during his continuance in office engage in the practice of law or other gainful occupation.

6. Judges of inferior courts, other than Justices of Peace, Police Judges, Recorders, Magistrates, and the like, shall be appointed by the Governor by and with the advice and consent of the Senate. They shall hold their offices for such terms as may be fixed by law. The Legislature shall provide by general law for the appointment of all other judges.

SECTION VI

1. The Chancellor and Chief Justice now in office shall continue in office for the term for which they were appointed. If reappointed they shall hold office during good behavior. The Justices of Appeal first to be appointed shall be selected by the Governor, by and with the advice and consent of the Senate, from among the Justices of the Supreme Court, Vice-Chancellors and Circuit Court Judges now in office, and shall be so selected that no more than four members of the Court of Appeals as originally constituted shall be members of one political party. The Justices of the Supreme Court, Vice-Chancellors and Circuit Court Judges, and such of the Judges of the Court of Errors and Appeals, as are counsellors at law of ten years' standing, shall become Justices of the Supreme Court as newly constituted and shall continue in office for the terms for which they severally were appointed. If re-appointed they shall hold office during good behavior.

2. This amendment to the Constitution shall not cause the

abatement of any suit or proceeding pending when it takes effect. All causes then pending in the Court of Errors and Appeals shall be transferred to the Court of Appeals. All causes then pending in the Court of Chancery and the Prerogative Court shall be transferred to the Chancery Division of the Supreme Court; all causes then pending in the Supreme Court as heretofore constituted shall be transferred to the Law Division of the Supreme Court. Matters argued or submitted but undecided when this amendment takes effect shall be decided by the judge or judges to whom they were submitted, and the appropriate order, judgment or decree shall be entered as that of the division or court to whom the cause shall have been transferred.

3. The various inferior courts now in existence shall continue in existence with their jurisdiction unimpaired until the Legislature shall otherwise provide.

In the matter of the proposals and recommendations made by the Commission on Revision of the New Jersey Constitution. } MEMORANDUM

To the Members of the Joint Legislative Committee:

In this memorandum I shall bring down to date the result of the poll taken by me of the Burlington County Bar and the Camden County Bar as to the proposal and recommendation made by the Commission on Revision of the New Jersey Constitution to eliminate, without any good reason or excuse whatever, the gem of the judicial system of the State of New Jersey, the Court of Chancery of New Jersey.

I shall also comment upon the manner in which the Commission proposes to put into effect a Revision of the Constitution of this State.

On September 12th, instant, I sent out to fifty-eight members of the Bar of Burlington County and to 368 members of the Bar of Camden County return postals, with request that the recipients indicate on the return cards their views as to the elimination of the Court of Chancery of New Jersey as a separate and distinct court, and that if they favor the retention of the Court of Chancery as a separate and distinct court, as heretofore, that they indicate on the return card their preference as to the manner of the appointment of Vice-Chancellors.

The questions upon which the poll was taken are as follows:

No. 1. I oppose the elimination of the Court of Chancery as a separate and distinct Court in the Proposed Revised Constitution.

No. 2. I favor the elimination of the Court of Chancery as a separate and distinct Court in the Proposed Revised Constitution, and the substitution therefor of an Equity Section of the proposed Superior Court.

No. 3. Vice-Chancellors should be appointed by the Chancellor as heretofore, without the advice and consent of the Senate.

No. 4. Vice-Chancellors should be appointed by the Chancellor by and with the advice and consent of the Senate.

No. 5. Vice-Chancellors should be appointed by the Governor by and with the advice and consent of the Senate.

From the members of the Bar of Burlington County I have received to date thirty-one replies, showing the following vote:

No. 1. 29 votes
No. 2 2 votes
No. 3 28 votes

No. 4 1 vote
No. 5 1 vote

From the members of the Bar of Camden County I have received to date 141 replies, showing the following vote:

No. 1 117 votes
No. 2 24 votes
No. 3 108 votes
No. 4 10 votes
No. 5 6 votes

Strangely enough, some of those who voted in favor of the elimination of the Court of Chancery as a separate and distinct court favored the appointment of Vice-Chancellors by the Chancellor or by the Governor.

The poll taken indicates an overwhelming sentiment among the members of the Bar in Burlington and Camden Counties that the Court of Chancery of New Jersey should be retained as a separate and distinct court in the Proposed Revised Constitution.

It is perfectly reasonable to conclude that the sentiment of the members of the Bar in the other counties of the State is also overwhelmingly in favor of the retention of the Court of Chancery as heretofore.

In my discussions of this subject with the members of the Bar in the Southern part of the State, I found that the older members of the Bar are almost unanimous in their opinion that in the reorganization of the courts of New Jersey the Court of Chancery should be retained as at present as a separate and distinct court, and that Vice-Chancellors should be appointed by the Chancellor without the advice and consent of the Senate.

It is reasonable to conclude that the fact that a large majority of the members of the Bar appear to be opposed to the elimination of the Court of Chancery as a separate and distinct court should have a very considerable influence upon the vote of the people upon this question at an election held for the purpose of voting upon the Revised Constitution.

It may be interesting to your Committee to state that a few days after I sent out the postals above referred to I received a letter from Professor W. Foster Reeve, III, Hubbell Professor of Law at the University of Pennsylvania Law School and a member of the New Jersey Bar.

Professor Reeve is a grandson of the late Honorable Samuel H. Grey, a former Attorney General of this State, and a grandnephew of the late Honorable Martin P. Grey, a former Vice-Chancellor who presided over the Court of Chancery at Camden. Professor Reeve has taught Trusts at the University of Pennsylvania Law School for some twenty years and was one of the advisors of the American Law Institute when it published its Re-

statement of the Law of Trusts. He was also Chairman of the Committee of the Pennsylvania Bar Association to annotate that Restatement with the Pennsylvania decisions and personally wrote such annotations, which were published in 1938.

Professor Reeve, in his letter to me, recalling his work on the Restatement of Trusts, said, among other things, the following:

> "* * * the reporters and advisors working on the Restatement of Trusts were all very much impressed by the New Jersey Chancery decisions and the reputation of that Court. It is an interesting fact that the experience in Pennsylvania has, in a curious backhanded way, tended in fact although the man in the street does not realize it to exactly the result that New Jersey has long had. At the time of the American Revolution the separate Chancery Courts were abolished in Pennsylvania and such confusion resulted that in 1836 the Orphans' Courts were set up and given equity powers with regard to decedents' estates. Their sole original jurisdiction was with respect to decedents' estates and as the result of having such a narrow jurisdiction they became extremely competent in it. The recognition of this competence over a period of years had led the Pennsylvania Legislature to gradually grant that court concurrent jurisdiction over trusts inter vivos which finally culminated in the Act of 1931, and I believe that you would find it the opinion of the Pennsylvania Bar that because of the competence brought about by their much more frequent handling of such cases that they would prefer bringing a trusts question before the Orphans' Court rather than the Court of Common Pleas where they might go into either."

This letter is quite significant, in view of the fact that it indicates that the members of the Bar of Pennsylvania are glad to embrace the opportunity of having their equity cases relating to trusts determined by specialists upon the subject.

Before closing I desire to make a statement as to the time of amending our State Constitution and as to the manner of so doing.

It is proposed that at the coming election to be held on November 3rd next there shall be submitted to the people of this State the question as to whether they desire a revision of our present Constitution. If the vote of the people indicates that they desire such a revision, then it is proposed that the Legislature at its 1943 session shall prepare a Revision of the State Constitution and that such Revision, as prepared by the Legislature, shall be submitted to the people of the State at the 1943 general election, and if the people at the 1943 general election approve the Proposed Revision, the Constitution shall be considered as revised in the form voted upon at the 1943 election.

With all due respect to the brilliant minds which have been considering this novel plan of putting the Revision of our Constitution into effect, I would say that such a Revised Constitution, passed upon by the people in such a manner, would be of no more value than one of Hitler's promises.

In 1913 Honorable Edmund Wilson, then Attorney General of the State of New Jersey and one of the most brilliant lawyers who ever graced the New Jersey Bar, was requested by the Honorable Emerson Richards, then a member of the House of Assembly, to render an opinion as to whether or not the Constitution of the State may be lawfully changed, altered or amended by a Constitutional Convention convened for that purpose. The original opinion is on file in the office of the Attorney General at Trenton.

The Attorney General, after ably discussing the question submitted to him, concluded his opinion as follows:

> "Accordingly my conclusion upon the whole matter is that it is not lawful to amend or change the Constitution of this State in any other way than by the precise method pointed out in the instrument itself."

Mr. Wilson in his opinion has made a careful analysis of this entire question. His statements are logical and clear and I believe that his conclusion is absolutely correct, and that whether it is desired to amend the State Constitution by changing one paragraph or whether it is desired to amend the Constitution by substituting a new and Revised Constitution in the place and stead of our present Constitution, the method so clearly set forth in Article IX of our State Constitution shall be strictly adhered to if the Revision of the Constitution is to be of any force or effect.

As to the time when the Revised Constitution shall be considered by the people of the State of New Jersey, I would simply say that we are living in abnormal times, when the stress of every-day life is increasing from day to day. We are engaged in a desperate war, and we should devote as much of our time and energy as possible to the winning of the war.

I am of the opinion that the consideration of the revision of the entire Constitution of the State should be deferred until peace time, when both the legislators and the people of the State can give it the consideration and deliberation it deserves, and no subject deserves or requires more mature and deliberate consideration than a complete revision of our Constitution.

As the war progresses the life of the people of the State becomes more disturbed and complicated and the less time and disposition they have for mature reflection and thought upon the changes which should be made in our Constitution.

The times are abnormal, unsettled and confused and are likely to become more so.

No one knows what New Jersey may be called upon to experience or endure within the next year of the war.

One of the last utterances made by the late Honorable Merritt Lane at the annual meeting of the New Jersey State Bar Association in June of 1939, only a few days before his death, was that that was no time to discuss an entirely new Constitution for New Jersey, nor for any other State, nor for the United States . This statement applies to a far greater degree in 1942.

Respectfully submitted,

WM. D. LIPPINCOTT.

Dated: Camden, New Jersey, September 22nd, 1942.

JUSTICE FREDERIC R. COLIE
Millburn
SUPREME COURT OF NEW JERSEY

September 21, 1942.

Charles DeF. Besore, Secretary
State House
Trenton, New Jersey.

My dear Mr. Besore:

In answer to the invitation of the Joint Legislative Committee constituted under Senate Concurrent Resolution 19, I take this opportunity to express in part my views as to the Judiciary Article of the Proposed Constitution. In doing so, I have attempted to avoid commenting upon such parts of the Proposed Constitution as might be deemed to personally affect me in my capacity as a Justice of the New Jersey Supreme Court and as a member of the Court of Errors and Appeals.

Article V, Section I, Paragraph 1. This Article creates two constitutional courts, the Supreme Court and the Superior Court, and thereby abolishes the Court of Chancery as a constitutional court. There is no great merit in abolishing a name. Equity jurisdiction is not thereby abolished, nor could it be without destroying our entire system of jurisprudence. The existence of a separate court to deal with equity problems, known as the Court of Chancery, is not fundamentally objectionable. In fact, the reverse is true in my opinion. If there are fundamental objections to the Court of Chancery, they have not been called to my attention. If it is deemed that there are administrative faults in the operation of any court, surely there must be other equally effective methods of correcting such conditions, if they exist, other than abolition of the court in question.

Article V, Section I; Paragraph 3. The proposed constitutional mandate that the Supreme Court shall sit in the State Capital seems inadvisable. Trenton is the normal place for the court to hold its sittings, but it is conceivable that an emergency might well arise which would make it advisable for the court to convene at some other place than the State Capital. The provision in the same paragraph that the court of last resort and the intermediate Court of Appeals shall hold ten monthly terms also seems inadvisable. Would it not be better to have the sittings of the court fixed by rule of the court concerned? To do so would permit greater flexibility to meet changing conditions. The continuous term of both the court of last resort and the intermediate Court of Appeals might be advisable. The actual sittings for the hearing of arguments to be fixed by each court, dependent upon the volume of work, such sittings to be determined so as to bring the consideration, study and decision of a given case as near as possible to the date of the argument.

Article V, Section V, Paragraph 2. The clause in this paragraph which provides that a Justice of the Supreme Court shall, prior to his appointment, have been a Justice of the Superior Court for at least one year deserves consideration. There are at present four members of the Supreme Court, each with a record of nine or more years' service on that court, no one of whom would have been eligible for appointment to the Supreme Court had the proposed qualification been effective on the date of his original appointment. It seems to me that the mere statement of the facts just mentioned should cause one to pause before adopting this qualification as a part of the Constitution of this State.

Article V, Section VI, Paragraph 4, which provides that upon the failure of the Supreme Court to decide an appeal within two months after argument and upon certification of that fact, the bestowal of the power on the Governor to appoint a special term of the court from among the judges of the Superior Court, seems inadvisable. It is impossible to presently forecast the amount of work that the proposed Supreme Court will have, and I think it a dangerous and inadvisable innovation to place a time limit upon the deliberaton of a court of last resort. As, if and when that court is organized, it will be composed of experienced lawyers and judges who, without doubt, will be able to recognize, when presented to them, a case which calls for expeditious decision. In addition, there will be cases which, because of the length of the record and the complexity of the questions involved, may require more time than that fixed by the above numbered paragraph. I recognize fully the power of the argument that delay often results in a failure of justice, but I question whether that would be a real danger, given a court of last resort independent of other duties.

Article XI, Section IV, Paragraph 2 contains a provision which might work an unfortunate result. The difficulty can perhaps be more clearly pointed out by an example. Assuming the adoption of the proposed Constitution in its present form and assuming, further, that a justice of the present Supreme Court and a specially appointed judge of the Court of Errors and Appeals each go to the Superior Court, and assume, further, that both are assigned as a Superior Court Justice for a given county, for the balance of his unexpired term, the one will be sitting at a salary of $18,000. a year, the other will sit at a per diem of $40., and assume, further, that the total number of days' work required in that county is one hundred for each judge, we then get a discrepancy in remuneration of $14,000. between two judges, each performing the same type of work in the same county. It will be borne in mind that the former judge on the Court of Errors and Appeals, now a Superior Court judge in the cited instance, is foreclosed from practicing his profession.

This letter is merely to call to the attention of the Joint Legislative Committee certain phases of the proposed Constitution relating to the judiciary that seem to warrant re-consideration. There is no attempt on the part of the writer to offer constructive suggestions, none having been asked for.

I strongly feel, and have felt for many years, that a separate court of last resort, independent of all other duties, is of vital importance. The views that I had as a practicing lawyer have been reenforced in the year and a half of experience that I have had sitting on the Supreme Court and the Court of Errors and Appeals.

It may be of interest to the Joint Committee to know that during the twelve months from February 1941, to February 1942, the total number of printed pages submitted to the Court of Errors and Appeals was slightly in excess of 52,000, of which 13,600 pages were in briefs submitted by counsel. When one considers the number of hours necessarily consumed in merely reading these briefs and examining such parts of the record as counsel specifically calls to the court's attention, coupled with the number of hours of necessary collateral reading suggested in the briefs or called for in a determination of the questions raised, and considers, in addition, the fact that in the Part of the Supreme Court in which the writer sat during the past year, there was upwards of 5,700 printed pages in the briefs and states of case, it must be patent that our present system could be improved. In each instance, the figures given above are accurate within a very few hundreds, and are merely set forth to apprise the committee of the present work-load on a justice of the Supreme Court. It might further be of help to the committee to know that during the period mentioned, the number of cases examined, studied and voted upon by the writer was in excess of 325. These figures do not include any motions, applications for prerogative writ or other matters, and exclude all matters relating to the counties within the district over which the writer presides.

I wish to thank your committee for this opportunity to present, in a limited form, my views, and I trust that they will be of some assistance.

Very truly yours,

FREDERIC R. COLIE.

NEW JERSEY SUPREME COURT
JUSTICE J. L. BODINE
Trenton, N. J.

September 24, 1942

Dear Mr. Besore:

Justice Parker sent me today a memo which he has prepared on Article V of the proposed Constitution now under consideration by the Joint Committee.

He asked me to hand it to you. I am so doing.

Very truly yours,

JOSEPH L. BODINE.

Charles De F Besore, Esq.,
Sec'y, Joint Legislative Committee
State House, Trenton.

MEMORANDA WITH REGARD TO CERTAIN DETAILS OF ARTICLE V OF THE PROPOSED CONSTITUTION NOW UNDER CONSIDERATION BY THE JOINT LEGISLATIVE COMMITTEE.

Sect. 1 ARTICLE V

Par. 1

The first sentence may be all right.

The second sentence about "integrating" inferior courts with the Superior Court seems to me obscure and hazy and likely to provoke a great deal of unnecessary litigation.

Par. 2

It is suggested that this be made to read that in all cases where the matter of litigation is in conflict and the action is in the law section (see Section III, Paragraph 2) it shall be transferred to the equity and probate section.

Par. 3

I think the provision in this paragraph requiring at least ten monthly terms each year is most inadvisable, if not impracticable. No such provision should be embedded in a Constitution which cannot be changed except by a complicated process, and after considerable delay. It is entirely competent for the Legislature to require the courts to hold as many terms as its thinks proper, but up to this time, and for over a century I think, the courts have been allowed to settle their own terms, and I am unaware of any particular complaint on that score. A few years ago, at the instance of the State Bar Association through Mr. Robert H. McCarter, the Court of Appeals established four terms instead of three. This arrangement lasted for just one year and the same body that requested it asked that it be abrogated. At all events, the number of terms per year is not a matter for constitutional prescription.

SECTION III

Par. 2

On the assumption that every court of general jurisdiction is to be authorized to exercise equity powers, which is deprecated, the question arises why the law section should exercise matrimonial jurisdiction which has always been exercised by the equity courts and which it would seem should be committed to the equity and probate courts.

SECTION V

Par. 1

The last sentence is objected to as it is considered that the present method of having all justices appointed by the Governor with the advice and consent of the Senate should not be altered.

Par. 2

The requirement that every justice of the Supreme Court shall have been a justice of the Superior Court for a year is considered unnecessary and dangerous. Many of our very best Supreme Court Justices have been appointed directly from the bar. For example, Beasley, Dixon, Knapp, Magie, Gummere, Garrison, and others might be named. I rather favor the requirement that an appointee to a justiceship shall have been a counselor at law for a certain period of time. Under the present Constitution as I understand the matter, there is no requirement either constitutional or statutory that a justice of the Supreme Court should be a counselor at law or even a lawyer.

Par. 3

The limit to 70 years is objectionable. It is unnecessary and undesirable. Chief Justice Beasley was 82 years old when he died; Chancellor Magie was 75 in 1908 when he was retired; Chief Justice Depue was about 75 when he retired; Justice Scudder was 71 when he died; Justice Bergen died in office at the age of 76; Justice Trenchard retired at the age of 78; Chief Justice Gummere died in January, 1933, at the age of 80. All of these had done their work effectively.

SECTION VI

Par. 1

Referring to an executive director, whatever may be the wisdom of having an executive director, it seems distinctly not a constitutional proposition, but apparently is desired to erect an office under the Constitution which, if found useless and inadvisable, nevertheless must continue.

Par. 3

Assignment of justices to counties, etc. This has been by the court itself, not by the Chief Justice, and there seems to be no reason for making any change.

Par. 4

Appointment of a special term of the Supreme Court when the Supreme Court fails to decide within two months. This, I think, is totally unnecessary and should not be adopted. The appellate court is just as anxious to get cases decided as anybody and the delays of decisions are infrequent. When they do occur it is because the court wishes to reach a right decision rather than run the risk of making a wrong decision because of haste.

Par. 5

Same objection as to Paragraph 4 and for the same reasons.

Par. 6

This seems to be totally unnecessary, particularly as a constitutional matter. If it is desired to try the plan to make an annual report to the Governor and Legislature of the work of the courts, a legislative act to that effect would be just as effective and much easier to repeal if it should later appear inadvisable to continue.

NEW JERSEY SUPREME COURT

JUSTICE J. L. BODINE

Trenton, N. J.

September 21, 1942

Dear Mr. Besore:

I delayed answering your letter of September 4th because Chief Justice Brogan had sent me copies of his letter, which made it clear that no member of the Supreme Court would find it convenient to appear before the Joint Committee until after our conference on September 17th.

The request for comment in your letter is limited to Article V —the Judiciary. If it were not so limited, I would have liked to suggest that the change in No. IX, "The Bill of Rights," although it is precise with the Constitution of the United States, is unwise since the State criminal field is so much wider.

The Grand Jury requirement, before criminal prosecution, is a safeguard to the citizen and to the prosecutor.

Broadly, I have no comment to make as to Article V. I do believe, however, that as a constitutional matter it is unwise to require compulsory retirement at seventy. Such a provision would have deprived the State of the services of many able jurists.

Article V, Section VI, Paragraph 4, requires compulsory decision within two months. I regard this as unwise. It is, of course, desirable that decisions be promptly made, but a hard and fast rule might tend to a hurried and unwise result.

Advancement to the highest court should not be limited to ranks of the judiciary. Some of the ablest jurists in the State would have been disqualified by such a rule. New blood might be very necessary some time in order to secure the capable.

The Constitution is merely an instrument providing for the framework of government. I venture no opinion whatever as to the merit or demerits of the proposed framework. Its success or failure must always be determined by the capacity of the officers chosen thereunder.

Very truly yours,

JOSEPH L. BODINE.

Charles De F. Besore, Esq.,
Sec'y, Joint Legislative Committee
State House, Trenton.

FOR BRIEFS, DOCUMENTS AND COMMUNICATIONS ADDRESSED TO THE METHODS OF SUBMISSION OF CHANGES IN THE CONSTITUTION, TO THE PEOPLE, SEE END OF EVENING SESSION OF THIS DATE.

PUBLIC HEARING

September 17, 1942

Evening Session

on

Proposed Revision of the New Jersey Constitution,
Article V. "Judicial"
and also on
Methods of Submission of Changes in the
Constitution to the People.

The Joint Legislative Committee re-convened in the Assembly Chamber at Trenton on Thursday, September 17, 1942, at eight o'clock P.M., pursuant to announcement previously made.

The Chairman opened the Hearing and the Hearing proceeded as follows:

MR. SCHROEDER: The first speaker this evening will be Mrs. Zwemer, representing the New Jersey League of Women Voters.

MRS. ZWEMER: This is a statement signed by the first vice-president, Mrs. Thelma V. Ingram. She asked me to read it because she was unable to stay for the evening session.

"The New Jersey League of Women Voters has long advocated a revision of our State Constitution. The magnitude of such an undertaking has been fully appreciated. A complete constitutional revision would produce far-reaching effects on the people of this State as voters, as taxpayers, as citizens of a democracy who want nothing less than the best that our system of government can devise. The League of Women Voters has believed that such a revision could best be achieved by a Constitutional Convention composed of delegates elected by the people of the State. These delegates would meet together for the specific purpose of drawing up a revised document to be submitted to the electorate for approval or rejection. These delegates could devote their attention entirely to the job at hand, removed from the worries of campaigning for re-election, and free from partisan pressures, while at the same time the importance of their undertaking and the special significance attached to it would draw attention to their efforts and arouse widespread public interest. The League has believed that the convention method is the most desirable and most democratic method which could be used to secure a revision of our Constitution. It does not deny that some other method might achieve substantially the same results in the end. So long as the spirit of our democratic processes has been maintained in achieving the results,

the League cannot and does not want to do other than recognize the merits of another method.

Another method has been invented. It has produced results in the form of the Report of the Commission on Revision of the New Jersey Constitution. The members of the Commission have worked long and diligently and have reported officially their recommendations for constitutional changes. The document they have produced is reasonably satisfactory. The citizens of New Jersey have had an opportunity to suggest changes, to commend, or to deplore at the hearings held weekly here in Trenton during the summer. These hearings have in effect afforded participation in revision to the citizenry of this State. The League believes the Commission's Report, while leaving much to be desired, is vastly superior to the document under which we are presently conducting the affairs of state. It further believes the method employed thus far toward a revision, while not as wholly democratic as the convention method, is an acceptable substitute, particularly in view of the fact that needless duplication of effort should be avoided at a time when war demands hang heavily upon all of us. It hopes that further open hearings on revision will be provided for, at which the public may be heard; also, that full opportunity for debate on the provisions under consideration will be afforded. Thus will the citizens of the State be encouraged to participate more widely in the governmental affairs of their State, and the educational aspect of such procedures would have great value in the development of public opinion.

The New Jersey League of Women Voters therefore should like to take this opportunity to state its willingness to accept this substitute method, toward the end that a better Constitution may more speedily be adopted. We trust that our legislators will take appropriate action as soon as possible toward setting up the necessary machinery to give the voters of New Jersey the first chance they have had in nearly a hundred years to revise their Constitution."

MR. SCHROEDER: The next speaker will be Mr. Kirk Brown.

MR. BROWN: Mr. Chairman and Members of the Committee:

Some believe that for the people of New Jersey to ordain another Constitution to replace the present one by any other means than those provided therein, would be an act of revolutionary nature; that ratification is not enough; that there must be compliance with all the steps leading thereto such as the proposal and submission; that these must be in strict accordance with all the provisions of the old instrument. If this view is correct, it would be interesting to determine against what government that revolution would be directed. Not against that of New Jersey, for surely that is a government by the people of New Jersey and the people cannot revolt against themselves.

The Federal Constitution was not an amendment of the Articles of Confederation and Perpetual Union, but a complete substitute and not made in conformance with provisions in the Articles for complete substitution, for there was none, just as there is none in our State Constitution. Was that a resolution?

If our Constitution completely prohibited amendment would we be helpless to change our government whenever we saw fit or is the declaration to that effect in the Constitution just meaningless words? That is not a fanciful question; such an occasion has arisen. Confederation Article XIII provided that any alteration must be confirmed by the legislatures of all the States. Not in words, but in force and effect, this proved to be such a prohibition.

So the United States of those days, in Congress assembled, called a convention just as our Legislature set up the Revision Commission, and that convention of 1787 drafted our Federal Constitution just as the Commission drafted this Revision, and that Constitution was ratified by the States just as this Revision can be ratified by the people. So the Perpetual Union came to an end, the Confederation playing no part in the procedure except to call the convention, and without so much as an obituary in the new charter, and so can this new charter succeed the old one, revolution or no revolution. It may be advisable to take a plebiscite in order to fortify the procedure in the opinion of some, but that is only another intermediate step. Thus, we see that our great Federal Constitution, the mother of all modern constitutions, was adopted under circumstances that parallel the present instance.

Anyone can draft a Constitution, but only the sovereign people can ordain and establish one, and if this revision or Constitution, as it really is, be ratified at an election in which every registered voter is free to vote, there can be no question of the validity of that final act of ordaining and establishing. And this sovereign act the people can perform on any draft no matter what its antecedents. The final act of ratification will validate all the preliminaries whether they accord with the present constitutional requirements or not. Even the people of 1844 could not set limits on the sovereignty of those of 1942. Sovereignty is self-perpetuating. It resides in the living, not in the dead.

MR. SCHROEDER: The next speaker will be Former Commissioner J. H. Thayer Martin representing the Newark Chamber of Commerce. Commissioner Martin.

MR. MARTIN: Mr. Chairman and Members of the Legislative Committee:

I am here to express to the Commission the view of the Newark Chamber of Commerce that the proposal for constitutional revision be not placed on the ballot this fall. The reasons for that were set up in a short three-page report adopted by the Board of the Newark Chamber and those reasons were based upon a preliminary

report made by a Committee of the Board, of which I was Chairman. The Vice-President of the Newark Chamber, I understand, has agreed to furnish your Committee with copies both of the report adopted by the Board and the comments on which that report was founded. Those comments comprise about seventeen typewritten pages and only touch on what might be called typical objections to the draft that is now proposed as illustrating that, in contradiction to Mr. Bilder's remark, not every organization in the State was in favor of constitutional revision.

That question, "Are you in favor of constitutional revision?" can only be answered by first having a definition of what is meant by revision. The Newark Chamber favors many of the proposed changes. The Newark Chamber is opposed to many others. There are many of the changes which are wholly unnecessary in any Constitution because they can be made by act of the Legislature without any constitutional change. The Newark Chamber thinks that it is unwise to include in the Constitution anything that can appropriately be left to the Legislature.

I am not going to take your time, after the long day you have put in on this, by stating all the reasons that actuated the Newark Chamber. I will summarize a few of them very briefly; but before I do that, I want to state one of the reasons in a form not quite that passed on by the Newark Chamber, but in a form which is directed to the comments of the former Senators who spoke this afternoon in favor of the proposed method of submission. The Newark Chamber feels that submission in that form would be a breach of faith with the citizens of the State. I am not going to argue at all on the question of constitutional law. That has been discussed somewhat this afternoon and may have been discussed at great length before you before this. But I am going to first point out that, admitting that the full power of government remains in the people, I wonder if Senators Hendrickson and Jamieson have forgotten what they learned in law school about self-denying ordinances. There isn't any question that all governmental power is lodged in the people of this State, but the people of this State have promised the minority, the people who are not at the moment in the majority, that changes in the Constitution will only be made in a particular way. The proposal to submit in this particular manner is a violation of the spirit of that constitutional self-denying ordinance of the people of this State and it obviously would be a breach of faith to invite a bare majority of the people to delegate to the in-coming Legislature the duty or authority of submitting perhaps next August, not May or June, but as late as next August, a complete revision of the existing Constitution which might be very different because nobody knows what the next Legislature is going to do. It might be very

different from this document that has been under study for the last two or three months.

Without considering whether such a breach of faith would be constitutional or unconstitutional, I just want to point out one logical consequence of assuming that the people of the State can do right away, regardless of what the Constitution says, what Senators Hendrickson and Jamieson said they could do. Suppose on September 28 when the Legislature reconvenes a majority of the Senate and the House decided that they wanted to get rid of the present Governor. It is a logical sequence from what has been said here this afternoon that the Legislature on the 28th could pass an act providing that there be submitted to the voters in the November Election the question, "Shall the Governor be thrown out of office or shall the office of Governor be abolished?" and if a majority of the people voted for it, then, according to their view as expressed this afternoon, the Governor would be out. I think that is a perfectly logical consequence of the attitude that because the people hold all governmental power they have a legitimate right to exercise it in defiance of what they have said was to be a limitation on their own power; that is, a limitation only to the extent that it provides for a delay.

What is the spirit of our constitutonal provision that one Legislature shall submit its view of a change that should be made in the Constitution, whether that change is great or small? After it has been submitted by one Legislature, then a new Legislature is to be elected and that new Legislature must approve the draft approved by the preceding Legislature, and then only after that double approval do the voters think they have to start in and decide for themselves whether they are going to adopt the recommendation of the two successive Legislatures. I am not going to argue that the Legislature couldn't or the two successive Legistures couldn't submit a complete revision of the Constitution. I don't suggest that that would be a violation of our present amending article. That would be a strict and literal compliance both with the spirit and with the letter of the present Constitution, but that would provide that two successive Legislatures must approve the same specific Proposal or Proposals for change.

The Newark Chamber thinks that whatever form of change should be adopted, should be approved by the Legislature, should be submitted in that form. Secondly, the Newark Chamber does not believe that it is wise, that it is good judgment, to submit a complete document in such form that it must be either accepted as a whole or rejected as a whole. There are many provisions in this proposed revision that most everybody would like to see changed as here suggested. But, as one of the speakers this afternoon said, because of one single feature in the Judiciary Article that he discussed at length, if that were left that way, he would

vote against anything and everything else in the proposed submission just because there was one extremely offensive feature in it. There is no earthly, practical reason why those changes that are proposed here that are independent as that one was can't be submitted to a separate vote so that the people who may want to approve in general the principal proposals for change can do so and can reject the features that they don't like. That is in my opinion particularly desirable because if the Legislature will first decide what changes they think are desirable, how many of these proposed changes they think should be adopted, I believe that you will find a great many of them don't need a constitutional revision or even a constitutional amendment to put them into effect. Certainly, it is a fact that a great many of the abuses in State Government which are mentioned in their report are not attributable to anything in our existing Constitution and many of them could not be improved in any way or cured in any way by the particular proposed revision, and just now and a year from now when the Proposal would lay this presumably big document before the people for rejection or adoption, a tremendous proportion of our citizens who are the ones who are going to live longest under such changes as are adopted in the near future will be in a position where they can't vote one way or another. One of the speakers very learnedly referred to the new Federal Absentee Ballot Law. I wonder if he thinks that anyone of our Jersey boys who is over in the Solomon Islands, even if he got a ballot and had a right to mark it and send it back here to Jersey, has any time to think about what is involved. And a year from now we will be, all of us, in my humble opinion, too much occupied with more serious questions than any of those involved in this revision to want to devote the time to study what may be the product of the next Legislature.

I am, as I said, thoroughly in sympathy with many of these proposed changes, but the Newark Chamber agrees with me in the view that they shouldn't be rushed through in the absence of so many voters and that they should be submitted in such form that some of them, those that are independent, can be rejected or approved without being necessarily tied in with features that are perhaps not controversial. And the Newark Chamber agrees with me in the view that two successive Legislatures ought to approve the same identical language before the voters are asked to write that into the fundamental law of the land.

I will read in conclusion the recommendation of the Newark Chamber that preceded the brief one, the summary of the reasons why the pending Proposal should not now be put on the ballot:

"The Newark Chamber recommends that after the proposed changes have been considered in detail, those provisions which seem to have substantial merit should be put in the best possible

form and then submitted in an orderly manner and not too many at one time. Only in that way will there be adequate opportunity for the citizens as a whole to become really acquainted with what they are to pass on."

I might add in confirmation of that conclusion, it seems to me, the remark made by Senator Jamieson this afternoon that not five percent of the lawyers that he had come in contact with had ever read the Proposal. I attended a meeting of the Newark Bar only Monday night, and Assemblyman Cavicchia was there and it was my opinion, after talking with several of them, that not fifty percent of those who turned out at that meeting had read the Proposals. They had read only what had been in the newspaper and some of them hadn't even read many of the newspaper articles about the proposed revision.

MR. CAVICCHIA: Mr. Martin, I am trying to reconcile your admission that political power belongs to the people with your contention that it would be a breach of faith with the people not to pursue the method of amendment provided in the Constitution. I don't reconcile the one with the other.

MR. MARTIN: If all political power is lodged with the people, the people can legitimately say we promise the citizens of this State that we will exercise that power in the change of our fundamental law only in the way specified in that fundamental law.

MR. CAVICCHIA: You mean the people of 1844?

MR. MARTIN: The people of 1844 wrote into their Constitution a self-denying ordinance when they provided it should be amended only in the way specified. In a constitutional sense, that perhaps doesn't bind the people of later years, but the people, the citizens of this State, have lived these ninety-eight years under the belief that they were protected from sudden change in the fundamental law by that provision, and from a purely legalistic point of view, regardless of whether the Legislature, with or without a referendum, can override that provision or can evade it in the method proposed, regardless of whether they can do that or can't, it would be a breach of faith with the people of the State who have during all these years relied on the supposed protection of the present amending clause of the Constitution against unexpected changes, and I would go further and say that it was a breach of faith with the people of the country when the present United States Supreme Court, on legalistic fine-spun arguments, threw out of the window several constitutional beliefs that had been held by a majority of the people of this country for a great many years, and that they thought they were protected by. I say it was a breach of faith with the people of the country to make that change, and regardless of whether our courts would hold it constitutional or not, I say it would be a similar breach of faith if the Government of New Jersey attempted to make a change in a way that the people

did not expect and that would not be approved, so far as the minority were concerned, by a mere referendum that did not tell them what they were going to be asked to pass on, that merely left it a blank check for the next incoming Legislature.

MR. CAVICCHIA: Aren't you actually reading into the Constitution something that was never intended? Let me call your attention to what Chief Justice Hornblower said in the Constitutional Convention of 1844, when this question was being debated on the floor of the convention. In reply to a pointed question from a fellow delegate, he said that if the rule that the adoption of one mode of amendments excludes all others, it is entirely at war with the article in our Bill of Rights that we have made so much a parade about, that the people are sovereign and may change their form of government when they choose. As I read the reports of the Constitutional Convention of 1844, this very question engaged the delegates' attention. They debated whether to include in the Constitution a provision for revision by a mode other than amendment. Now, if you call it a breach of faith, I would say that in denying the people the right to pass upon this question, the Legislature would be depriving the people of the instance of expressing, through the accepted democratic process, their political power. Don't you see that point?

MR. MARTIN: I see that point, and my answer to that is the little parable that I started with. If that is so, then this Legislature on the 28th can submit to the people an act to abolish the office of Governor forthwith, and if the people should happen to vote it in November, the office of Governor would be out. Would you say that that is within the purview of the rights that are preserved to the people?

MR. CAVICCHIA: I would answer you by saying if sovereignty has expressed itself, it has become an act of sovereignty. The point I am trying to drive home is that actually the intention behind this amending clause was not to limit the means of revision; the intention behind this amending clause was that it should be a check upon the power of the Legislature or the Government itself to make or to initiate revision.

MR. MARTIN: Well, if that is so, which I don't want you to understand I concede, does it follow that the people, by voting that they would like to have a new Constitution submitted to them, the people have thereby delegated to the Legislature the power to provide a brand new Constitution that may be, on your hypothesis, entirely different from anything in here, that they would thereby have delegated to the Legislature the power to submit next August or perhaps even September, if the election laws permitted, a complete document for the people to absorb and reject, or not, in the following November.

MR. CAVICCHIA: The people don't have to ratify it if it doesn't meet with their approval.

MR. MARTIN: No, but do you think that it would give them any reasonable opportunity to decide whether they approved it or not, under those circumstances?

MR. CAVICCHIA: That is up to the people to decide at the time they are voting on the preliminary question, it seems to me.

MR. MARTIN: Admitting that, still it remains that it is a breach of faith with those people who have believed that the provision in the Constitution for amendment means what it says or means what it appears to say. If you think it doesn't mean what the rest of us think it appears to say and you contend that it says something different, still a large part of the people of this State have relied on what they supposed was the meaning of the present amending clause, and I say that regardless of the legalistic point of view, it is a breach of faith with them to have a change in their fundamental law submitted by one Legislature perhaps two months before election, or three months before election, for consideration, when they have supposed that they would have a complete document of any change, a complete documentation of any proposed change, before them for at least a year before they would have to vote on it.

MR. SCHROEDER: Any other questions?

MR. CAVICCHIA: Just one more question. You will recall that for a period of ninety years there was one interpretation of the amending clause, that no amendment could be submitted to the electorate but once every five years. Then our present Attorney General, by an opinion rendered, revolutionized the construction. Would you say that was a breach of faith, under your reasoning, with the people if they had for years been led to believe that no amendment could be submitted but once in five years?

MR. MARTIN: Well, in the first place, you are talking about an interpretation of what is a much more doubtful feature of the amending clause, and in the second place, you are talking about an interpretation placed on it by the Attorney General. Neither the courts nor the Legislature have accepted the Attorney General's amended opinion.

MR. SCHROEDER: The next speaker will be Mr. Manuel Cantor.

MR. CANTOR: Mr. Chairman, at the outset of these hearings the Communist Party expressed the conviction that the time was most favorable for the accomplishment of this very important undertaking—that of scrapping the outmoded and undemocratic New Jersey Constitution and of forging a modern, truly democratic instrument of State Government in its stead.

The democratic peoples of the world are leagued together for the gigantic task of repelling the forces of fascism which threaten

to wipe out all freedom and democracy. Since our first session here the leaders of these democratic peoples have spoken solemn words and entered into lasting pacts and agreements which lend heavy emphasis to the liberating character of this people's war and which open new horizons for the growth and expansion of democracy.

For our country to survive the onslaught of the mighty and evil powers which assail us, the broadest and deepest unity of all our people is of the utmost importance. The failure to remove the barriers which engender confusions and doubts and create frictions and disunity plays directly into the hands of the enemy. Examples in point are the poll-tax and lynching. One of the prime reasons for the persistence of these shameful practices is the blind, calloused, politics-as-usual attitude of too many men in public office. The present Congress is giving us another sorry example of such indifference to the vital interests of the country and people.

The handling of the whole question of constitutional revision by the New Jersey Legislature smacks not a little of this politics-as-usual approach. Considering this fact and within the limits set by the act creating it, your committee has done what is in our opinion an excellent job. These hearings, conducted in a serious and constructive manner, have provided opportunity for free expression of conflicting opinions and points of view. Yet in the most emphatic way, the hearings have made absolutely clear that the overwhelming majority of the people of New Jersey desire a thorough overhauling of our Constitution. The claim by a certain few that the people at large are not concerned with the problem is proven absolutely without foundation. Certainly thousands of individual citizens have not stormed these chambers. They are busy fighting for democracy on other fronts. But legitimate representatives of hundreds of thousands have here given voice to the unquestionable will of the great majority of the people.

In the face of these facts we are disturbed lest this Committee, by drawing out its deliberations and by indecisive recommendations to the Legislature, also may slip into the swamp of politics-as-usual and thereby obviate the positive value of these months of discussion.

Our position on the Report of the Commission on Revision has been made clear throughout the hearings. We seek to help secure for our State such a Constitution as will provide the most democratic forms whereby the will of the people of New Jersey can be carried out. With this criterion, we have no reason at this point to revise the opinions we have expressed. Those additional proposals which would further the objective, we heartily endorse.

One all-important question remains. How shall a new or revised Constitution be adopted? We state again our conviction that the most effective and truly democratic method is a Constitu-

tional Convention. It is abundantly clear that there is a powerful albeit numerically insignificant opposition to such a method. Short of this, what other way? We propose that this Committee, having ascertained "the sentiments of the people on the various Proposals and recommendations for changes in the Constitution," now submit as its report to the Legislature in effect a new draft incorporating the Proposals made here by the representatives of the people. If necessary, a special session of the Legislature can be convened to consider this important question. If your Committee and the Legislature undertake the matter with the dispatch and sense of urgency displayed in the past over much less vital questions, the proposition could and we think should be submitted to the people at the November elections, that the Legislature submit the new Constitution for a referendum at a special election within three months thereafter.

We would add one final recommendation, that the Legislature make possible the widest distribution of the new document amongst the citizenry.

Your Committee now has both the opportunity and the grave responsibility of rendering a report which can be a landmark in the history of New Jersey. The Communist Party of New Jersey expresses the hope that you will fulfill this responsibility with honor.

MR. SCHROEDER: The next speaker will be Mr. John Bebout.

MR. BEBOUT: Mr. Chairman, I am speaking in support of this method of revision this evening because from time to time during the preceding hearings and out-of-doors also, as they used to say in 1844, I have heard statements made which led me to think that there is still a good deal of doubt, I believe quite unwarranted but nevertheless real, in the minds of a good many sincere people about the constitutional right of the Legislature to pursue this course.

The next to the last speaker made a point which I would like to have him reconsider. It seems to me that the point he made boiled down to this, that people of the State or a minority of the people of the State perhaps have in effect acquired a vested or constitutional right in an erroneous interpretation of the Constitution and that because they have labored under that erroneous interpretation of the Constitution all these years, we are estopped from proceeding to operate on the correct interpretation of the Constitution.

The only provision in our present Constitution for making changes is to be found in Article IX. Article IX, if it is carefully read, suggests very clearly that it was not intended to provide the only method by which the Constitution could be altered. In fact, the use of the language "any specific amendment or amendments . . . may be proposed in the Senate or General Assembly

. . . " would suggest that the purpose is to provide in this Article not for a general revision but for alterations of detail. This interpretation is strengthened by the last part of the Article which provides that such amendments must be submitted in such a way "that the people may vote for, or against each amendment separately and distinctly . . . " Such a requirement imposes a very serious handicap on extensive constitutional revision by the amending process. An illustration is to be found in the experience of the State with the amendment submitted to the people in 1927 for the extension of the terms of the Legislature and Governor. After the amendment had been passed by two successive Legislatures, it was pointed out that embarrassment might result from the elimination of the annual elections of Assemblymen because of unaltered provisions in Article VII, Section II, for the election of County Clerks, Surrogates, Sheriffs, and Coroners "at the annual elections for members of the General Assembly." Since Clerks and Surrogates have five-year terms and Sheriffs and Coroners three-year terms, it is apparent that the elimination of annual elections for the General Assembly would have caused legal difficulties. The Newark Evening News called attention to this situation as constituting a valid objection to the adoption of the amendment. The News added that "Republican members of the Legislature were aware of the possible clash of constitutional provisions when the amendment was pending, but they stated the situation could be met by making early changes in the Constitution in case the time limitation amendment should be adopted." This was obviously a lame answer, especially in view of the fact that no one could be sure that "the time-limitation amendment," an amendment to permit the submission of proposed constitutional changes more often than once in five years, would be passed even if the others were. In fact, the answer only tends to emphasize the unsatisfactory nature of the process of piecemeal amendment of the Constitution in important respects.

By the way, I am partly reading this and part is extemporaneous. The part I am reading is not plagiarized; I am reading from an article written by myself and a collaborator, Mr. Julius Kass, counsellor at law, of Perth Amboy, who, by the way, is now in service and is one of many now in service who have played a very important part in the last few years in developing this program of constitutional revision and pushing for its adoption.

We went on to point out that only a convention charged with responsibility for constitutional revision can be expected to give the document the thorough scrutiny required when important or far reaching changes are contemplated. It is equally clear that submission of specific amendments in such a way that the people can vote for or against each one separately runs the risk of producing a chaotic if not a completely unworkable result. Professor Erdman has called attention to another objection to the legislative

proposal of specific amendments by showing that in the special elections of 1875, 1890, 1915, and 1927 the electorate showed its inability to distinguish between separate amendments on unrelated subjects; and thus either accepted questionable amendments indiscriminately with non-controversial ones, or rejected non-controversial ones because of objection to others. An amusing illustration of this weakness is to be seen in the fact that both in 1890 and in 1927 the voters rejected an amendment to eliminate the obsolete provision in Article VII of the Constitution for the election of judges of the Court of Common Pleas by the Legislature. Because of such considerations, the recognized authorities make a clear distinction between the functions of amendment and revision, and point out the superiority of the convention for the purpose of revision.

Let me point out here that when I use the word "convention," I use it advisedly and quite appropriately, as applying to the method we are now advocating, because, in effect, if the Legislature submits this question which we are asking to the people this Fall, and the people direct the next Legislature to submit a Revised Constitution a year hence, the people will by that act have directed and, in effect, elected the next Legislature as a constitutional convention and the constitutionality of this procedure therefore rests squarely on the same fundamental basis on the constitutionality of a constitutional convention.

It should also be borne in mind that of the twelve States without provision for a constitutional convention, New Jersey and Massachusetts are the only ones in which the amending clause makes use of the words "specific amendment." In other words, the argument for a constitutional convention as the appropriate instrument for a general revision is stronger in New Jersey than in most other States lacking provision for a constitutional convention, and if you will consult the authorities, the authorities all agree that constitutional conventions are constitutional in all of those other States. If the question were ever raised, a strict construction of the language of the Constitution would indeed limit the application of Article IX to specific amendments. It may, therefore, some time develop that a convention is the only method available to the people of New Jersey for a general revision.

As Professor Erdman showed, the amending clause of the New Jersey Constitution was based on that of the Pennsylvania document of 1838. Moreover, the clause in the "Declaration of Rights" in the Pennsylvania Constitution, corresponding to Article I, Section II, of the New Jersey Constitution, affirms the "Inalienable and indefeasible right" (of the people) "to alter, reform, or abolish their Government in such manner as they may think proper." The opinion of the Supreme Court of Pennsylvania, declaring that a

constitutional convention in Pennsylvania was constitutional, should therefore have great weight in this State.

The Pennsylvania court said: "The calling of a convention and regulating its action by law is not forbidden in the Constitution. It is a conceded manner through which the people may exercise the right reserved in the Bill of Rights. It falls, therefore, within the protection of the Bill of Rights as a very manner in which the people may proceed to amend their Constitution . . ."

This argument is rendered even stronger in New Jersey by reason of the only significant difference between the amending clause in the Pennsylvania Constitution and that in the New Jersey Constitution; namely, the insertion before the word "amendment" of the qualifying word "specific" in the New Jersey document, despite its absence in the Pennsylvania Constitution.

Well, now, somebody will come and say—in fact, it has been said once or twice in these hearings—that we have very learned opinions in New Jersey to the effect that a constitutional convention would be unconstitutional in New Jersey. Two opinions that are always cited are an opinion by Attorney General Edmund Wilson and one by the late Justice Van Syckel, the latter an essay written and published in the New Jersey Law Journal. Lest there be any lingering belief in the legal soundness of either of those opinions, I am going to analyze them very briefly. The opinions of both Van Syckel and Wilson are largely based upon an advisory opinion of the Rhode Island Supreme Court delivered in 1883. In 1935, however, that advisory opinion was repudiated by the Rhode Island Supreme Court in another advisory opinion, which, by the way, might well be accepted as about the last word or the "Bible" on the constitutionality of the constitutional convention or the equivalent.

The Rhode Island Supreme Court, inter alia, refused to follow the earlier decision and called attention to the fact that that opinion had been delivered only six days after it had been requested. The court then continued: "The whole opinion indicates that it was ill-considered and hastily prepared. It is not only not binding on us as a precedent, but is also entitled to little or no weight, in spite of the ability and character of the men who joined in it."

If that was a valid criticism of the earlier advisory opinions in Rhode Island, the same criticism can, with more force, be leveled at the opinion of Attorney General Wilson, one man. The request for an opinion came from Emerson Richards, then a member of the House of Assembly, and by the way, not qualified under the law particularly to require an opinion from the Attorney General, on February 4, 1913. The very next day the Attorney General responded in a lengthy opinion which attempted to cover the subject in all its phases, a very remarkable effort.

Attorney General Wilson's reasons for holding the proposed

convention unconstitutional boil down to the proposition that since the Constitution does provide a method of amendment, no other method of constitutional change is permissible. He attempted to support this idea, first, by the unfounded claim that the exclusive character of the amending process had never been seriously questioned in this State, and, second, by a citation of cases from other jurisdictions.

Let us examine the cases upon which he relied. As we have already pointed out, the Rhode Island case upon which the Attorney General principally relied has since been overruled. Moreover, the case has never been followed by the courts of any other State. The opinion of Wilson also rested heavily upon an opinion of Chief Justice Shaw of Massachusetts. An analysis of that case shows that its holding cannot be construed in the manner that Wilson attempted. The Constitution of Massachusetts provided a mode by which "specific and particular amendments" might be made through the legislative method. The question put to the judges was whether "any specific and particular amendment or amendments could be made in any other manner than that provided in the Constitution." It is obvious that a negative answer to this question does not determine the validity of a general revision by convention. This opinion is directly in line with the holdings of other cases which we shall later discuss. The most recent opinion of the Rhode Island Court said of it: "We are fully convinced that the Massachusetts opinion does not support in the slightest degree the opinion of our judges." It should be noted furthermore, that a convention was called by the Legislature of Massachusetts in 1853, twenty years after the Shaw opinion, and a Constitution was prepared and submitted to the people of Massachusetts by that convention.

Wilson also relied upon the cases of *Koehler and Lange* v. *Hill*, *State* v. *Powell*, and *Ellingham* v. *Dye*. However, a careful analysis of these cases shows that they also do not justify the conclusion of Mr. Wilson.

The case of *Koehler and Lange* v. *Hill* involved the question of whether an amendment could be validly adopted without complying fully with the provisions of the amending clause. The court necessarily held that it could not; but this decision has no bearing on the validity of a convention. The Koehler case was based upon an earlier decision of the Alabama court in *Collier* v. *Frierson*, wherein the same question was at issue. The Alabama Constitution contained a declaration of rights similar to that contained in Article I, Section II of the New Jersey Constitution. There also was no reference to a convention in the Constitution. The court said: "The Constitution can be amended in but two ways; either by the people who originally framed it, or in the mode prescribed by the instrument itself . . . We entertain no doubt that to change the

Constitution in any other mode than by a convention, every requisite that is demanded by the instrument itself must be observed and that the omission of any one is fatal to the amendment." The holding in the Powell case was similar to that in the Koehler case, and also does not bear on the legality of a convention.

In the Indiana case of *Ellingham* v. *Dye*, the court, holding that the Legislature could not on its own initiative frame and submit a new Constitution, enjoined the officials from submitting a series of amendments which amounted to a new Constitution. The Indiana Constitution included no provision for a convention, but contained a provision with reference to rights and priviliges similar to the one contained in our Article I, Section II. The court said: "On the other hand, the long established usage has settled the principle that a general grant of legislative power carries with it the authority to call conventions for the amendment or revision of the Constitution; and even where the only method provided in the Constitution for its own modification is by legislative submission of amendments, the better doctrine seems to be that such provisions, unless in terms restrictive, are permissive only and do not preclude the calling of a constitutional convention under the implied power of the legislative department."

Mr. Wilson's own authorities thus turn out upon examination to be against him. They appear to be not only not for him but squarely against him, and no legal opinion based on such a flimsy or rather erroneous citation of cases should be given any weight at this late date.

Let us just examine for a moment this question of the reasons for the distinction between the safeguards thrown around the amending processes and the lack of specific provisions concerning convention. In order to have a constitutional convention, you automatically must have a whole series of events which result in a considerable amount of deliberation and delay, which are at least the equivalent, as far as getting the matter before the public is concerned, of the provisions for deliberation and delay put in our Constitution concerning amendments, and as far as the particular method of revision which we are now supporting is concerned, it involves considerably more in the way of deliberation, study and delay than was had, for example, in connection with the last amendment which was attached to the Constitution of the State. This matter has been under agitation now for at least a year and a half. We have had a commission which has in the full light of publicity made an extensive study and report which has been under discussion all summer. We now propose, not that the Report of that Commission be submitted for adoption or rejection by the people this Fall, but that the people, in the light of this background, say whether or not they want to proceed further with this project for revision of the Constitution by directing the

Legislature or not, as they see fit, to submit a revised Constitution a year hence. In other words, the proceeding is more protracted from beginning to end than that involved in the adoption of a specific amendment. It has involved a great deal more study and a great deal more popular participation and deliberation. There can therefore be no conceivable breach of faith, let alone any breach of law, in proceeding with this matter.

Now, just one more point that I want to make, and that is this: That if, as Chief Justice Hornblower insisted, Article I, Section II really means something in the way of guaranteeing the inherent right of the people to institute, alter and reform their Government as the public good may require it, then it must follow that somebody has an obligation from time to time to assist the people in implementing and exercising that right. Now, admittedly, there is always in the last resort the right of revolution, the right of the people to take a matter in their own hands, if their established or constituted representative authorities refuse to act in their interests, but let's not assume any such unfortunate or untoward development. Where there is a right, there must be a duty to perform or to assist in the performance or in the limitation of that right, and that duty obviously rests very squarely on the constituted authorities of the State and more particularly upon the Legislature of the State.

Governor Haines invoked that doctrine of duty way back in 1844, when he advised the Legislature of that year to call a constitutional convention. I would like to read you a brief extract from Governor Haines' message:

> "You will allow me to remind you that the formation or alteration of the fundamental law of a State is the province of the people in their highest sovereign capacity, and not the duty of the Legislature, who are delegated to act in obedience to that fundamental law. The same voice that asks a change of the Constitution asks that change through the medium of a convention; and instructs us to fix by law the time, place, and manner of forming it. A law . . . calling a convention of a suitable number of delegates at as short a time and little expense as the importance of the measure will justify, I believe to be both proper and necessary. If the will of the people has been misunderstood, they can so express it by instruction to their delegates."

In view of the very formidable expression of opinion by accredited delegates and representatives of, as somebody has said, many thousands of people of this State, I should suppose that the Legislature would feel that they had better, lest they run the risk of neglecting a constitutional duty, put this question squarely up to the people, shall this matter be proceeded with further or

not? The Legislature certainly has no duty not to do it, in view of the historically correct interpretation of the amending clause of the Constitution, and the universal agreement among students of constitutional revision that there is a fundamental distinction between revision and amendment, and that amending clauses don't relate in any way to the implementation of the basic right of the people to alter or reform their government whenever the public good may require it.

MR. SCHROEDER: The next speaker will be Mr. R. Robinson Chance representing the Manufacturers Association of New Jersey.

MR. CHANCE: Mr. Chairman and Members of the Committee: This meeting has been stated to be a meeting on the proposed methods of submission of constitutional changes to the electorate. Before I had heard any of the speakers of the day, I had put down in an outline here what I thought about the matter, so I shall first direct my attention to the things that I particularly put down and then I shall direct my attention to some of the remarks which have been made here about revolution and other things.

It is assumed that no detailed discussion is necessary as to the manner provided by Article IX of the present Constitution. The requirement of that Article that if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly, is well known and understood; so also are the provisions requiring the concurrence of a majority of the members elected to each of both houses in two consecutive Legislatures. And the other details of Article IX are equally plain. Accordingly the method of submission specified in Article IX of the present Constitution is passed without further comment.

The method provided by Article IX of the draft of the Proposed Revision annexed to the Commission's Report is also passed. I think of nothing to add to what was said when that particular Article was the subject of discussion at a prior hearing.

The next matter that comes to mind is the method of submission proposed by the Commission in its Report. That contemplated that the Legislature at the primary election to be held in September request authority from the people to submit a revised Constitution at the general election in November, 1942. Very obviously this Proposal cannot be followed because the primary election is past. However, the general theory which lay back of this Proposal persists in some quarters and a new proposal of method, based upon the same theory, is now suggested by some proponents of change.

The new suggestion seems to be that the Legislature pass a law to place upon the ballot at the general election in November, 1942, some general question as to whether the Legislature shall

submit constitutional changes to the electorate at the general election in 1943.

This method seems to contemplate that Article IX of the present Constitution can be disregarded as to its requirement that submission of changes should be at a special election, rather than a general election, and that the proposed changes would not have to be adopted by two separate Legislatures, provided the people at the general election in 1942 vote that the Legislature shall take the necessary steps to bring about submission at the general election in 1943.

In approaching this Proposal it is not my purpose further to discuss the constitutional validity of following a different method of submission to the electorate than that provided in the present Constitution. When Article IX of the draft proposed by the Revision Commission was under discussion, I referred to authorities citing divergent views on that subject. Among them was the opinion of the former Attorney General of this State, Honorable Edmund Wilson, to the effect that the Constitution could be changed only in the method prescribed in the present Article IX.

Aside from any question of constitutional validity is the question of desirability of the suggested course of action. The suggestion that I have heard, and I have heard it again today, would have a general question submitted at the November, 1942, election which (without expressly saying so) would be open to the interpretation that the Legislature shall propose changes in the form of a revision for a submission on an all or none basis, as distinguished from specific amendments to be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly. I have already stated in previous hearings that there is substantial ground for opposition to any submission of separate matters on other than a separate basis. Placing on the ballot at any time of any question which if answered affirmatively might be capable of the interpretation that the Legislature should propose a total revision on an all or none basis is open to the same objections. The reason for this view is not any unwillingness to be guided by what a majority of the people want, but because such form of question would lend itself to be a result which proponents of revision might want, but which those voting in the affirmative might not really desire. The distinction between general revision and specific amendment and the consequences which may result from the use of one or the other method of change is not recognized by some, and not understood by others. Many might understand the general question as to whether a revision should be submitted, to mean whether a change was desired without regard to whether the change would be brought about by a general revision or specific amendment. Thus it might result that an affirmative vote could be used by proponents as

indicating that a complete revision is desired, whereas if the distinction were clear, no such result would be desired.

The submission of a general question as to whether the Legislature should propose a revision would seem like an effort to commit the voters and the Legislature to a revision in advance of knowledge as to what changes in the Constitution would later be submitted. Until it is definitely indicated what changes are to be offered, the submission of a general question would seem much like asking the people to buy "a pig in a poke." Whether some people would or should want a change in the Constitution undoubtedly depends upon what change will be offered.

Now, to speak from personal experience, I am a pretty easy victim for book agents. If they come in with a book, I am pretty apt to buy it if I have the change on hand at the time; but if someone comes in to me and says, "Do you want to buy a book?" before I say, "Yes" or before I say "No," I say "What book?" Likewise when they come to me and say, "Do you want a constitutional change?" before I say, "Yes" or, "No," I make the same inquiry, "What change?"

As the suggestion of placing this question on the ballot, if followed, would inevitably entail action in disregard of the present Article IX of the Constitution, I should like to comment briefly upon the supposed foundation of the theory that the suggested procedure would be proper. As I understand it, the argument is that Article I, Paragraph 2, of the present Constitution provides that all political power is inherent in the people and that the people have the right at all times to alter or reform their government whenever the public good may require it. Now if it be assumed that this provision be warrant for disregarding Article IX relating to amendments, there is still the question who are "the people" to whom the Bill of Rights refers? Have any less than a majority of the people, or at least a majority of those authorized to vote, any right to call themselves "we, the people" of 1943 or 1942?

Suppose the suggested course be followed and at the general election in 1943 a revision on an all or none basis be submitted to the people; suppose further that less than a majority of all those authorized to vote (even if the majority of those voting) should vote in favor of the proposed changes. Would those changes legally be adopted despite the fact that a majority of those authorized to vote did not vote in favor of the changes? Would men who are absent in the armed service of the country whose opportunity to vote is curtailed and whose attention is now otherwise engaged be bound by a minority of the State's electorate? Suppose that on the question of change in the Constitution only 45 percent of the qualified voters voted, and that of that 45 percent only a majority voted in favor of the change, the result would be

that a minority consisting of about 23 percent of the electorate would have voted for a change. Would that 23 percent of the electorate be "the people" referred to in the Bill of Rights? Or should it be said that if the mentioned provision of the Bill of Rights permits a change in the Constitution in other ways than as provided in Article IX, an affirmative vote of a majority of all authorized to vote should be required?

We have heard a great deal of talk here about how the minority have relied upon certain things being in the Constitution and it has been answered that this is a country of majority rule or words to that effect. If they propose to accomplish this peaceful revolution, so to speak, of having "we, the people" do something, would it not be an appropriate thing to say that when such a question was put on, if it were put on, that it should also be said as a part of the same proposition that it would require a majority of the people to make an adoption of a Constitution pursuant to that section which says "we, the people" have the right to change?

Passing for a moment to what has been said here that is not in my manuscript, I shall not waste much time about whether a convention is a good thing or whether a convention is legal or whether a convention is illegal because at a previous hearing I expressed reasons why I think that you cannot get the Legislature to vote in favor of a constitutional convention. Not only do you have to have these debates and deliberations which one of the gentleman spoke about, but you have to get the votes from Cape May and Sussex and a few other places. I pass the question of constitutional convention as something which I believe it is impossible to get the votes for.

As to what Mr. Thayer Martin said about how the boys in the Solomon Islands had their attention on something else so that they couldn't vote for the thing, I will go one better than that. I read a United Press Dispatch that I took from one of the papers a few days ago which says:

> "Secretary Knox told a press conference today that sending ballots to troops overseas was 'utterly impracticable' for two reasons.
>
> The first factor is that of security. Knox said to send ballots overseas would disclose to a large number of people what units were abroad and would 'to a shrewd enemy reveal the exact makeup of each force.'
>
> The second factor, Mr. Knox said, is that of transportation. To send the ballots by ship would be too slow, and there would not be room aboard the transport planes for the thousands of ballots necessary."

So, not only do they have their attention so directed that they won't be able to think about it if they get it, but they won't even get the ballots according to that idea. So we are going to vote something for them that they are not to be consulted about.

As to the suggestion made by the representative of the ladies that the revision draft, as is, is superior to the present Constitution, I say no more except that you have heard what everybody says about a little change here, there, and this, that and the other correction, including those suggested by the League of Women Voters on that. I don't know whether or not this is superior. It may be you can get up one that is superior to this. I have no doubt that you can, but this one I am not free to admit is anything superior to the existing Constitution.

One of the speakers suggested that you circulate copies of whatever revision there is so that it will be free for the people to see what it is is proposed. I suggest that you send along with it a copy of the present Constitution because when I have heard some of the criticisms about the present Constitution, I wondered if the critics had read the present Constitution.

I noticed that Professor Bebout spoke about that case out in Indiana about how something happened out there. I think perhaps it would be a proper supplement to say that what happened in Indiana was they passed a Constitution and voted to place upon the ballot a complete Constitution. Somebody went and got an injunction to prevent the Secretary of State from ever advertising the thing. The State Court did enjoin the Secretary of State from ever advertising it. The Secretary of State took it to the United States Supreme Court and the United States Supreme Court in *Marshall* v. *Dye* in 58 Lawyer's Edition, 2060, indicated that it had no jurisdiction over the matter, so I suppose the final question, if this ever gets into litigation, will be what the Court of Errors and Appeals of New Jersey says as to the legality or the propriety of the method which you have adopted in doing any particular thing which is a departure from the method set out in Article IX, and if they ever get to the Supreme Court of the United States from any ruling of the Court of Errors and Appeals, while I am rather slow about prophesying, I would prophesy that the United States Supreme Court would throw that out for lack of jurisdiction.

I was well struck by one word of Mr. Cantor about forging a Constitution or forging some kind of a document, and I thought that forging was a very good word. If you would have some vote of the people supposedly carrying out this peaceful revolution pursuant to the first article, the Bill of Rights, and you provided that anything less than a majority of the authorized voters were to accomplish that peaceful revolution, it would seem to me that forging the people's will would be a very good expression to use in that connection.

Let us see here what our Chairman of the Commission says.

He says something about how they think this is a political question. I think that I won't talk about that any more. I have told you that I think the United States Supreme Court will say it is a political question if the Court of Errors and Appeals ever decides that this method that is proposed or suggested is not in accordance with constitutional law in New Jersey. Then the United States Supreme Court will say it is a political question all right and they have no jurisdiction. Oh, I don't think I will say anything more about what the Chairman of the Commission said.

Another thing, we had this morning the honor and distinction of having had in our gathering His Excellency, the Governor of this State. By a peculiar coincidence just a few days ago I looked at a document or a book that goes even further back than this 1844 Constitution we have been talking about. I looked at three Coke's Institutes and I was interested to come across a provision in there which said that they had a crime in the old days and that crime was flattery and in connection with that subject Coke said—I think he quoted from Proverbs—but anyhow he says somewhere that more kingdoms fall by flattery than by force. Consequently under the old common law it was even made a crime to flatter the powers that be. Now I don't know just what became of that common law crime, but I am sure if by any chance that still prevails, I don't want to be accused of being guilty of it, so I shall not hesitate to speak with regard to some of the things which were said by His Excellency. I have no doubt that he would concede to me freedom of opinion on the matter; if not, he isn't as big a man as I think he is. Anyhow, whatever the fact may be about that, I am going to comment about his remarks. We heard 1844 a good many times through the course of the remarks so that I think we are all quite certain by now that 1844 was when the Constitution was adopted. There was comment about how all the Governors through these times had spoken about the desirability of having a constitutional convention. Well, history teaches, and the lesson that we can gather from history in this connection is that all of the rest of the governors to the contrary notwithstanding didn't get their constitutional convention. So the lesson that I get from this is that the governors can talk about constitutional conventions and keep on talking about them, but they don't get them and I don't think you are going to get one now.

There was also the challenge that if those who are opponents are sincere, they will join in the endeavor to get upon the ballot a certain question. Of course, it is easy to challenge and I will make a challenge. I will challenge that if anybody puts on any ballot any time the proposition that you revise this Constitution or that you amend it, either way, you cannot get a majority of the authorized voters of the State to vote in favor of the change, whether it be revision or amendment, and it is questionable if you

will get the majority of the voters out to vote on the thing at all. But if you do not get that majority of the people or majority of the voters, how can people stand up here and conscientiously and sincerely say that a majority rule is what we want and it is too bad if the minority that Mr. Martin was talking about had some different idea. If you don't get the majority, how can you say that the minority is "the people" pursuant to this Bill of Rights provision.

Let us see what the question was that His Excellency gave us: Shall the 1943, 167th Legislature, be directed to submit for the peoples' adoption or rejection at the 1943 general election a revised Constitution, altered or revised as the Legislature deems the public good requires? That is a question which it seems to me is open to the same objection that I made when I spoke about the fact that the people as a whole do not recognize the distinction between amendment and revision. I have no doubt that if you put that on the ballot, a lot of people would vote yes. They would want that, not with the idea that a revised Constitution meant something on an all or none basis, but simply with the idea that they wanted a change. Let us look again at this resolution under which your honorable body is sitting. Here is what I find: It is the duty of the Joint Commission to hold public hearings to ascertain the sentiment of the people of the State—here is the first one—as to the various proposals and recommendation made by the said Commission in its Report. Well, you have been getting that a whole lot. The next one is to ascertain also the sentiment of the people of the State as to whether or not they desire the fundamental law of the State to be changed. You are not asked to determine whether it shall be revised or not, but whether it shall be changed, and I guess everybody is going to vote for that if you put the proposition up whether it should be changed because I think, I know I have said some things that were all right for change, so that really it seems like a superfluous performance if you are going to ask them whether they want it changed or not because everybody here wants some change apparently. At the other part in Section V of this resolution, you are to report to the Legislature the result thereof to the end that the Legislature may be informed: first, of the public sentiment of the State as to the various proposals for changes in the fundamental law of the State made in the said Report of the Commission; and, next, in the course of said hearings, meaning of course the various proposals for change. So there isn't anything in that resolution that makes any duty on your part to submit any question of whether there would be revision as distinguished from change.

I think that that is all that I will say with respect to the comments of the gentlemen who have spoken that I didn't get on my notes.

In the course of the discussions here, the enthusiasm of the debate or something else may have led me a little bit astray and I might have departed from what I should have said, but to make it clear beyond peradventure as to just what the President of the Manufacturers Association thinks about the situation. I should like to submit a statement signed by Mr. Henry W. Johnson, President, which reads as follows:

Statement on Constitutional Revision on behalf of Henry W. Johnson, president of Manufacturers Association of New Jersey.

The Manufacturers Association of New Jersey is not and never has been opposed to any change in our State Constitution where sound progress and the general welfare indicate such change to be desirable.

Through our Attorney, Mr. R. Robinson Chance, there have been presented to the Joint Legislative Committee many arguments on the several articles of the Proposed Revision of the State Constitution as unanimously recommended by the Commission on Revision of the New Jersey Constitution for immediate submission as a whole to the people. These arguments were presented for the sole purpose of aiding the Committee in arriving at a full understanding of all the important matters involved in the Revision Proposal. There have been expressions of agreement on some parts as well as expressions in opposition to other parts.

It is believed that the hearings have demonstrated by overwhelming weight of arguments submitted that there are many serious defects in the Revision Proposal as it was recommended by the Revision Commission. These defects make it imperative that clarification, modification, or deletion of sections and articles be considered before the Revision Proposal can properly be submitted to direct public expression by referendum vote.

It is felt that the arguments and facts advanced at the public hearings render it imperative that the whole subject should be given further study and that the Joint Legislative Committee should be continued in its jurisdiction over the matter. It is urged that haste be made slowly in so vital a matter as the revision of our constitutional charter of liberties and delegated powers.

It is desired to emphasize our Attorney's arguments concerning the proposal to submit as a whole, at any General Election, an entirely re-written and revised State Constitution. We raise the point that such a procedure is of questionable fairness to the people as a whole and to the proponents or opponents of any whole new document which it is conceivable could be written. Submission as a whole means that our people might be compelled to accept those parts which they regard as bad in order to attain those parts which are, in their opinion, regarded as good. On the legal validity aspects of any submission of a new Constitution as a whole our attorney is directed to ask leave to file with the Joint Legislative Committee a complete photostatic copy of an opinion rendered on February 5, 1913, by the then Attorney General of New Jersey, Honorable Edmund Wilson, and to urge that the Committee and all members of the Legislature should give careful study thereto. It is further recommended that the Committee should request and receive from the present Attorney General of New Jersey, Honorable David Wilentz, his opinion as to the legality and validity of any submission as a whole, of any new Constitution, at any General Election.

In conclusion it is desired to repeat that the Trustees, Officers or Members of the Manufacturers Association of New Jersey have not authorized anyone to go on record on their behalf as finally for or against the Proposed Revision and they do not intend to go on record until the Legislature of New Jersey, as the constitutionally authorized agency for submission of amendments to the Constitution, has finally determined, in view of the public discussions which have recently been held, the nature and character of changes to be put before all the people of the State.

Henry W. Johnson, President,
Manufacturers Association of New Jersey.

I ask permission to file the signed copy of Mr. Johnson's statement. I also ask leave to file the photostatic copy of the Attorney General's Report.

With respect to this, incidentally, I may mention that one of the gentlemen said that it was dated February 5 in response to a note of February 4. I don't think that that makes a whole lot of difference because I have no doubt that between the time that this idea of getting the Attorney General's opinion and the submission of the same was under consideration there had been a lot of thought about the thing before the actual request came out; and when you look over the various arguments that you find in there, I have no doubt that you will disregard the fact that the inquiry came on the 4th and the answer came on the 5th.

MR. SCHROEDER: We will be very glad to receive it.

MR. CHANCE: Finally on my own behalf and in behalf of the Association which assigned me to study this Revision Proposal and come here and throw light upon it, I wish to thank the Committee for the patient and careful consideration which they have given to me and to the Association in this connection. Thank you.

MR. CAVICCHIA: Mr. Chance.

MR. CHANCE: Yes, sir.

MR. SCHROEDER: Will the gentleman submit to a question?

MR. CHANCE: Sure.

MR. CAVICCHIA: I must say that the Governor may have been guilty of flattery or not—

MR. CHANCE: I didn't say he was guilty of flattery—I wasn't going to be guilty of flattering him and say that because he said something, I was going to agree with it.

MR. CAVICCHIA: At least, I might comment, he treated with dignity a matter which is so serious and vital and solemn, so far as the people of New Jersey are concerned—

MR. CHANCE: I don't deny that one, either.

MR. CAVICCHIA:—and did not resort to facetiousness. Might I ask you this: You have stressed the amendment process. You would be agreeable to having a series of amendments submitted to the people under that process?

MR. CHANCE: Yes, sure.

MR. CAVICCHIA: Suppose twenty percent of the registered voters came out to vote on an amendment and only eleven percent of those voting voted for the amendment. Would you accept the amendment as the voice of the people?

MR. CHANCE: Yes, because there you are following out the constitutional method and you are not resorting to the revolution which is sought to be brought about by ballots and not by bullets, but anyhow, by a peaceful revolution, we might say.

MR. CAVICCHIA: You are not, then, so much concerned with "we the people" and the majority of the people when your plan is followed out, are you?

MR. CHANCE: It is not my plan. It is in the plan that is in your Constitution that you and I have both sworn to support.

MR. CAVICCHIA: And I have also sworn to support that part of the Constitution which protects the people as having inherent in them the political power which was recognized by the founders of our government in 1776.

MR. CHANCE: What is that, majority rule? If it is majority rule, you are going to put this Article I provision over without a majority. I don't quite get the question, I am afraid. What is this 1776 business? That is back before 1844, too.

MR. CAVICCHIA: Then, what you are doing is blowing hot and cold. You are attempting to avoid a discussion on the validity of the method suggested by the Commission, and then you are trying to say that method is no good.

MR. CHANCE: I am not trying to get into any argument about the validity of the method submitted by the Commission so much, because you can make an argument on both sides, on either side, and what I say about it and what anybody here says about it doesn't make a whole lot of difference because we are not the final judges about it, and in my earlier remarks I cited articles on both sides of the question.

MR. CAVICCHIA: Who is the final judge?

MR. CHANCE: The Court of Errors and Appeals of the State of New Jersey, in my estimation.

MR. CAVICCHIA: Then you would say it is a judicial question and not a political question?

MR. CHANCE: I say it is a judicial question as to whether officers of the State of New Jersey proceed to place upon the ballot any question. In other words, the question comes up whether they are legally authorized to place that on there, just as it came up in Indiana, and the Indiana court issued an injunction that said they are not authorized to do it. And incidentally, they never had the election they were authorized to put on the ballot either, because the Indiana State Court gave a decision that it was a judicial question. I think there is some dicta in some case in New Jersey that says something about how it is a judicial question, some woman suffrage or something about women voting or holding office—I have forgotten the case that came up. It seems to me the Supreme Court said in that case it was a judicial question for them, whether or not the proceedings for the adoption of the Constitution had been properly followed. The woman claimed that because they didn't make some kind of provision back in 1844 how the women could hold office or vote or do some kind of thing, they never legally adopted the 1844 Constitution, and they said it was a judicial question, whether it had been legally adopted, and they weren't going to make any ruling that the Constitution under which they held office and which gave them their authority was not validly adopted.

MR. CAVICCHIA: Do you say, then, this question could not get into the federal courts?

MR. CHANCE: It could get into the federal courts. You could get up to the United States Supreme Court and come bounding back just as they did in that case that I mentioned before, in *Marshall* v. *Dye*.

MR. CAVICCHIA: You mean the federal courts would not take cognizance of the issue?

MR. CHANCE: No, they say it is a political question in the United States Supreme Court, whether a State Constitution has been adopted properly or not, and incidentally, they said that in *Luther* v. *Martin*, where the contention up in Rhode Island was that a majority of the whole people had voted in favor of the constitutional convention.

MR. CAVICCHIA: Are you familiar with the case of *Brickhouse* v. *Brooks*?

MR. CHANCE: *Brickhouse* v. *Brooks*?

MR. CAVICCHIA: 165 Federal, 534.

MR. CHANCE: I am not familiar with that case, but I think the United States Supreme Court is a little better than any federal.

MR. CAVICCHIA: Let me tell you what that court said.

MR. CHANCE: Where was that court?

MR. CAVICCHIA: In the Eastern District of Virginia. That court said, on ruling as to whether or not a Virginia Constitution had been validly adopted, "Whether or not the people of the State of Virginia have duly adopted the Constitution in controversy in this case is a political question not to be disposed of by this court but by the legislative and executive departments of the government of this State. Those departments having recognized and promulgated that Constitution, having declared it valid and in force, it consequently is the fundamental law of Virginia, so to remain until it is changed by the people of that State or overthrown not by the courts but by revolution."

MR. CHANCE: Well, that is all right. I told you before you can get arguments on both sides of the proposition. I have a whole list of key numbers here that tell all about this business. Do you want me to give them to you so that you can look up the arguments on both sides?

MR. CAVICCHIA: No, but I am showing you where the courts have eliminated themselves as the arbiters.

MR. CHANCE: You read the New Jersey case where the woman undertook to say the 1844 Convention wasn't legally adopted and you will see that the New Jersey courts have not eliminated themselves.

MR. SCHROEDER: Can we confine ourselves to questions and answers, please, instead of argument? Are there any other questions?

MR. CAVICCHIA: Was that the case of the *State* v. *the Governor*?

MR. EDWARDS: *Carpenter* v. *Cornish*, 83 N. J. L. 696.

MR. CHANCE: That is the one I am talking about.

MR. SCHROEDER: Any other questions?

MR. CAVICCHIA: No.

MR. SCHROEDER: Are there any other individuals here who are desirous of expressing their opinions? If not, we will adjourn and will convene tomorrow morning at 10:30, in the Assembly Chamber.

Thank you.

(Adjournment)

BRIEFS AND COMMUNICATIONS SUBMITTED AT THIS SESSION.

TO JOINT LEGISLATIVE COMMITTEE ON HEARINGS ON CONSTITUTIONAL REVISION:

1. With reference to the question proposed to be submitted to the voters at the November 3, 1942 General Election, I recommend that such question be submitted, and that it be phrased in substantially the following form:

> "Shall the 167th Legislature (1943) be directed to submit for the people's adoption or rejection at the next general election, a revised Constitution, altered and reformed as the Legislature deems the public good and benefit of the people requires?"

2. This form of question differs in essential details from the question proposed in Senate, No. 295 introduced by Sen. Hendrickson on May 18, 1942. I prefer and recommend the word "directed" instead of "authorized" or "empowered" because, in my opinion, the Legislature is already authorized to so act for reasons set out in detail in my discussion of the subject "Constitutional Methods for Revising the New Jersey Constitution," published in the New Jersey Law Journal for August 6, 1942. If the Legislature does not already have this power, a mere referendum on authorization would be ineffective to confer the power by transfer from the people to the Legislature. A constitutional amendment would be required. If, however, the power is already vested in the Legislature, it would be a matter of supererogation and possible confusion to vote it again. However authorities are of two minds as to whether, already possessing the power, the Legislature is justified in exercising it except upon a specific direction from the people so to do, as a necessary step in the assertion of the people's own right to revise their Constitution.

The words "altered and reformed in such respects as the Legislature upon investigation deems the public good and benefit of the people requires" are employed for the purpose of giving in constitutional language (Art. I (2)) instructions from the people to their representatives, in language designed to "furnish a declaration of policy or a standard of action," which appears highly desirable.

3. A referendum on the above question, if approved by the people, therefore has these advantages:

(1) It assures the members of the Legislature that they are acting in the premises in accordance with the people's current wishes and not in excess thereof;

(2) It solves the legal problem of whether the Legislature should take this step without prior direction from the people;

(3) The Act submitting the question will be merely a directory measure addressed to election officials, and will result, by its passage, in no change in the basic law of the State. For that reason it will be much less vulnerable to preliminary legal attack, being merely directory. Attack is more likely—if at all—upon the actual performance, later, by the Legislature of the instructions given it by the people.

(4) It will give preliminary notice to the voters that the definitive revision is a matter for final consideration by the 1943 Legislature whose members, so far as those coming up for election in 1942, will be chosen with their qualifications for this task in prospect.

(5) The present proposed revised text of the Constitution, now under consideration by the Legislature, while not in final form, undoubtedly gives the people a very fair idea of the extent of changes contemplated in the definitive measure to be finally submitted, and an opportunity to give a tentative direction to the Legislature to carry the altering and reforming of the basic law into effect and to a conclusion.

(6) It will make many careful students more eager to argue for the legitimacy of the method of procedure. It will relieve the proponents from the charge of improperly imputing too much authority vested in the Legislature, and more effectively direct the argument to the end that the final decision on the choice of methods is with the people.

(7) It will save the proponents the preliminary task of breaking down barriers in the minds of many that the Legislature ought not to assume authority in this matter without a specific mandate or direction from the people, to propose what the Legislators find and believe are the changes which the public good presently requires.

The objection, formerly anticipated, that the Legislature, is without authority in so proceeding as the people's functionary without a mandate is pretty much whittled away by this November "go ahead" direction.

4. The query will be made, is the phrase "a revised Constitution" sufficiently definite or adequate as a standard of action for the Legislature. It seems preferable that the people should direct a revision according to at least a generalized standard expressed in constitutional phraseology as suggested above. A mere "revised Constitution" seems too vague, indefinite and without any publicly supported measure of its adequacy, reason or necessity. For that reason the people in directing the Legislature should "furnish a declaration of policy and a standard of action."

As the words "whenever the public good may require it" are definite enough and sufficiently meaningful for inclusion in our present Constitution, I think the same words may be here used in a similar context and imply a very concrete idea of the standard to be applied by the Legislature in carrying out the people's wishes. Since the people's inherent political power to act when in composite agreement of minds as to the public good requiring action for their "protection, security and benefit" is explicitly stated in the Constitution, I suggest the indentical words can be appropriately employed to describe the objective and limits of the people's desire and their election to exercise that power through action initiated by their functionary, the Legislature. The analysis of the present requirements of the public good are to be investigated, interpreted and formulated by the Legislature, subject to ensuing ratification by the latter's sovereign, the people.

The Interstate Commerce Act authorizes the Interstate Commerce Commission to approve mergers of railroads when "in the public interest." The Federal Communications Act authorizes the Commission to grant radio licenses "as public convenience, interest or necessity requires," discussed in *Fed. Rad. Commn.* v. *Nelson Bros.*, 289 U. S. 266. Insufficient directions from Congress are discussed in *Panama Ref. Co.* v. *Ryan*, 293 U. S. 388, the first oil case invalidating the National Recovery Act.

ARTHUR J. EDWARDS.

CONSTITUTIONAL METHODS FOR REVISING THE NEW JERSEY CONSTITUTION

By Arthur J. Edwards, of Montclair

As Published in New Jersey Law Journal Thursday August 6, 1942

INTRODUCTION TO CONSTITUTIONAL REVISION IN NEW JERSEY

I. The authority of the Legislature to act for the people in instituting revision of the Constitution, other than by the procedure in Article IX, has been questioned. It is suggested that the Legislature is powerless in this field because of lack of explicit directions in the Constitution, without which its powers must be considered limited and inadequate.

This appears to be an argument based on abstract logic, without reference to the realities of the situation, the powers clearly conveyed by implication in the Constitution itself, and those ascribed and confirmed to it by the State's highest courts' interpretation of the fundamental law.

II. The immediate problem is how shall we give vitality to the powers in the initial Article of the Constitution (Article I (2)).

"All political power is inherent in the people. . . . They (the people) have *the right* at all times *to alter or reform*

the same (the framework of government) whenever the *public good may require it.*" (Underlining and bracketed words supplied throughout.)

How shall the powers of the Government be set in motion to do what the Constitution says may be done, when the Constitution itself is silent as to the method?

That *all* the people cannot join in one gigantic town meeting, or if they could, decide unanimously on alterations, is obvious.

The people's will in law making "cannot be exercised directly by the people." *Paterson* v. *Society*, 24 N. J. L. 385 (1854) at p. 395.

Article X (12) gives the formula for implementing the people's will:

> "The Legislature shall pass all laws necessary to carry into effect the provisions of this Constitution."

This must refer, among other provisions, to the power to alter or reform the Government "whenever the public good may require it," a right open at all times, uninhibited by the slow tempo and time limitations of Article IX. The existence of this right or power cannot be waived aside as a mere rhetorical truism or "fine phrase," not to be construed literally because of lack of blue prints for its operation.

III. The most complete exposition of the modes of action by the "people" when such are not explicitly stated in their Constitutions is found in the exhaustive discussion in—*In re opinion to the Governor (of Rhode Island)*, 178 Atl. Rep. 433 (1935), which states, at p. 437:

> "It is a recognized principle of free institutions that the normal and regular way for the people to act on any matter submitted to them, unless some other way is clearly and validly prescribed, is by the votes of a majority of the duly qualified voters who vote on such matters; such votes then *constituting an 'act of the whole people.'*"

This matter of Revision of Constitutions and Constitutional Conventions is almost wholly a development of American political folk ways in the past century and two-thirds. Its canons are mostly in judicial decisions and textbooks rather than in the Constitutions themselves and statutes. In some States the development has been rapid with one Constitution succeeding another at short intervals, and some authorities urging a change every twenty years. New Jersey has had only its 1776 and 1844 Constitutions, the latter amended only in 1875, 1897, 1927, and 1939. It is one of only twelve States that have in their Constitution no procedure for complete revision.

IV. There are two well recognized legal ways of altering or re-

forming a government—a State or National Constitution:

a. Piecemeal by specific alterations or amendments;

b. Unitary revision by substitution of a new Constitution.

Neither way is inclusive of or inconsistent with the other.

Revolution, as in 1776, is an extra-legal way.

Specific amendments to the Constitution, on the plan of Article IX merely add to or subtract from the main body of the fundamental law which is otherwise unchanged, and each such change must be submitted "separately and distinctly."

Revision or reform of the Constitution is not a change in specific provisions of the existing Constitution but the creation and substitution or succession of an entirely new body of fundamental law. In the case of *Wendel* v. *Lavin*, 246 N. Y. 115 at 117 (1927) in the Court of Appeals of our neighboring State, Mr. Justice Crane declared in effect:

> "The Constitution of 1894 was a complete and new Constitution, and not an amendment of an earlier Constitution, notwithstanding that it contains some provisions contained in such earlier Constitutions."

as summarized in 8 N. Y. Digest p. 11, par. 1½.

V. The *sovereignty of the people* and their ability to assert their rights is a cardinal principle of New Jersey law throughout its history as a State. Modes of asserting their sovereignty do not always need to be justified by explicit constitutional statement. The N. J. Supreme Court in a cognate matter declared:

> "The Constitution prescribes no method for ascertaining or recording the result of the election (for an amendment under Article IX). That duty is entrusted to the Legislature, the *representative of the sovereignty of the people*, to provide the means for determining the result of the election and furnishing the evidence that the amendments submitted to the people have become a part of the Constitution as a memorial for all time." *Bott* v. *Sec'y of State*, 62 N. J. L. 107.

And in *Carpenter* v. *Cornish*, 83, N. J. L. 254 (1912) affirmed by the Court of Errors and Appeals, 83 N. J. L. 696:

> "The attack upon the legislative act of 1844 which called for the constitutional convention and excluded women from the right to vote for delegates to that convention, upon the ground that it is unconstitutional, is a result of the fallacy of the position of counsel for relator, *in assuming that such an act could only be justified by constitutional authority;* but this is not so. *It required no constitutional authority.*

> *It was the exercise of the sovereign power of the people.* It provided as a matter of course, that the Constitution framed by the delegates should be submitted to the vote of the people. The Constitution of 1844 was so submitted to the vote of the people. The Constitution, therefor, rests for its validity upon the public will and being adopted in this manner, is the fundamental law of the land until supplanted either by a new Constitution adopted as that was adopted or by amendment in the manner therein provided."

Note our Court's reference to "a new Constitution adopted" as being a recognized alternative method to specific amendment under Article IX. "Adopted as that was adopted" refers to "submitted to vote of the people," thereby resting upon the public will. The procedural details of submission, not made jurisdictional by any constitutional direction are not mandatory provided they are consistent with and adapted to constitutional ends.

VI. It is a virtue of the best constructed constitutions that principles are stated broadly and details left to be worked out practically in harmony therewith. It is politically impractical to secure a wholly revised Constitution, which the people are entitled to "whenever the public good may require it" by means of a series of specific amendments which are separately worded and submitted, but designed to make an interlocking whole. It is contrary to experience to anticipate that such a series should *all* be approved at an election. Certain of them—possibly the keystone amendment necessary to lock the others into a consistent and coalescent whole—may be defeated. Therefore it is necessary to develop other methods to implement and make practical the people's

> "right . . . to alter and reform the same, *whenever the public good may require* it." Art. I (2).

The New Jersey Constitution makes no affirmative statement as to how such a consistent whole is to be drafted for submission to the people—and therefore it creates no preference for or prejudice against different methods which may be legally available, as would be the case if one were set out, nor are we embarrassed by any conflicting directions as to the mode of complete revision. Mr. Justice Depue in *Bott* v. *Sec'y of State*, supra at 5, in effect declared that if a method of amendment is not pointed out in the Constitution, the Legislature alone has the power to institute procedure. (As summarized N. J. Stat. Annot. "Constitution" p. 524.)

In 1844, before the Constitutional Convention was called, a committee of the Legislative Council, then the Upper House of the Legislature, suggested three possible methods of securing a new Constitution, of which one was the appointment of a commission with power to prepare a new Constitution to be submitted directly to the people. Instead a Constitutional Convention was called to

prepare the draft. However, nothing was inserted in the 1844 Constitution to limit the authority of the Legislature as "the representative of the sovereignty of the people" to institute proceedings for a further revision of the document, "to alter or reform the same," by either of these methods, convention or commission, or to itself act as the author of a revised Constitution, assisted by the recommendations of such expert advisors as it chose to appoint, particularly if directed so to do by a vote of the people, as it is now considering doing.

The New Jersey Constitution of 1776 contained no reference to its own alteration or amendment, but the 1844 Convention was called when the time was ripe and no objection was made. Similarly the 1844 Constitutional Convention deliberately completed the draft of the Constitution with explicit provisions only for "specific amendments." In the debate one of its members and delegates, the then Chief Justice of the State, Joseph C. Hornblower, is reported to have declared: "I am of the opinion the Legislature will still retain the power to call a convention to revise the Constitution." That is, the power by which the 1844 Convention had been convened had not been withdrawn or surrendered. Neither had the people's right to *revise* the Constitution by other recognized methods, other than a convention, been forbidden; hence it survives.

VII. In *Bott* v. *Sec'y of State*, supra, Mr. Justice Depue, speaking for the Supreme Court, declared at p. 118:

> "In every government organized under a constitutional form of government the initial steps for a change in the Constitution are with the legislative department of the government in which *is vested the sovereign power of the people* in that respect."

And this same decision at p. 119 quotes approvingly Mr. Justice Cooley in a manner to create a New Jersey precedent:

> "The Constitution of 1776 made no provision for an amendment of that Constitution. During the later years of its supremacy a new Constitution was earnestly advocated, but no one supposed that it was competent for the people to inaugurate measures for the adoption of another Constitution without legislative action. Mr. Justice Cooley says: 'The will of the people to this end can only be expressed in the legitimate modes by which such a body politic can act, and which must either be prescribed by the Constitution whose revision or amendment is sought or *by an act of the legislative department* of the State, which alone would be authorized to speak for the people upon this subject, and to point out a mode for the expression of their will *in the absence* of any provision for amendment *or revision* contained in the Constitution.'" Cooley Const. Lim. 40.

The principle thus developed is that it is not an unusual thing for constitution makers to fail to provide fully for the contingency of later necessity of complete revision, and that American practice fully sustains the Legislatures in stepping in and providing the means and procedure for revision "whenever the public good may require it."

Two such modes have been availed of in the nation, the drafting of a new constitution either by a convention or by the Legislature itself. Judge J. A. Jameson, an authority, in "Constitutional Conventions" (1887 Edition) calls attention to 27 conventions which met without constitutional authority for their assembly. The list has been substantially expanded since.

And the Legislatures of three States: Michigan (1874), Rhode Island (1898 and again in 1899) and Connecticut (1907) undertook to themselves revise their constitutions and submit such revisions as single amendments to popular referenda, which were rejected. The Constitutions of these three States each contained amendment provisions of the New Jersey type, but provided for change by "amendments" instead of "specific amendments" as in the New Jersey document. (Art. IX.) This difference—absence of the word "specific"—enabled these three Legislatures to embody an entire new constitution in a single amendment. Indiana in 1911 undertook the same procedure but its courts enjoined the referendum, interpreting the Indiana Constitution as so worded and limited as to amendments that an entire new constitution could not be sumbitted as an amendment. New Jersey is considering a revision, not merely a single amendment, covering the multitude of subjects contained in its Constitution.

VIII. In the absence of any provision for complete revision in the New Jersey Constitution, except the general power in Art. I (2), the Legislature has under consideration the proposal that the Legislature itself should draft a new Constitution for submission for the people's approval based on and aided by the recommendations made by the Commission on Revision of the New Jersey Constitution created by Resolution of November 18, 1941, to "inquire into the subject of constitutional revision—and to make recommendations—," supplemented by its own committee's study and investigation. This procedure is supported and justified both by (1) the broad powers vested in the Legislature by the people when they adopted the 1844 Constitution, continuing all the 1776 powers except those specifically interdicted, and (2) by its exercise of the sovereignty of the people as their representatives. *Bott* v. *Secretary of State*, supra. *Carpenter* v. *Cornish*, supra.

IX. The New Jersey Legislature (unlike the Federal Congress which is the creature of limited, specified, delegated powers, U. S. Const. Amend. Art. X) *has all the legislative powers* of the people which are not prohibited to it by the N. J. Constitution itself, the

Federal Constitution, and "the social compact." One of the very modern expositions of this doctrine is contained in the Court of Errors and Appeals' decision in *State* v. *Murzda*, 116 N. J. L. 215 (1936) at pages 222-3:

> "A State Constitution, unlike the Federal Constitution, is not a grant but a limitation of legislative power. The State Legislature exercises a portion of the sovereign power residing in the people, subject to the limitations imposed by the Federal Constitution and its own organic law, and, as well, those so fundamental in the social compact as to be necessarily implied. The constitutional limitation upon the exercise of legislative power must be clear and imperative. . . . A constitutional prohibition against the exercise of particular power is in the nature of an exception. . . ."

And in the Supreme Court, some five years later, Chief Justice Brogan in *State* v. *Baldinotte*, 127 N. J. L. 46 (1941):

> "Our Constitution is a limitation, not a grant of power. And the limitation should be strictly construed. *That which the Legislature may not do*, because it is prohibited, *must be definitely and precisely stated* and may not be broadened or extended by implication or by reading into the limitation itself something which is not clearly set forth therein."

These limitations are few and are mostly set forth in Art. IV, Secs. VI and VII. By contrast witness Marshall, C. J. in *McCulloch* v. *Maryland*, infra.

> "This government (of the United States) is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it, would seem too apparent."

X. This judicial view of the breadth of the powers of the New Jersey Legislature is justified by their historical development.

The New Jersey Constitution of 1776 provided:

> Section 1. "That the government of this Province shall be *vested in a Governor, Legislative Council and General Assembly*" (These later two constituting the Legislature) and
>
> Section VIII. "The *Governor* . . . shall have the *supreme executive power* . . ."

Mr. Charles R. Erdman Jr., in his book "The New Jersey Constitution of 1776" has discussed the powers of this Legislature. There were no restrictions whatsoever upon the Legislature's governing powers—that is upon that portion of the "governing powers" separable and not comprised in "the supreme executive power" —other than those moral restrictions implied in the prescribed oath of the legislators as to three specified matters and their pledge

not to assent to any law deemed by them "injurious to the public welfare" and after 1789, the powers delegated to the Federal Government. Some authorities even held "there was nothing that the Legislature could not alter at its pleasure."

The 1844 Constitution, following this pattern in closely identical words, vests the legislative power of the government in the Senate and General Assembly and vests the executive power in the Governor. In Chapter IV of his book, Mr. Erdman reviews the conflicting views as to "Legislative Omnipotence vs. the Supremacy (or Inviolability) of the Constitution" of 1776, and points out the gradual drift of public opinion from the first thesis toward the latter.

Under either of these historic views it is clear that the powerful legislative functions of 1776 were but little narrowed in principle by the closely identical language in the 1844 transition, except as specific limitations and prohibitions were written into the 1844 Constitution and into the 1875, 1891, 1927 and 1939 amendments, all of which must be strictly construed.

The New Jersey Legislature can now do everything within its legislative sphere which it is not specifically and explicitly prohibited from doing.

XI. By the terms of Art. 1 (2) the sovereign people expressly reserved for themselves, as a matter of fundamental law, the right to alter their Constitution of government when they voted in 1844 to adopt and accept the present Constitution.

According to the constitutions and laws adopted in three-fourths of the States, a specific method of *revising* their constitutions is provided by elective delegate conventions. This might foreclose alternative methods in these particular States. Their practice, however, is not binding on New Jersey. New Jersey not having provided any specific methods for complete revision, should be considered as having a clear field to select appropriate methods availed of in other states—Michigan, Rhode Island, Connecticut—to implement the "people's right at all times to alter or reform the same, whenever the public good may require it." This is particularly true in case the Legislature acts to submit a revised Constitution in response to prior direction to proceed in a specific manner given it by vote of the people, as now recommended to the Legislature. Report of the Commission on Revision, p. 11, (p. 912). Thereby the sovereign people will speak to and direct the functionary through whom they act (Bott v. Secretary of State, supra at V) to proceed in a specified manner to accomplish a constitutional end.

If a new Constitution is to be drafted for submission to the people of New Jersey, the people have two functionaries available for such purpose, neither designated in its present Constitution but both availed of in other States with similar constitutional provisions: a constitutional convention (availed of in 1844) and the

Legislature itself, assisted by such expert advisors as it chooses. If an alternate method of revision, "a new Constitution," is available as the Court declared as noted below, to supplement Art. IX, there is no reason to limit the alternate method to a convention, unmentioned in the 1844 Constitution, but other appropriately empowered means likewise unmentioned should be considered available. As stated in *Carpenter* v. *Cornish*, supra:

> "The Constitution, therefore, rests for its validity upon the public will, and being adopted in this manner, is the fundamental law of the land until supplanted either by a new Constitution adopted as that was adopted (i. e., by a vote of the people) or by amendment in the manner therein provided."

The means of getting the draft before the people "required no constitutional authority. It was the exercise of the sovereign power of the people." And the Legislature is as competent to place the draft before the people as any other functionary. The Commission on Revision is an advisory body to which the Legislature has not and cannot delegate any of its distinctive functions. If the Legislature chooses to submit the Commission's draft of a Revised Constitution, changed if need be in such particulars as the Legislature itself believes the public good required, it must adopt the words as its own and become the responsible sponsor to the people.

XII. It seems fruitless to discuss whether the power of the Legislature *thus* "to speak for the people" is one of "the powers of *the* government," Art. III (1), that is "the legislative power (which) shall be vested in a Senate and General Assembly," Art. IV, Sec. I (1), or whether it is a broad "instrumental power" to represent the people in their reserved constitutional powers as sovereigns. It is sufficient that the Legislature has this power of representation without pursuing the finer nuances of definition or reaching agreement as to how it gets it. The more its actions are removed from the strict lawmaking functions, the stronger becomes its authority to act instrumentally as the representative of the sovereign people. Its powers are not "mere agency," rather they are "everything but . . ." It may be asked, will the courts read into the law the proviso that the people elect their legislators for specific and limited lawmaking purposes, and that their functions are exclusively with the routine legislative issues foreseen in their campaigns. There may be dicta to this effect in other jurisdictions. In New Jersey, this should not be the rule in view of their broad investment with well-nigh unlimited legislative and representative powers, of which the people are aware when they elect them. Assemblymen only serve for one year terms, after which they must again appeal to the voters for their suffrage. It does not seem, however,

that this can be translated as a matter of law into an incompetence to handle completely the Legislature's part in constitutional matters, including both revision and amendment, during their year in office. They now complete *half* the Legislature's part in amendments under Art. IX before their terms expire.

XIII. The law takes no notice of the actual authorship of Constitutions and statutes. It is the ratifying vote of the people themselves upon a form of words which transforms the words into fundamental law.

In the field of drafting of a revised Constitution, the Legislature does not act as a lawmaking body, for it makes no law. But when its literary product becomes the instrumental process of constitutional revision, it is not because the Legislature possesses any inherent power to change the existing Constitution by such proposal, but because it is the means through which an authorized consent of the whole people, the entire State, can be lawfully and peaceably obtained.

XIV. And if the Legislature *does* believe that it has authority to draft and submit a revised Constitution to the people, then the New Jersey courts have this guide or canon of interpretation from the decision in *Hudspeth* v. *Swayze*, 85 N. J. L. 593, at p. 610 (1914) as a precedent in which Chancellor Walker said:

> "Where there are two permissable views as to the existence of a constitutional limitation—one favorable and the other unfavorable—to a given statute, the courts *must accord* to the Legislature the right to hold the view of the Constitution which supports its enactment even should the other view seem to the court to be the preferable one."

And of the Court of Errors and Appeals:

> "It is our duty to adjudge all acts of the Legislature, which are not clearly in violation of the Constitution, valid."
>
> *Ross* v. *Freeholders of Essex Co.*, 69 N. J. L. 291 at p. 299 (1903).

XV. Because the method of specific amendment is set out in Art. IX it must not be inferred that such method is exclusive and that other methods of general revision or substitution of a new Constitution were denied to the people by their 1844 ratification. "Expressio unius est exclusio alterius" as an axiom of interpretation is not appropriately applied when the Legislature's power is basically general except as explicitly limited.

Art. IX makes no "clear and imperative" claim that it is the exclusive method available for constitutional change. In fact there is no statement in Art. IX or elsewhere in the Constitution that operation under its *permissive* authority whereby "specific amendments *may be proposed*" is the only method available. Nor

is there any intimation of "clear and imperative" limitation that the procedure of 1844 whereby the Constitution of 1844 was substituted for the Constitution of 1776 may not again be availed of, or that the Legislature may not itself propose to the people to alter and reform the present Constitution "as the public good may require it" "at all times" i. e., at the present time, provided the people by their approving votes so direct and by their later votes ratify the changes thus proposed.

XVI. The people's two Constitution drafting functionaries—convention and Legislature—are not essentially different in character or function. Both represent the sovereign people; neither is delegated this particular task by the Constitution. If the Commission's plan is followed of having the people, by a preliminary election, direct the Legislature to submit a revised Constitution for their consideration and ratification, the Legislature then has orders direct from the source of sovereign power to proceed with the task of formulating the alterations and reformations in the present Constitution which in their judgment the public good at this time requires, and submit their product for formal popular ratification. The people are their own masters in this matter and are not bound by any set rules of procedure. They can, and thereby, make their own rules.

> "It required no constitutional authority."
>
> *Carpenter* v. *Cornish*, supra.

We can then call on Mr. Chief Justice John Marshall to justify the means:

> "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."
>
> *McCulloch* v. *Maryland* (1819), 4 Wheaton 316.

Proposed Revision Of The New Jersey Constitution

The Chamber of Commerce of the City of Newark officially disapproves the submission of the Proposed Constitutional Revision to be voted for or against as a whole. There are three main reasons for this disapproval.

First: The method recommended by the Commission would appear to be an admission that if the proposed changes were to be voted on separately some would be rejected, and that if voted as a whole there would be locked into the new Constitution provisions

which a majority would disapprove if given a chance. That is no way to get a Constitution which the citizens can respect. Why should any one be asked to vote for one change which he abhors in order to secure another change which he wishes?

Second: It is impossible to expect the public as a whole to become really aware of the true meaning of all the numerous changes even in a further year of discussion.

The Proposed Revision provides for many changes, some important and some not so important. Some of the proposed changes would meet with general approval. Some of the proposed changes, if properly explained, would meet with general disapproval. Many of the changes will find public opinion sharply divided, with one group strongly in favor and another group strongly opposed.

The proposed changes on which there would be a wide and strong difference of opinion are in themselves so important and vital that no attempt should be made to submit them (either as a whole or in detail) until there has been such an adequate discussion of the merits or demerits that the public as a whole can reasonably be assumed to have a fair understanding of the issues involved. It is doubtful whether at this time one in ten thousand citizens have actually read the complete proposals.

But even after long and full discussion, the proposed changes are too numerous to expect the public to exert itself to understand all of them at once.

Third: The proposal to discard the present prescribed method of amendment would engender increased disrespect for all constitutional principles. This is revolutionary.

A constitution is an agreement to form a society for purposes of government. It is fundamental, natural law that an agreement to form a society (whether called constitution or by-laws) can only be altered by action of the majority of the members after adequate notice of the proposed change has been given all the members. It is equally basic that if the Constitution provides a specific form of such notice, no substitute is valid.

This elemental principle was re-stated as recently as May 1, 1942, in a case involving the Democratic Woman's Luncheon Club (131 N. J. E. 450 at pp. 452-3). Vice-Chancellor Bigelow said at page 452:

> "The by-laws of a voluntary association constitute a contract between the members on which each member can rely."

The method or notice of amendment prescribed by Article IX of the present New Jersey Constitution is a contract on which those who may be the minority for the time being are entitled to rely.

Conclusion: The Commission's report on the "highlights" of the Proposed Revision is captivating; but the details do not always live up to the "highlights."

The most fundamental proposal is to give the Executive branch much greater power, necessarily at the expense of the Legislative branch.

Many thinking persons are already disturbed at the excessive concentration of executive power under our Federal Government. The adoption of the Proposed Revision or anything substantially resembling it would go a long way toward setting up a similar concentration in New Jersey.

Finally, it is impossible while the war is demanding the full time of the citizens, to expect them to give the study to the proposals which is obviously necessary.

For the foregoing reasons the Newark Chamber recommends that after the proposed changes have been considered in detail, those provisions which seem to have substantial merit should be put in the best possible form and then submitted in an orderly manner, and not too many at one time. Only in that way will there be adequate opportunity for the citizens, as a whole, to become really acquainted with what they are to pass on.

BOARD OF DIRECTORS
CHAMBER OF COMMERCE OF THE CITY OF NEWARK, N. J.
August 13, 1942.

COMMENTS ON PROPOSED REVISED CONSTITUTION BY THE COMMITTEE OF THE CHAMBER OF COMMERCE OF THE CITY OF NEWARK, N. J.

INTRODUCTION

The Proposed Revision provides for many changes, some important and some not so important. Some of the proposed changes would meet with general approval. Some of the proposed changes, if properly explained, would meet with general disapproval. Many of the changes will find public opinion sharply divided, with one group strongly in favor and another group strongly opposed.

The changes which would meet with general approval are all of them simple enough so that they could be easily submitted to the people as independent amendments. The proposed changes on which there would be a wide and strong difference of opinion are in themselves so important and vital that no attempt should be made to submit them either as a whole or in detail, until there has been such an adequate discussion of the merits or demerits that the public as a whole can reasonably be assumed to have a fair understanding of the issues involved. This is entirely apart from the question of whether the proposal can legally be submitted to the people as a whole to be taken intact or rejected intact.

The points on which there may be a serious division of opinion are numerous. Some of them are highly technical. An adequate discussion of all of the important controversial matters would be too lengthy and would take up too much time to be presented at

one session. Therefore, this comment is limited to a discussion of those features where the objections can be most simply and readily pointed out, in order to make it clear why there should be no hurried submission of any complete revision on a "take it or leave it" vote.

COMMISSION'S "RECOMMENDATION"

The Commission submitting the Proposal recommends a new and unauthorized method of amending and says:

> "That submission of the Revised Constitution should be in such form that the people will vote for or against the document as a whole."

And further says:

> "It is impractical to utilize the amending method provided by Article IX of the present Constitution."

That Proposal itself shatters respect for the Constitution. A constitution is an agreement to form a society for purposes of government. It is fundamental, natural law that an agreement to form a society (whether called constitution or by-laws) can only be altered by action of the majority of the members after adequate notice of the proposed change has been given all the members. It is equally basic that if the Constitution provides a specific form of such notice, no substitute is valid.

This elemental principle was re-stated as recently as May 1, 1942, in a case involving the Democratic Women's Luncheon Club (131 N. J. E. 450 at pp. 452-3). Vice-Chancellor Bigelow said, at page 452:

> "The by-laws of a voluntary association constitute a contract between the members on which each member can rely."

The method or notice of amendment prescribed by Article IX of the present New Jersey Constitution is a contract on which those who may be the minority for the time being are entitled to rely. In proposing to disregard this, the Commission overlooked one of the elementary principles of self government. The Commission was composed of able, conscientious men who devoted much time and serious thought to the problem before them, but they were all busy men and could not be expected to remember everything.

Assuming they are right in their conclusion that the method of submitting amendments should be changed, the first Proposal should be to amend Article IX in the constitutional method. Curiously enough, the Proposed Revision abandons completely the commission's recommendation that people should vote for or against the present document as a whole; and the proposed Article IX, Section V, specifically requires that future amendments must be so submitted that the people may vote for or against each amendment separately and distinctly. If good for the future, why not equally good now?

HIGHLIGHTS

The Commission's Report on the "highlights" is captivating; but the details do not always live up to the "highlights"; and many of those "highlights" could be fully accomplished by amendment of statutes without change in the existing Constitution.

The text of the proposed Constitution is preceded by a non-technical summary and explanation. Perhaps before discussing the proposed text it might be well to discuss in the same non-technical manner the Commission's own explanation.

ARTICLE I

Whether the proposed new privilege of bringing suit to restrain a violation of the Constitution is beneficial, or whether it even gives any new right, may be open to question. Perhaps it gives a citizen the right to start his contest a little earlier than he might otherwise, but the change is not sufficiently important to justify taking time for discussion. It could certainly be submitted separately. It is wholly independent of any other proposed change.

ARTICLE II

It is probable that the provisions here mentioned are nothing but a re-statement of the existing situation. If so, the provisions are unnecessary, but probably would do no harm and, therefore, do not need discussion now. Where the language of the present Constitution is changed, there should be careful study, lest the proposed language might upset existing safeguards.

ARTICLE III

The suggestion to increase the length of term and salaries of the members of the Legislature, is sound. Whether to forbid the election of the Legislature in years of presidential or congressional elections, raises a serious question. When the national questions at issue overshadow the state issues, the separation would be beneficial; but against that must be offset the fact that a much greater percentage of voters habitually ignore the so-called off-year elections, which might lead to state elections going by default.

This issue could and certainly should be submitted separately. Also there may be a serious question whether the Senators' terms shouldn't be extended to six years instead of only four.

The Proposal for a legislative session every other year is unsound. An arbitrary limit on the length of the session is even more unsound. If the legislators are not fit to determine how long they should sit, they are unfit to enact laws. The cause of the current lengthy and complicated legislative sessions is not the present constitutional frame work, but is the lack of harmony in recent years between the Governor and the Legislature. The pro-

posed change would not improve the legislative set-up, but would effectively prevent the Legislature from acting as a curb on a Governor who desired, or was thought to desire, to usurp authority.

The same thing is true of the Proposal to limit special sessions.

The proposal to make a legislator ineligible for promotion during his term is based on the ethical idea that it will prevent Legislators from buying promotions with votes. If it had been in effect in the past, it would have prevented the promotion of countless men who have adorned the public life of the State and who would have been ineligible under this Proposal; yet whose appointment was never accompanied by any suspicion that anything but merit had brought about the appointment. The career of the late Chancellor Pitney may be mentioned as one example.

The Proposal to forbid all power of appointment to the Legislature except in case of the State Treasurer and Comptroller, is a part of the broad question of increased power to the Governor and can best be discussed later. Even on the assumption that the legislative power of appointment should be limited to the revenue and disbursing departments, the legislative power to appoint should certainly include all officials whose function is to collect State revenues if the Legislature deems it wise to exercise such power.

The proposal to require all nominations to be voted upon in public within a limited period, seems unsound. The theory behind it seems to be the idea that the Governor should be all powerful in the executive field and that the present system permits the Senate to put too great pressure upon the Governor in the making of appointments. But this is contrary to the spirit of the constitutional provisions respecting appointments, both as found in the present Constitution and in the Proposed Revision.

The present Constitution provides: Article VII, Section I, Paragraph 5, as to the principal militia officers; Article VII, Section II, Paragraph 1, as to the judiciary; and Article VII, Section II, Paragraph 4 and Paragraph 9, as to "all other officers whose appointments are not otherwise provided for by law"; that they shall be "nominated by the Governor and appointed by him, with the advice and consent of the Senate."

The Proposed Revision, Article IV, Section III, Paragraph 4, as to all such department heads and the members of all boards, councils and commissions except the State Comptroller and the State Treasurer; Article IV, Section IV, Paragraph 2, as to the Adjutant General; and Article V, Section V, Paragraph 1, as to all judges with jurisdiction extending to more than one municipality; all likewise provide that they shall be "nominated and appointed by the Governor, by and with the advice and consent of the Senate."

The other officers of the militia (including the Naval Militia)

under Article IV, Section IV, Paragraph 3, are to be appointed and commissioned by the Governor under conditions to be determined by the United States War Department.

These provisions for appointment by and with the consent of the Senate do not mean that the Governor is to nominate and the Senate to approve or reject the nominations without anything more. The advice of the Senate clearly means, and clearly was intended to mean, something very different. It was intended to impose upon the Governor the duty of cooperating with the Senate to insure the appointment of officals mutually satisfactory to both the appointing and the advising parties.

The proposed change would intensify any lack of harmony between the Governor and the Senate. Under such a provision it would have to be expected that the Senate, in retaliation for the Governor's rejection of its advice with respect to one office, would frequently yield to the temptation arbitrarily to reject a nominee for some other office, whom it would otherwise be willing to accept.

An attempt to prevent public lobbying is bound to drive lobbying underground, where it is much more dangerous; and in practice it would impair the right of petition by hampering the useful but informal appeal to individual legislators.

As recently as April 23rd the Court of Errors and Appeals in an opinion by Justice Bodine, one of the most respected members of that court, in the case of *Board of Education* v. *Haddon Farms*, 128 N. J. L. p. 306 at p. 309, made this statement:

> "Citizens are under a duty to freely approach the Legislature. This right is fundamental in a democracy."

This decision was concurred in by every member of that court, except one absent lay judge.

The Proposal for a legislative council needs no constitutional amendment except to authorize the extra compensation to the legislative members.

No one could object to assuring the right of labor to organize and bargain collectively; but such right should certainly be accompanied by the equal right of labor to work without interference by, or paying tribute to, other workers.

The zoning and condemnation changes are relatively unobjectionable, but do not require a revision of the entire Constitution. The same thing applies to the proposed curbs on special legislation.

ARTICLE IV—EXECUTIVE

The major objections to the revision arise out of the changes in this Article. These changes spring from the theory, often spread, that government is like private business, and that the way to get efficient and economical government is by having a strong or powerful executive, to carry out government under a policy laid down by laws adopted by the Legislature, acting as a board of

directors in a business corporation. This theory overlooks two very important features. The supporters of this theory have increased greatly in number since the adoption of the revised New York Constitution, because that has been hailed in many newspapers as a very great improvement, and was recommended and put into practical operation by Alfred E. Smith, unquestionably one of the ablest Governors of recent years. But its operation has not been nearly so efficient under his successors. It has enabled the building up of such a political machine that no Governor from the other party has been elected in over twenty years. It has not produced economy. On the contrary, the adoption of a revised Constitution in New York was the signal for a tremendous expansion of the cost of State Government which has not yet been checked.

The successful administration of Governor Smith cannot properly be attributed to the increased powers of the new Constitution. A man of his ability would have been successful under any form of Constitution.

The theory of an all-powerful executive overlooks two striking differences between government and business. In government the policy of the Governor may run counter to the legislative policy as expressed in laws. In case of such a conflict in business the board of directors can throw out the executive and select another to carry out the official policy of the board as representative of the owners; but in government the Legislature cannot throw out the Governor, no matter how much he disregards the spirit of the laws, unless he so far offends as to become subject to impeachment; requiring even then a two-thirds vote of the Senate.

DEPARTMENT HEADS

The theory that the heads of all departments should serve at the pleasure of the Governor, necessarily means that no person who wishes to make administration a career could occupy such a position, for no one can be a career man without some assurance of tenure.

If the later provisions for civil service are to mean anything, the actual administrative head of every department must be a career man with tenure. Therefore, this Proposal, as to most of the departments in the State Government of this State, will produce nothing but political appointees, whose function in the department to which they are assigned will be nothing but that of messenger, conveying the Governor's idea of policy to the administrative head; and there are only a few departments in this State where there is any actual need for such an intermediary.

The New Jersey Department of Banking and Insurance, which includes building and loan associations, has an administrative head over each of its three main divisions. There may be some reason for the appointment of one who is not a career man to

interpret the Governor's policies to these different divisions of this particular department; but that department, important as it is, is not one of those named in the proposed Constitution, and this department would have to be thrown in with other wholly dissimilar branches of government under some heading. The only headings where this could possibly be lodged would either be commerce, state, or taxation and finance, and it has no characteristics in common with anything else that could be put in either of these three departments.

The finance associated under the heading "Taxation and Finance" normally means the finance of government, and particularly the expenditures of government. But that has nothing whatever to do with any of the problems encountered by the Banking and Insurance Department.

Education and civil service are thrown into one department. The present department of education has been carefully developed to provide for a consistent educational policy not subject to sudden change, directed by a conscientious board, the membership of which is reasonably stable and which has the power to select and direct a career educator as the administrative head of the entire public education system. It is doubtful whether any one reasonably acquainted with the problems of education would view with approval a proposal that a man be put over this entire educational system who might easily be chosen for purely political reasons; and who would also be the head of the Civil Service Department, which in theory should be non-political, but which is, in fact, subject to more political pressure than any other department of State Government.

Exactly similar criticism might be applied to the proposal to put a short term political head over many of the other main departments.

This detailed criticism might be extended, but it seems unnecessary to do more than point out the fallacy of thinking that all governmental activities can be folded up and stuck in appropriate pigeon holes as if there were some degree of uniformity or similarity between them such as to justify uniformity of treatment.

In practice this proposal would merely provide a politically minded Governor with nine lucrative appointments to serve as a political cabinet for him, while the actual problems of administration would be carried out by the present staffs and in practically the same way as at present. In short, it would simply multiply the "sinecures" and add to the cost of State Government.

Perhaps the most striking, because current, instance of the unsoundness of this proposal can be found in the suggestion that all law staffs must be in one department. This would mean that when the Attorney General questions the validity of legislation, such as the railroad tax settlement legislation, the defense of the

legislation would, under the Constitution, have to be left with some lawyer who was employed by, and under the direction of, the Attorney General as head of the Law Department. One might wonder what the present Governor might think of such a possibility.

The provision under heading 9 for three days' delay between veto and its re-consideration is unimportant one way or the other. It merely makes it more inconvenient for the Legislature. The provision requiring a two-thirds vote of the Legislature to re-pass a vetoed appropriation item seems rather curious in light of an existing statute. Under this statute, after an appropriation has been voted and approved, the Governor may suppress it entirely by bare executive order without hindrance by the Legislature, in any case except for the salary of an official whose salary is fixed by law.

Most of the provisions respecting pardons and paroles mentioned under item 10 could be put into effect by statute without any constitutional amendment, but would make the subject more likely to fall into political control, which would certainly prove most unfortunate.

The changes in respect to the militia should be passed upon by persons who are familiar with its problems, but it is evident that the proposals are at least too carelessly drawn.

ARTICLE V

The provisions of the judicial article as stated in the summary would have considerable merit if the actual text on the proposed article really lived up to the summary. However, Paragraph 6 of the summary is obviously wishful thinking. Many controversies contain two elements; one, a controversy between individual parties, and secondly, an alleged violation of criminal law. It is perfectly obvious that the civil and criminal phases of a controversy under our notions of justice can never be disposed of in a single proceeding.

Also the wisdom of Paragraph 13 of the summary may be very doubtful. Many of the most noted decisions of our most eminent judges have been rendered after they were over seventy-five, and many of our ablest judges have retained their capacity for prodigious work long after that age. This provision would deprive the State of the benefit of many able judges at a time when they are reaching the ripest years of judgment.

Even if the State wished to disregard such possible beneficial service, a mandatory retirement at seventy would be a cruelty, unless coupled with a constitutional assurance of an adequate retirement allowance. An arbitrary retirement provision, without assurance of a retirement allowance, would tend to keep capable men from accepting judicial office.

The explanation for the Judicial Proposals, is based upon an

allegation that the New Jersey court system is the most complicated in the nation. On paper it does look complicated, but in practice it is not appreciably more complicated than that in the City and State of New York.

There is a very serious difference of opinion among lawyers as to a great part of the proposed changes. The more far-seeing lawyers generally consider there is a substantial advantage in a unified court system with a single responsible head. The proposal does not go that far. It does provide for three separate sets of courts on different levels, and retains our present system of double appeals. There is little of real substantial benefit in the proposals except that for a separate Court of Appeals which could not be accomplished by legislation; and the few proposals which could not be brought about by legislation could, if thought desirable, be put into effect with very simple amendments of the present framework.

The explanation concludes:

> "No effort has been spared . . . to insure the selection of experienced and independent judges."

There is nothing in the entire proposal to justify that statement.

ARTICLE VI

There may be no dissent from the proposal that the merit system of appointment or promotion in civil service should be compulsory. The difficulty is in the determination of merit. The system of competitive examinations is about the poorest method ever attempted for determining comparative merit.

There may also be agreement that there should be uniform salaries for similar work, but no one can actually determine whether a class of work in one department is similar to a class of work in another department.

The explanation says that strengthening the legislative power of investigation will directly result in improved accountability of public officials; but nothing in the entire Proposal would cover the comparatively recent case where a public official with a weak heart successfully prevented a legislative examination of some relevant election records; nor would it cover many other types of possible misconduct.

ARTICLE VII

Paragraph 1 of the summary is not borne out by the text. Instead of abolishing all dedicated funds, a large number of funds are specifically protected by the proposed constitutional provision. It is difficult to see why, if persons belonging to a trade or profession voluntarily collect a sum of money and pay it in trust to the State Treasurer for the specific purpose of regulating their trade or profession, that sum should be protected as a dedicated

fund; but if those same people persuade the Legislature to provide by law for collection of that same fund from the same members of the trade or profession for the same purpose, the moneys so collected should be at the arbitrary disposal of the Legislature for any other purpose.

Any attempt to make appropriations for a period of two years in advance is bound either to starve some of the functions of government or to provide them with too liberal a surplus. When coupled with a provision requiring a supplementary appropriation to secure a two-thirds vote in each house, this is merely to guarantee that in most cases the original appropriation will be in excess of what is really needed.

The Proposal to limit future State borrowings to serial bonds is a sound one, but there is doubt as to whether the other changes in relation to bond issues would so satisfy investors as to enable the State to secure loans at the lowest possible rate.

ARTICLE VIII

There is serious doubt whether the voters of a municipality operating under commission government should be denied the right to hold a local referendum when they wish it, and should be compelled to await the time of the next regular municipal election, however far off.

ARTICLE IX

It is doubtful if any amendment which failed in the past because of the difficulty of sustaining interest in it through two Legislatures, was an amendment really needed. An amendment to the Constitution should be made only when it is really needed and not when a vociferous group think it is needed.

The form of this article has been mentioned at the beginning of these comments.

CONCLUSION

There are many other proposed changes which are equally objectionable, but time does not permit their discussion now. Enough has been said to show that the evils which would probably flow from some of the changes would more than out-weigh any disadvantages of the present Constitution. Many thinking persons are already disturbed at the excessive concentration of executive power under our Federal Government. The adoption of the proposed revision or anything substantially resembling it would go a long way toward setting up a similar concentration in New Jersey. Your committee, therefore, feels that if the voters are forced to accept or reject the Constitution, as a whole, it should be rejected. Your Committee, therefore, opposes any thought of submitting a complete revision for adoption as a whole.

On the other hand, there are many of the proposed changes which would be beneficial, others which would be beneficial, if

properly modified, and others, which, if not beneficial are at least harmless. Your Committee therefore, recommends that the proposed changes be considered in detail, and those provisions which seen to have substantial merit should be put in the best possible form and then submitted in an orderly manner, and not too many at one time. Only in that way will there be adequate opportunity for the citizens, as a whole, to become really acquainted with what they are to pass on.

It is doubtful whether at this time one in ten thousand citizens have actually read the complete Proposals, and it is doubtful if any substantial proportion of the citizens have read any substantial fraction of the newspaper comment beyond the headlines.

OPINION OF ATTORNEY GENERAL WILSON

Trenton, N. J., Feb. 5, 1913.

Hon. Emerson Richards,
Member of the House of Assembly
State House, Trenton, N. J.

Dear Sir:

I am just in receipt of your note of Feb. 4th. It would appear from your communication that it is proposed to amend the Constitution of this State at a convention convened for that purpose, called in accordance with the terms of a legislative act. The request contained in your letter you express in these words:—"In behalf of the Republican members of the House of Assembly will you be kind enough to give me your opinion as to whether or not the Constitution may be lawfully changed, altered or amended by such a proposed method."

In considering this matter, it is important, I think, to have before us the method and manner by which our Constitution has been molded into its present form. The first Constitution was adopted "in Provincial Congress" at Burlington, on the second day of July, 1776. The Preamble, among other things, recites:—"We the representatives of the Colony of New Jersey, having been elected by all the counties in the freest manner, and in Congress assembled, have after mature deliberation, agreed upon a set of rights in the form of a Constitution." What follows is a very meagre recitation of powers delegated and retained by the people, together with certain express provisions as to how the necessary functions of government should be discharged. It nowhere, in express terms, or by inference, provided for any alteration, change or amendment nor was any method pointed out by which a Constitutional Convention might be held.

This instrument was made to serve every essential purpose

until the year 1844 when a Constitutional Convention was held, which recast the whole instrument. The convention was called and organized under an act of the Legislature, passed on the 23rd of February, 1844. The delegates who participated in its deliberations were duly elected according to the terms of this act, and the Constitution thus tentatively approved by them was submitted (as the act required) to the people of the State for ratification or rejection, at an election held on the thirteenth day of August, 1844. By this election the instrument thus proposed was ratified and adopted, and thereafter was denominated "The Constitution of 1844." It contained an express provision, embodied in Article IX, by which specific amendment or amendments might thereafter be proposed and become a part of the fundamental law.

Your question will be answered by determining whether or not it is now possible to amend the present Constitution in any other way than by the precise method pointed out in the instrument itself.

As already pointed out, the draft of 1776 recited no method by which changes might be effected. It would follow, therefore, that the power was inherent in the people to make such changes as new and altered conditions required, and by any method which the people themselves might sanction and approve. Otherwise organized society would fail of its purpose, and the Constitution would be futile to accomplish the very objects for which it was designed. Accordingly, it was eminently proper (the Constitution being silent) for the Legislature, by the act of February 23, 1844, to propose as it did, a method of alteration which involved the instumentality of a convention. This method by which changes in the organic law were then made and the changes themselves, were regularly and authoritatively ratified, approved and adopted by the people in the exercise of natural and inherent rights.

But the problem now before us presents the matter in an aspect wholly different. The present Constitution is *not silent* as to the manner in which changes are to be wrought. A definite procedure is now prescribed. The Convention of 1844, as one of its first deliberative acts, provided a method by which such changes were to be made. The scheme detailed in Article IX is carefully framed, is comprehensive, and is all-sufficient in its terms. Summarized, it is as follows:—Amendments are to be proposed in the Senate or General Assembly; if agreed to by a majority of the members elected to each of the two houses, such amendments shall be entered on their journals, with the ayes and nays taken thereon, and referred to the Legislature then next to be chosen; they shall be published for three months previous to the making of such choice in at least one newspaper of each county, if any be published therein; if in the Legislature next chosen such proposed amendments or any of them shall be agreed to by a majority of all the

members elected to each house, then it is the duty of the Legislature to submit such amendments, or such of them as have been agreed to by the two Legislatures, to the people, in such manner and at such time, at least four months after the adjournment of the Legislature, as the Legislature shall prescribe; if the people, at a special election to be held for that purpose only, shall approve and ratify such amendments, or any of them, by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment so approved and ratified shall become a part of the Constitution; provided, that if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly; but no amendment or amendments shall be submitted to the people by the Legislature oftener than once in five years.

Here we have presented a careful, deliberate and adequate scheme which meets every emergency, and is one which, in my opinion, must be followed if changes are to be now incorporated in the fundamental law.

I present herewith some of the reasons which have led me to this conclusion.

It is a familiar rule of construction that where the power is given to do a certain thing in a particular way, the words which mark out the particular way prohibit all other ways by implication. This rule is embodied in the legal maxim *"expressio unius est exclusio alterius."* The rule is invoked primarily to determine the intention of those who drafted the instrument under construction. It is invoked because words thus creative in character, are by inference, in derogation of any other existing mode or method by which a certain particular thing might be accomplished. The rule is thus expressed as applied to statutes, in Lewis' Sutherland Statutory Construction, Vol. II, page 919, (2d edition).

> "Where authority is given to do a particular thing and the mode of doing it is prescribed, it is limited to be done in that mode; all other modes are excluded. Such affirmative legislation, and any other which introduces a new rule, implies a negative."

See also *Smith* v. *Stevens,* 10 Wall, 823; *New Haven* v. *Whitney,* 39 Conn. 373; *District* v. *Dubuque,* 7 Iowa, 262; *Childs* v. *Smith,* 55 Barb. 45.

This rule of construction is universally applied in the interpretation of statutes, deeds, wills, and other written instruments. No reason can be suggested why it should not be applied with equal force in construing constitutional provisions. It is a rule designed to guide in discovering the meaning of language, and wherever the true import of written words is to be determined the

rule would seem to have useful, appropriate and conclusive application. See R. I. Rep. Vol. XIV, page 651.

As I have already said, the rule is invoked for the purpose of discovering the meaning of language and enforcing the intent of those who framed the instrument under consideration. Certain inferences arise which are also useful in this regard and which confirm me in the conclusion that the framers of the Constitution of 1844 designed Article IX as an exclusive method by which the organic law should be thereafter altered or changed. We have already seen that the original draft of 1776 was silent in this important particular. What advantage could flow from this amendment if, after its adoption, just as before, the Constitution might be altered and changed through the intermediary of a Convention, where (as we shall shortly argue) certain distinct elements of deliberation, caution and safety embodied in the amendment, might not and probably would not be dominant? Most of the State Constitutions ordained in the early days were silent on the question of future changes. It was because this silence (upon a subject of such grave importance) was liable to misconstruction; and because in constitutional conventions hastiness in deliberation and distracting causes presented elements of danger, that the policy was afterward generally adopted of regulating by express constitutional provisions the exercise of this important power. That the two methods of procedure, in detail at least, are essentially different, no one can deny. A deliberative body convened as a Constitutional Convention might well be carried away by passion swayed by sentiment, or misled by specious argument or intemperate debate. Such a peril under conditions which may be easily premised is real and not imaginary. It was to meet this very danger that Article IX was incorporated in the organic law. It was designed to insure the most calm and deliberate contemplation of constitutional problems, not only by the people themselves, but by the members of both lawmaking bodies, as the representatives of the people. Let us see how complete and salutary from this point of view are the provisions of this Article. Not even the people themselves by a direct vote can effect a proposed change. The lawmaking bodies serve as a check upon popular passion and unrest, while on the other hand the people themselves can render nugatory any amendment which the lawmaking bodies may propose or even formally approve. For reasons of safety the lawmaking bodies are not permitted to effectuate amendments which they propose without the sanction and approval of the people. The Legislature and the people serve as checks upon each other, and a mutual co-operation and union of mind can alone render operative such changes as are contemplated. Under the terms of this Article the proposal may be made by either the Senate or the General Assembly, but such proposal must first be sanctioned by a

majority of the members of both houses. When this is done, a complete and inviolate record is made by the recording of the ayes and nays. But the problem must then rest until another Legislature is chosen. In the interval the proposed changes must be promulgated by being published for three months previous to the election of members of the next Legislature in at least one newspaper of each county. By this means the people are informed as to the proposed change; they are informed of the approval of the Legislature which proposed the change, and are invited, in effect, to obtain some expression of opinion as to the views entertained by those who in the interval of deliberation are seeking election to the lawmaking bodies of the State. When this step is taken, if the Legislature then chosen shall approve said amendments, by a majority of all the members, then, and not till then, are they submitted to the people of the State at a time which shall be at least four months after the Legislature has adjourned. It is to be noted that the election thus held is a special election, and is, therefore, one in which enthusiasm for candidates and exciting and distracting political questions are not before the public mind to inflame the passion or confuse judgment. When thus submitted, to become a part of the Constitution they must be ratified by a majority of all the electors voting thereon. And finally, it is provided that no amendment shall be submitted, even by this method, oftener than once in five years. Having adopted a scheme of procedure so elaborate, comprehensive and salutary, can it be fairly suggested that the framers of the Constitution intended to leave the door open for changes through the instrumentality of a convention where all these precautions which manifestly make for safety and painstaking deliberation would be rendered inoperative and ineffective? If any other view obtain, it would have been entirely permissible for the Legislature which met in the year 1845 to have at once by its formal act convened a second Constitutional Convention, which could at will have set at naught every provision of the organic law which the Convention of 1844 had been at such pains to formulate. And the same course could have been pursued by each succeeding Legislature, so that government by Constitution would have no longer presented any element of useful certainty or stability.

Again, by Article IX it is provided that the same amendment shall not be proposed oftener than once in five years. This inhibition was doubtless prompted by highest considerations of safety. It is certainly undesirable, if not dangerous, to have proposed changes in the Constitution presented with persistent frequency and at short intervals. Such a course invites unrest and threatens stability. If this be true, and this peril was guarded against by the clause just referred to, upon what theory shall we suppose the framers so drafted the Constitution as that by mere inference the power was left outstanding and untrammeled to thrust this

very peril upon us by calling conventions through legislative acts annually or even oftener, if the Legislature should so elect? The mischief sought to be remedied in Article IX, and the very rationale of the problem negatives any such inference.

In dealing with that phase of the question we are now considering, the Supreme Court of Rhode Island, in 1883, made this comment upon the wisdom and safety embodied in a Constitutional provision which provided a method of amendment identical for all practical purposes with that which obtains in this State. The court said:

> "Evidently the purpose was to insure the calm and considerate action of both the assembly and the people. It was to pass two assemblies, so that the members of the second, elected after publication, might, if the electors thought proper, be elected specially to consider it. The popular mind was not to be taken by surprise or to be carried away by any sudden sentiment, but it was to act deliberately after reflection . . . The object was not to hamper or baffle the popular will, but to insure its full expression. Our ancestors knew, what we all know, that in spite of all precautions a majority may be worked up for an occasion, which is not the true and permanent majority. They also knew, what we all know, that many electors, perfectly satisfied with the existing state of things, stay away from the polls on election day from mere inertness of temperament. It is inconceivable to us, that they would have elaborated so guarded a mode of amendment unless they had intended to have it exclusive and controlling."

See Rhode Island Reports, Vol. XIV, at page 652.

It may be suggested that the language of Article IX is merely permissive: that it is directory and not mandatory. The opening sentence of the paragraph reads: "Any specific amendment or amendments to the Constitution *may* be proposed in the Senate or General Assembly," etc. The whole policy of constitutional interpretation is predicated upon the necessary assumption that provisions of this character in the organic law are never directory, but always mandatory. This presumption arises *ex necessitate*, for otherwise government thus ordained would become nothing more (to use Mr. Lincoln's expression) than "a rope of sand."

Cooley's Constitutional Limitations (7th Ed. p. 214) thus disposes of the matter:

> "In all that we have said upon this subject, we have assumed the constitutional provision to be mandatory. . . . . The fact is this:—that whatever constitutional provision can be looked upon as directory merely, is very likely to be treated by the Legislature as if it is devoid even of moral obligation, and to be, therefore, habitually disregarded. To say that a provision is directory, seems, with many persons, to be equivalent to saying that it is not law at all. That this ought not to be so must be conceded; that it is not so, we have abundant reason and good authority for saying."

And again, at page 114, 7th Ed.:—

> "It is the province of an instrument of this solemn and permanent character to establish those fundamental maxims, and fix those unvarying rules by which all departments of the government must at all times shape their conduct; and if it descends to prescribing mere rules of order in unessential matters, it is lowering the proper dignity of such an instrument, and usurping the proper province of ordinary legislation. We are not, therefore, to expect to find in a Constitution provisions which the people, in adopting it, have not regarded as of high importance, and worthy to be embraced in an instrument which, for a time at least, is to control alike the government and the governed, and to form a standard by which is to be measured the power which can be exercised as well by the delegate as by the sovereign people themselves. If directions are given respecting the times or modes of proceeding in which a power should be exercised, there is at least a strong presumption that the people designed it should be exercised in that time and mode only; and we impute to the people a want of due appreciation of the purpose and proper province of such an instrument, when we infer that such directions are given to any other end."

It is not mandatory, of course, for either house of the Legislature to take the initiative and propose amendments to the Constitution. But if either house does propose amendments or initiates a course which results in the adoption of amendments, the word "may" is mandatory and should be interpreted to mean that the precise method pointed out *must* be pursued in effecting any proposed change.

There is another consideration bearing upon the whole problem which seems to me important. The Constitution as adopted in 1844 has been twice amended in important particulars, first in 1875 and again in 1897. At least two ineffectual attempts have also been made since the year 1897 to adopt additional amendments. The method uniformly pursued was that prescribed in Article IX of the Constitution, and the propriety of a departure from that method seems never to have been seriously contemplated or considered. This course of practice amounts, in my opinion, to a practical exposition of the Constitution itself, and such an interpretation ought not to be ignored. Chief Justice Beasley, in writ-

ing the opinion for the Supreme Court in *State* v. *Kelsey* (See 15 Vr., at page 22) makes it clear that this principle of construction may be appropriately applied not only in the interpretation of statutes, but of the fundamental law as well. I quote:

> "The legal rule is succinctly expressed in the maxim of the civil law, '*cotemporanea expositio est fortissima.*' The doctrine has such prevalence that it is applicable not only in the exposition of statutes, but in the interpretation of Constitutions of government."

Indeed, the decision in *State* v. *Kelsey* was made to turn upon a certain course of practice which the court held amounted to such practical exposition, and which the Chief Justice referred to as "too strong and obstinate to be shaken or controlled." A practice long continued may be regarded as embodying a principle of construction, and should not be recklessly disregarded. For further recognition and application of this rule see *Rogers* v. *Godwin*, 2 Mass., 477; *Board* v. *Cronk*, 1 Halst., 120; *Calame* v. *Calame*, 10 C. E. Green, 547.

Satisfying authority is not lacking in support of the view I have expressed to the effect that the Constitution must be changed and amended by the very method prescribed by its terms, and not otherwise. Permit me to call your attention to some of the cases and text books which treat of the matter.

The precise question we are now considering was presented to the Supreme Court in the State of Massachusets. In 1833 the House of Representatives propounded to that tribunal two questions, viz:—

> "First. Whether if the Legislature should submit to the people to vote upon the expendiency of having a convention of delegates of the people for the purpose of revising or altering the Constitution of the commonwealth in any specified parts of the same, and a majority of the people voting thereon should decide in favor thereof, could such convention holden in pursuance thereof, act upon, and propose to the people, amendments in other parts of the Constitution not so specified?"
>
> "Second. Can any specific and particular amendments to the Constitution be made in any other manner than that prescribed in the ninth Article of the amendments adopted in 1820?"

The answer returned to the first question was as follows:

> "Considering that the Constitution has vested no authority in the Legislature, in its ordinary action, to provide by law for submitting to the people the expendiency of calling a convention of delegates, for the purpose of revising or altering the Constitution of the commonwealth, it is difficult to give an opinion upon the question, what would be the power of such a convention, if called. If, however, the people should, by the terms of their vote, decide to call a convention of delegates to consider the expediency of altering the Constitution in some particular part thereof, we are of opinion that such delegates would derive their whole authority and commission from such votes, and, upon the general principles governing the delegation of power and authority, they would have no right, under such vote, to act upon and propose amendments in other parts of the Constitution not so specified."

It will be observed that the decision quoted denies the right of the Legislature to provide by law for even submitting to the people the expedieney of calling a convention to revise or alter the Constitution.

To the second inquiry this answer was returned:

> "That under and pursuant to the existing Constitution, there is no authority given, by any reasonable construction or necessary implication, by which any specific and particular amendment or amendments of the Constitution can be made in any other manner than that prescribed in the ninth article of the amendments, adopted in 1820. Considering that previous to 1820 no mode was provided by the Constitution for its own amendment, that no other power for that purpose than in the mode alluded to is anywhere given in the Constitution, by implication or otherwise, and that the mode thereby provided appears manifestly to have been carefully considered, and the power of altering the Constitution thereby conferred to have been cautiously restrained, and guarded, we think a strong implication arises against the existence of any other power, under the Constitution, for the same purposes."

It is noteworthy that the Constitution of Massachusetts prior to the year 1820, like our Constitution of 1776, had in it no provision by which a change or amendment might be effected. The opinion of the judges turns upon the theory that when the Constitution of Massachusetts (adopted in 1820) had engrafted into it a provision (practically identical with our own) as to the submission of proposed amendments, that method, and that method alone, should thereafter control. It was held in express terms that there was no power to proceed other than in the manner pointed out in the Constitution, and the right to effect changes through the instrumentality of a convention was explicitly denied. The value of this opinion is enhanced when it is understood that it was unanimously given and was joined in by Justices Putnam, Wilde and Morton, who were regarded in their day as eminent

jurists, and also by Chief Justice Shaw, who has been most conspicuous for learning and thoroughness among the great judges of his own and every succeeding generation. See Opinions of Judges, 6 Cush., 573.

Cooley's Constitutional Limitations, 7th Ed., p. 59, treats of the matter thus:

> "In the original States, and all others subsequently admitted to the Union, the power to amend or revise their constitutions resides in the great body of the people as an organized body politic, who, being vested with ultimate sovereignty, and the source of all State authority, have power to control and alter at will the law which they have made. But the people, in the legal sense, must be understood to be those who, by the existing Constitution, are clothed with political rights, and who, while that instrument remains, will be the sole organs through which the will of the body politic can be expressed.
>
> But the will of the people to this end can only be expressed in the legitimate modes by which such a body politic can act, and which must either be prescribed by the Constitution whose revision or amendment is sought, or by an act of the legislative department of the State, which alone would be authorized to speak for the people upon this subject, and to point out a mode for the expression of their will *in the absence of any provision for the amendment or revision contained in the Constitution itself.*"

It would seem, according to the view thus expressed, that neither revision nor amendment could be accomplished except by the method prescribed in the organic law, unless the Constitution provided *no method* for effectuating this purpose.

In 1883 the Senate of Rhode Island, by formal resolution, requested an opinion of the Supreme Court, in regard to the "legal competence of the General Assembly to call a convention for a revision of the Constitution." The Constitution of that State at that time, by Article XIII, provided that "The General Assembly may propose amendments to this Constitution by the votes of a majority of all the members elected to each house." It further provided that such amendments were to be published in newspapers, and otherwise brought to the attention of the people. They must then be approved by the Assembly elected after such publication, and by a majority of both houses, after which such amendments were to be submitted to the approval of the electors, and if approved by three-fifths of the electors voting, and not otherwise, such amendments became incorporated into the Constitution. It is to be noted, in passing, that the language of the Constitution declared that "the General Assembly *may propose amendments*,"

etc., and the judges were clearly of the opinion that this language was mandatory and not directory. The text of the opinion in dealing with the main question we are here discussing has seemed to me to be conclusive and convincing. Accordingly I quote at length:

> "We are of the opinion that the mode provided in the Constitution for the amendment thereof is the only mode in which it can be constitutionally amended. The ordinary rule is that where power is given to do a thing in a particular way, there the affirmative words, marking out the particular way, prohibit all other ways by implication, so that the particular way is the only way in which the power can be legally executed. The rule was recently recognized by the Supreme Court of the United States in *Smith* v. *Stevens*, 10 Wall. 321. There by act of Congress lands were ceded to Indians with power to sell them, or parts of them, in a particular manner, and the court held that a sale in any other manner, was void. The rule was likewise recently recognized by the English Court of Exchequer in a case in which it was thus expressed: 'If authority is given expressly, though by affirmative words, upon a defined condition, the expression of that condition excludes the doing of the act authorized under other circumstances than those so defined: 'Expressio unius est exclusio alterius.' *North Stafford Steel &c. Co.* v. *Ward*, L. R. 3 Exch. 172, 177. Cases to the same point might be indefinitely multiplied. 1 Kent Comment. 467, note d: 1 Sugden on Powers, 258 et seq.; *City of New Haven* v. *Whitney*, 36 Conn. 373; *District Township of the City of Dubuque* v. *The City of Dubuque*, 7 Iowa, 262. It has been claimed, indeed, that the rule, though applicable in the interpretation of statutes, deeds, wills, and other ordinary instruments, is inapplicable in the interpretation of a State constitution. Those who assert this difference, however, do not appear to have any reason to give for it but this, namely: that under stress of strong political excitement, the rule, if it exists, is pretty sure to be disregarded, as past experience proves, and therefore it is better to conclude that it is does not exist. We do not consider the reason satisfactory. The rule is simply a guide to the meaning of language when used in a particular way, and we do not see why it is not as trustworthy a guide to the meaning when the language so used occurs in a State constitution, as when it occurs in a statute or a will. Men do not put away their spontaneous and habitual modes of expressing themselves merely because they are engaged in the unaccustomed work of framing or adopting a constitution. In this view we are not without precedent. One of the greatest of modern jurists, Chief Justice Shaw, was of the same

way of thinking, and conjointly with his associates, declared it to be his opinion that the Constitution of Massachusetts is constitutionally amendable only as therein provided."

The Supreme Court of Iowa, in *Koehler & Lange* v. *Hill*, while dealing with the general principle here involved, in a decision handed down in 1883 held:

> "Not only must a constitution be amended in the manner prescribed in the existing constitution, but it is competent for the courts, when the amendment does not relate to their own powers or functions, to inquire whether, in the adoption of the amendment, the provisions of the existing constitution have been observed."

See 60 Iowa Reports, at page 616.

In the opinion of the Supreme Court of Mississippi, in the case of *State* v. *Powell* (see 77 Miss. 543) it was said:

> "The true view is that the Constitution, the organic law of the land, is paramount and supreme over Governor, Legislature, and courts. When it prescribes the exact method in which an amendment shall be submitted, and defines positively the majority necessary to its adoption, these are constitutional directions mandatory upon all departments of the government, and without strict compliance with which no amendment can be validly adopted."

See also *Ellingham* v. *Dye*, 99 Northeastern Rep. p. 2, a recent case of interest and value, decided by the Supreme Court of Indiana.

Nor is it any answer, in my opinion, to suggest that the proposed plan of changing, amending or revising the Constitution by the agency of a convention may be justified by Article 1 of our Constitution. That portion of the Article which is pertinent reads as follows:

> "All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it."

The rights thus expressed are not a part of government. They are older than government. The language quoted declares these rights to be inherent, and they would be none the less inherent and retained by the people even though not specifically recognized in the Constitution. But these rights are to be exercised not in a state of nature, but in organized society, and this brings us to consider the limitations which must control in the exercise of these rights. First of all, it is important to bear in mind that our government in form is not a pure democracy. In type and characteristic it is representative. The rights of the people, whether natural

and whether expressed in the organic law or not, must be wrought out through their duly constituted agents.

Mr. Justice Cooley, in his work already referred to, on Constitutional Limitations, (p. 892), states the matter thus:

> "Although by their constitutions the people have delegated the exercise of sovereign powers to the several departments, they have not thereby divested themselves of the sovereignty. The government which they create they retain in their own hands a power to control, so far as they have thought needful, and the three departments are responsible to and subject to be ordered, directed, changed or abolished by them. But this control and direction must be exercised in the legitimate mode previously agreed upon. The voice of the people can only be of legal force when expressed in the times and under the conditions which they themselves have prescribed and pointed out by the Constitution; and if any attempt should be made by any portion of the people, however large, to interfere with the regular working of the agencies of government, at any other time, or in any other mode, than as allowed by existing law, either constitutional or statutory, it would be revolutionary in character, and must be resisted and repressed by the officers who for the time being represent legitimate government."

It seems clear upon theory and authority that by the institution of government, the people surrender the exercise of sovereign functions of government to agents chosen by themselves, who, theoretically at least, represent the supreme will of the people. It seems equally clear that neither these agents nor the people who have chosen them, may act in contravention of a constitutional mandate.

In discussing a provision in the Constitution of the State of Iowa (identical with Article I, just quoted from our Constitution) the Supreme Court of that State, in the case already cited, made this illuminating comment:

> "But let us consider how these rights are to be exercised in an organized government. The people of this State have adopted a Constitution which specifically designates the modes for its own amendment. But this section declares the people have the right at all times to alter or reform the government, whenever the public good may require it. If the people unanimously agree respecting an alteration in the government, there could be no trouble, for there would be no one to object. Suppose, however, a part of the people conclude that the public good requires an alteration or reformation in the government, and they set about the adoption of a new constitution, in a manner not authorized in the old one. Suppose, also, as would most likely prove to be the

case, that a part of the people are content with the existing government, and will not consent to the change, and that the governor, who, under the Constitution, is the 'commander-in-chief of the militia, the army and navy of the State,' determines to maintain the existing government by force. It is evident that the people who think the public good requires a change, can establish these changes only by superior force. If they are powerful enough to succeed, well. They will have altered or reformed the government. But if they are not powerful enough to succeed, their attempt to overthrow the government is treason, and they are liable to punishment as traitors. They have the right to alter their government, in a manner not recognized in the Constitution, only when they can maintain that right by superior force. It follows, then, after all, that the much boasted right claimed under this action, is simply the right to alter the government in the manner prescribed in the existing Constitution, or the right of revolution, which is a right to be exercised, not under the Constitution, but in disregard and independently of it."

One other matter deserves comment. It has been suggested in the public press that the calling of a Constitutional Convention involves a purely political question, and is therefore one which no settled law would control, and in respect to which the judiciary could assume no jurisdiction. That there are such political questions cannot be doubted; but that the matter before us does not present such a question is equally clear. The whole body of judicial opinion with unanimity declares the right and affirms the duty of the judiciary to act whenever the legislative department or its agencies have violated constitutional injunctions. Without citing numerous authorities to be found in other jurisdictions, we may be content, I think, with what our own courts have said upon this topic. In *State* v. *Rogers*, 27 Vr., 480, Chief Justice Beasley, speaking for a unanimous court, said:

> "When the inquiry is whether the Legislature or any other body or officer has violated the regulations of the Constitution, it is entirely plain that the decision of that subject must rest exclusively with the judicial department of the government."

The same question, but in a more comprehensive form, was passed upon by the Court of Errors and Appeals in *Bott* v. *Secretary of State*, 34 Vr., page 289. The opinion was written for the unanimous court by Mr. Justice Dixon. It was there held that:

> "The judicial department of the government has the right to consider whether the legislative department and its agencies *have observed constitutional injunctions in attempting to amend the Constitution, and to annul their acts in case they have not done so.*"

And again:

> "For the exercise of that authority (by the courts) with regard to an attempted amendment of the Constitution, in conformity with the express provisions of that instrument, no occasion has heretofore arisen in this State; but we perceive no good reason for excluding such a case from the general principle. If a legislative enactment, which may be repealed in a year, or an executive act, which affects only a single individual, cannot be allowed to stand if it contravenes the Constitution, *a fortiori* a change in the fundamental law, which is much more permanent and affects the whole community, should not be permitted to take place in violation of constitutional mandates."

The Constitution is the highest expression of law, and yet it would be valueless if the Legislature might violate it with impunity. If an exclusive method of amendment is provided in the Constitution itself, the demands of safety and sound constitutional policy compel the judiciary to condemn such amendments as are shown to have been made in violation of the procedure fixed in the organic law.

I am aware that authority may be cited in opposition to the general view which I have expressed upon the question you have propounded. Permit me to refer briefly to the few cases which seem to be most in conflict. *Wells* v. *Bain*, 75 Pa. St., 39, would seem to affirm the right to convene a constitutional convention under the contingencies here presented. The reasoning upon the particular matter we are now considering does not seem to me, however, to be convincing. *Collier* v. *Frierson*, 24 Ala., 100, appears to be wholly uncontrolling, since an examination of the Constitution of Alabama discloses that by its very terms, it was permissible to convene a constitutional convention. Jameson in his work entitled "Constitutional Conventions," expresses the opinion that the Legislature of a State has authority to provide for calling a convention whenever there is no constitutional provision at all relating to the amendment of the fundamental law *or the provisions are confined to the enactment of specific amendments and a general revision is deemed necessary.* See Section 219. The author does not, however, cite, either in this connection or when dealing with the problem elsewhere in his book, any adjudicated cases which fairly support his conclusion. The opinion has its origin in the theory that the proposal and adoption of specific amendments and the general work of revision involve changes by methods which are wholly dissimilar. This is obviously true, and presents a detail of government which was properly controlled by the organic law.

But even though it be true that the changing of the Constitution by the adoption of specific amendments differs as to manner and method from that which would be pursued in the perfecting of a general revision, yet that circumstance in itself is inconsequential if the same result may be obtained by whichever method is employed. In other words, there would be some convincing force in his dictum if it might be fairly said that some result could be wrought out by a revision, which was impossible of accomplishment by the adoption of specific amendments. Such, however, (in my opinion) is not the case. The author in this connection, while recognizing the authority of the maxim "expressio unius," &c., already referred to, seeks to escape its force by arguing that what is contemplated by the medium of revision is not the accomplishment of the same thing, or the particular thing, sought by amendment, but a different thing. The soundness of this conclusion may well be challenged. What is the primary purpose—"the particular thing"—sought by either revision or amendment, and what is the object ultimately attained, whichever process is employed? Is it not a change or an alteration by the adding of new matter, or by recasting or modifying the substantive recitals of the instrument? The result reached in either case is the same. For all practical purposes amendments may equal revision, since revision may be accomplished by amendments. The Constitution has not rendered impossible the attainment by amendment or amendments of any particular result or object which may be desired, but it has, for reasons of safety, definitely controlled the method by which such result or object may be effected. The function of amendments is far-reaching, untrammeled, practical and complete. Every article, section, paragraph, sentence and word of the present Constitution may be exscinded, altered or changed, and the whole instrument added to by appropriate amendment, and a series of such amendments would result in a reconstruction and revision of the entire instrument. All this means practical and complete revision. And if this be true, it would follow that the distinction which he makes between revision and amendment is artificial and illusory, rather than substantial and real, and that the very reason which provoked the adoption of his rule has failed, and the rule, therefore, would seem to be ill-considered.

Accordingly my conclusion upon the whole matter is that it is not lawful to amend or change the Constitution of this State in any other way than by the precise method pointed out in the instrument itself.

Very truly yours,

(Signed) Edmund Wilson,
Attorney General.

PUBLIC HEARING

September 18, 1942

Morning Session

General Discussion

Including

Hearing on the Desire of the People to Have Their Fundamental Law Changed.

The Joint Legislative Committee appointed pursuant to Senate Concurrent Resolution No. 19, passed June 15, 1942, convened in the Assembly Chamber in the State House at Trenton on Friday, September 18, 1942, at ten-thirty o'clock A.M., for the purpose of holding a Public Hearing in connection with the Proposed Revision of the New Jersey Constitution (1942) pursuant to announcement previously made.

The following members of the Joint Committee were present: Hon. Lloyd L. Schroeder (presiding), Hon. Edward J. O'Mara, Hon. H. Rivington Pyne, Hon. John M. Summerill Jr., Hon. Manfield G. Amlicke, Hon. Dominic A. Cavicchia and Hon. Mildred A. Preen.

The Chairman opened the Hearing and the Hearing proceeded as follows:

Mr. Schroeder: We will open the hearing.

This morning there will be more or less an open house as far as the provisions of the Constitution are concerned. We will have an over-all hearing on the Proposed Revision and also a hearing on the desire of the people to have the fundamental law changed; so anyone who desires to speak on any provision of the Constitution or the desirability of changing the Constitution will be permitted to do so.

The first speaker will be Mr. John J. Goff, Chairman of the Committee of the Associated Pension Funds of the State of New Jersey. Mr. Goff.

Mr. Goff: Mr. Chairman and Members of the Legislative Public Hearing Committee on Constitutional Revision.

The purpose of this brief is to respectfully request that the legislators include in the proposed revision of the State Constitution proper protection for *all* existing pension funds by establishing contractural relationship between the State of New Jersey, its political subdivisions and the employees thereof.

It is undeniable that pensions to public employees of the State of New Jersey and its political subdivisions were established to

regulate and to equalize the community's obligation to its employees for long and faithful service at the low rate of pay received by them, for comparable work in private industry, as well as the social obligation which has been recognized not alone by the State of New Jersey and many of its subdivisions but by many corporations such as the New Jersey Bell Telephone Co., Prudential Insurance Co., Public Service Corp., etc., which have been maintaining pension funds for years at no cost to the employee. But the public employee member of a pension fund has been paying an average of four percent of his salary into the fund, with the one thought in mind that when he reached old age or was incapacitated, he will be compensated in a measure for remaining in public service at the smaller rate of pay in lieu of the higher pay in private employment. No one can dispute the fact that a very large number of public employees find it very difficult to meet the present cost of living on their salaries; it is also a fact that public employees' salaries are not being increased to meet the rise in cost of living, such as being done in private industry.

It might be said, and it is true, that many local public employees are not now covered by a pension fund, and they should be. However, this situation is being solved gradually in that local governments in such a position are beginning to realize that it is to their own advantage, as well as their social obligations, to provide retirement plans for their employees. The wheels of government usually grind slowly and it is not too much to expect that with proper encouragement local governments will make such provisions.

It has been said that some local plans are not financially sound; the fact of the matter is that even the Federal Social Security Act which was set up to take care of the general public employed in private industry in their old age is not financially sound. In fact that is the last thing that can be said for it. Actuaries estimate that the old age and survivors benefits under the present act, without adoption of any liberalization, will eventually cost at least eleven percent of the payroll. To quote a recent issue of the Chicago Journal of Commerce, and their estimates are low: "Students of the problem contend that the amounts being collected under the Social Security program are about one-fourth of what should be collected; that the plan as now constituted pays enormous sums in bonuses at the expense of future generations; that the plan as a whole is inadequate not only in meeting its financial requirements, but in doing what it purports to do, i.e., provide security payments to all aged, and that it hides its true status under unpublished bookkeeping and high-sounding phrases.

"On the present basis, an annual liability of $7,000,000,000.00 eventually will have to be met, it is estimated; and there will be only one way to pay that, if at all, and that is through the compulsion of general taxes. Not only is the situation as it now is shaping up a cruel hoax on a people trusting implicitly in the integrity of the government, but it is a threat to the solvency of the Treasury. At two and one-half percent, $7,000,000,000.00 annually would service a national debt of nearly $300,000,000,000.00, a figure not talked of yet by even our most ardent spenders."

I call this to the attention of the Committee to point out that the public employee will be subjected to pay his part of this tax for which he will receive nothing and the very people who make up the so-called taxpayers groups (and many of them receiving very high salaries) will reap these benefits. Further, the public employee pays a part of the current Social Security tax every time he makes a purchase of anything manufactured because the employer's tax is included in the selling price of the article. Again the so-called taxpayers groups benefit from the public employees.

Why is it we never hear the highly-paid representatives of the Chambers of Commerce and the so-called taxpayers groups making surveys, preparing papers, appearing at hearings, etc., against these unjustifiable taxes the public employee has to pay? The answer is a simple one; it is because they themselves benefit from them.

So it is plain that to claim that some local systems are not financially sound is hardly a good argument to use against all pension or retirement systems being included in the Revised Constitution and that it contain a provision that will accord equal protection to all legally constituted existing pension funds of public employees. We feel that no exceptions should be made in favor of any particular pension fund or funds to the exclusion of any other pension fund. However, we feel that new local plans should be established on a sound basis, and those in existence not enjoying soundness should be gradually put in order. If we have defects in our systems we must and will make a sincere effort to correct them.

I might point out at this time that very thing has been started in the County of Essex. I refer the Committee to Assembly Bill No. 110 of this year, which was vetoed by the Governor and a new bill has been prepared and is in the hands of Assemblyman Mahr which removes the objections, and is approved by the Board of Freeholders and all the employees affected. This bill (a) increases the amount of contributions from employees' salaries to the fund by sixty-six and two-thirds percent; (b) reduces and eliminates certain employees' benefits which exist under the present law, and (c) it consolidates seven existing separate systems in Essex County into one sound system.

Any corrections needed can be made in local plans, but we feel that home rule should prevail in that all moneys should remain under local jurisdiction.

If anything caused abandonment of local plans, there would be

no provisions for the hundreds of retired members whose actual existence depends upon their retirement allowance.

Injury to, or abolishment of, local retirement funds would be a serious blow to local government from the management point of view, since the most important public reason for establishment of pension funds is to increase the efficiency of the public service. That result is attained by accomplishing two important objectives:

(1) The elimination of the so-called "hidden pension system," through which superannuated and disabled employees are kept on the payroll at full salary after they are no longer useful, and

(2) To attract better personnel and to reduce costly labor turnover by encouraging trained employees to remain in the public service.

In public service, unless a state of disability or superannuation is extremely pronounced, employees after having given many years of service, generally are not removed from the payroll, particularly if such employees do not have financial means of support, and it appears that most public employees fall in that category.

In the State of Ohio, when their retirement system was inaugurated, there were over three hundred employees on the payroll, all at the higher salary levels for their respective classifications, who were between the ages of seventy and ninety-five years. In a number of cases the employees were almost totally disabled, some in welfare institutions actually being waited upon by other employees. It is all very well to say that they should not remain in the service but when there is no financial support, they will not be removed, as a general rule. While I referred to those over seventy, the situation exists for many under the superannuation age, particularly in special services such as fire and police, penitentiary and insane institution guards, etc., where the age and physical fitness become vital factors in efficient service.

The second objective; to attract better personnel and prevent turnover, is much more important than is generally recognized. It may be said that the very future of our democratic form of government depends upon our solution to that problem. There is no way to estimate the cost of labor turnover in the public service. Unfortunately, far too great a percentage of the public appears to view public positions as "bonuses" which should be passed around among the citizens, apparently completely blind to the fact that when a trained efficient employee is permitted to leave the service and is replaced by a new, inexperienced person, it reaches right into the pocketbook of the taxpayers.

More important than the cost angle is the serious long range result of inefficient public service. The democratic form of government is on trial for its very life throughout the entire world, and we should make no mistake, it must meet the challenge and justify itself. How much of the disrespect and contempt in which

public bodies are sometimes held is due directly to untrained and inefficient public servants. It behooves us to make a profession, a highly respected profession, if you please, of the public service. We must attract good employees to the service, and keep them after they are trained. We cannot accomplish that result through salaries alone, since public salaries are low. There will never be a speculative opportunity to make money in the public service; hence that lack must be replaced by some other factor.

It would seem that the only way to raise the quality of public service is through security of tenure, possibility for promotion, periodic increments and adequate protection against disability and old age.

In view of the foregoing facts, it would be manifestly unfair to public employees in general to give contractual agreement only to the two funds as recommended by the Constitutional Revision Commission, to the exclusion of all other legally constituted existing pension funds of public employees.

Therefore the Committee of Associated Pension Funds of New Jersey, whose affiliates embrace practically all the existing public employee pension funds in New Jersey of policemen, firemen, school teachers, municipal employees, county employees, state employees and employees of school districts, with a total membership of approximately 50,000, respectfully urges that the Proposed Revised Constitution contain a provision such as in Article V, Section VII of the Constitution of the State of New York—"That membership in any pension or retirement system is of a contractual nature, the benefits of which shall not be diminished or impaired."

MR. CAVICCHIA: Mr. Goff, I take it then that the 50,000 people whom you represent are for constitutional revision in New Jersey.

MR. GOFF: Providing a contractual agreement would be written into the new Constitution.

MR. CAVICCHIA: Do you care to state whether they would be for revision in any other respect?

MR. GOFF: I haven't the authority to say that at this time.

MR. SCHROEDER: Thank you very kindly. The next speaker will be Mr. Irving Abramson, President of the New Jersey Council, C. I. O. Mr. Abramson.

MR. ABRAMSON: Mr. Chairman, our organization is on record with respect to the various changes that we feel are needed in the State of New Jersey. I would like to make a brief over-all statement about the whole subject matter of constitutional revision.

First of all, our organization is on record and believes that the Constitution can be effectively and more democratically changed only by a constitutional conventon.

Secondly the Proposed Revision of the Constitution which is now before your Committee, we feel falls far short of the actual needs of the people of the State of New Jersey. However, there is

one very important aspect of the whole problem that is before you, Mr. Chairman, and that is this: I think we all know that there is some doubt on behalf of some members of the Legislature as to whether or not the people of New Jersey want a change in the Constitution. The structural changes in the Constitution are of historic moment; they don't come every day. I think we ought to be careful about any changes we make so that, if they are made, they are made fully and comprehensively so that they meet the demands of the people. I hope, therefore, Mr. Chairman, that the people of the State of New Jersey will be given an opportunity to resolve any doubts in the Legislature's mind as to whether or not they want any changes. I am sure that once the people of New Jersey are given an opportunity to state whether they want any changes, they will say so; they will indicate the urgent need for changes in the Constitution. And at the election in 1943—I assume that is the earliest moment—people ought to be given an opportunity to say whether or not they want the Revision. Once the mandate comes down from the people of New Jersey, I am sure that the Legislature will be given a more correct, a clear idea of what the people want and there won't be so much of a reluctance in getting into the realm of constitutional revision, which is today the most important thing the people of New Jersey face.

MR. SCHROEDER: Thank you, sir. The next speaker will be Commissioner Spencer Miller Jr. Commissioner Miller.

MR. MILLER: As you bring to a close this notable series of weekly hearings on the Revision of the State Constitution which were begun on July 8th last, may I say as Chairman of the New Jersey Committee on Constitutional Convention, that the conduct of these hearings by your Committee has been characterized by an impartiality, a judicial poise and a manifest desire to hear all sides which has been most commendable. Your hearings have definitely aided the cause of public education concerning our basic charter. But more. You have provided a public forum for the consideration of the report of the Revision Commission that has become so indispensable that the future historans of this period of our constitutional history will link together your Joint Legislative Hearings with this Revision Commission's report as indivisible parts of the larger whole.

As Chairman of the Citizens Committee, I have appeared week after week as a proponent of constitutional revision. But I have appeared both as a citizen and in behalf of the organizations associated with our committee who are also proponents. If one should measure the number of groups who have been represented in advocacy both for and against Revision, there would be no question but what the sentiment for Revision has been overwhelming. The weight of evidence has been clearly on the side of change. What

is more, the support for Revision is in no sense sectional or partisan or occupational. Representatives of business and labor have indicated their support of modernizing our State Government as well as outstanding leaders of the bench and bar. Individual farm leaders have expressed to me their desire for a more modern government in this State. May I remind your Committee at this closing session that these organizations which have associated themselves together in our New Jersey Committee on Constitutional Convention have by official resolution or by other declarations of policy arrayed themselves in favor of the modernization of our frame of government. They have strongly favored constitutional revision. They are more persuaded as the work of this Committee draws to a close that the need for Revision has been amply justified by all the facts.

One of the stock arguments against any governmental reform is that it is the wrong time to make a change. In general, the poverty of valid argument against the substance of a proposed reform may be measured by the emphasis put upon its alleged untimeliness. Ever since Revision of the New Jersey Constitution became an active issue as a result of the advocacy of Governor Edison and Senator Hendrickson two years ago, the principal opposition argument has been that action should be postponed until after the war.

These hearings have demonstrated that there are differences of opinion about the details of the changes that are most needed. But there is a surprisingly general agreement concerning the direction which changes should take. For example, the cumbersome system of courts, the practical impotence of the Governor as chief executive, and the over-burdening of our Legislature with annual elections and the power to appoint public officers find practically no defenders. It is generally recognized that, as Mr. Charles R. Erdman Jr., wrote some years ago, the New Jersey Constitution is a serious "barrier to governmental efficiency and economy."

Another proposition on which practically all thoughtful citizens agree is that the war and reconstruction following the war will put unprecedented strains on our governments, federal, state and local. People are definitely and justifiably afraid of our capacity to meet effectively and without grave danger to the whole social order, the succession of crises which the not too remote future undoubtedly has in store. We can meet the dangers ahead successfully, but we should not risk meeting them without the best possible tools that representative government can offer.

It is, therefore, as clear as a demonstration in geometry that we had better proceed at once to correct the defects in our State Constitution which are known to make government in New Jersey less efficient, less economical and less responsible than it can and should be. It is hard to escape the conclusion that those who

argue that we should wait until we are bedeviled by the social and economic aftermath of the war before improving the governmental machinery with which to deal with that aftermath are guilty either of insincerity or of a snap-judgment which they should speedily revise.

The hard future ahead is enough argument in itself for Revision of the New Jersey Constitution now. The fact that increasing numbers of our citizens are out of the State in the armed forces of the country and that many of the rest of us are exceptionally busy in the battles of production and civilian defense, does not reduce in the slightest the need for this action. In the days of prosperity we were "too busy" making money and having a good time to think or to act seriously about fundamental governmental problems. In the days of depression, we were "too busy" worrying, walking the streets and trying to make ends meet. The fact is we are always "too busy," and the opponents of change are always on hand to point that out. The question is not whether we have the time to do this job, but whether we can afford not to make the time to do it now. There is nothing whatever incompatible between an all-out war effort and a conscientious, business-like disposition of the unfinished business of taking the kinks out of the New Jersey Constitution. Unless the war is over sooner than we have the right to expect, the effort spent in finishing this job may be repaid many times over before the end of the war in more efficient operation of New Jersey Government. It is sheer fancy to suggest that completing this job would take much of the valuable time of any considerable number of people. Most of the time that needs to be spent working has already been spent by the Hendrickson Commission on Revision of the New Jersey Constitution, by the Joint Legislative Committee, and by those who have participated in the hearings before that committee this summer. All that is asked is that this Legislature between September 28 and October 6, pass an act putting on the November ballot substantially this question: "Shall the 1943 Legislature be directed to submit a revised Constitution for adoption or rejection by the people in November, 1943?" If, as we confidently expect, the people answer that question in the affirmative, it will be the duty of the next Legislature to make any changes it may think wise in the Constitution proposed by the Revision Commission and submit the revised document to the people a year hence. It should not take the Legislature or some committee of the Legislature any longer to refine this Constitution satisfactorily than is frequently taken on measures of much less public importance. That is, it should not take any longer if the members of the Legislature recognize that we really are in a death struggle for democracy which requires that partisanship and special and personal interests be set aside in an all-out demonstration that democracy is really fit to survive and worth fighting for. No person who does not recognize this has any business in the New Jersey Legislature or in any other place of responsibility or trust in these times.

Of course, there are and should be extensive public discussions of the proposed Revision. But when people discuss constitutional questions, they discuss the fundamental principles and procedures for which we are fighting. Emphatically, discussion of these matters should *not* be abandoned for the duration. The most fruitful discussions of fundamental political principles have been in times like these. The State of Massachusetts revised its constitution by a convention during the last war. The great formative period of American political science was the Revolution and the critical period immediately following it. The great formative periods in the history of English political thought and practice have been periods of stress and crisis. The English people today, despite the almost complete cessation of normal civilian activities, are said to be thinking and planning more seriously than they have for a long time for the improvement of their own constitutional system.

Nobody will claim that life is as disorganized in New Jersey today as it was during our own revolution or as it is now in England. We have a magnificent headstart toward the formation and adoption of a well considered and modern basic law for the State. It is not necessary as it was in Massachusetts to take the time and the expense to elect and hold a special constitutional convention. The completion rather than the shirking of this effort would give a great lift to our own democratic morale. It would be an inspiring demonstration that democracy still has its old capacity to strengthen itself in time of need. And the discussions of fundamental principles which it would entail would help us to get straight in our minds just what it is that we are fighting for.

The argument that we should wait until the "boys" have come home in order to give them an opportunity to have their say in this Revision is utterly specious. In the first place, it assumes that there is a difference of opinion or interest between those in the service and those who are still at home concerning these fundamental questions. If this is so, the whole basis of our system is unsound, and the draft is a cruel fraud. The fact is that a strengthened and extended democracy is the essence of what we are all fighting for, both on the home front and on the overseas battle lines. No one would claim that we must wait until the boys come home before making the decisions and taking the steps necessary to supply them with the material and equipment required to enable them to engage the foe on favorable terms. Very few will claim that we must not *during the war* make vast changes in our whole way of life, involving great inroads on the traditional rights and liberties of the individual, for the sake of ulti-

mate victory in the battle for democracy. But the present war is a great deal more than a trial of arms. It is more than a mobilization of industry and finance and manpower. It is a titanic struggle of ideas, principles, and systems. In the last analysis, it is a struggle for the survival of the fittest in constitutional systems.

As Americans, we are also Jerseymen, and our first line of defense is right here in our own State. One of the measures of the fitness of our American system to survive is, therefore, the fitness of the New Jersey Constitution to provide effective, responsible government in both war and peace. Since the present Constitution of the State has practically no defenders, it seems perfectly clear that democracy would be better served under a sensible revision of that Constitution. Abraham Lincoln issued the Emancipation Proclamation in order to help win the Civil War. Lincoln's act had both practical and symbolic implications, in a war fought to vindicate certain principles of freedom and equality. It is not far-fetched to assert that revision of the New Jersey Constitution for more efficient, more economical, more responsible government may also be regarded as a war measure. If this is not in order "for the duration," what is in order? Would a new tax be in order? Would a new police regulation be in order? Would any law affecting existing rights and arrangements be in order? The fact of war calls, not for a cessation, but rather for an intensification of activity for a better, more responsible government under a more workable Constitution. Many now in the service have taken an important part in the preliminary work for a Revision of the State Constitution, and are deeply interested in its early consummation. Furthermore, under recent State and Federal legislation, many more of the men in the service will have an opportunity to vote on the revised Constitution. These men know that they will be confronted with grave problems when they return. No reasonable person can doubt that they will be grateful rather than resentful at any improvement that we can make in our system of government before they return. Finally, we are not making an unamendable Constitution which cannot be improved, if the voters at any time in the future wish to change it.

There probably has not been a time since the last war and probably will not be a time for many years after this war when it would be as easy to get almost unanimous agreement among all elements in the community on fundamental American principles. If we postpone constitutional revision until then, we may be forced by a practical breakdown of governmental processes in a time of crisis to undertake Revision in the midst of a great storm of conflicting *isms*.

We in this State are not alone in concerning ourselves with this problem of bringing our governmental procedures into correspondence with modern ideas.

In a recent statement which appeared on May 28, 1942, United States Circuit Court Judge John J. Parker said in part:

> "The all-important matter now confronting the country is the winning of the war. Nothing must be permitted to interfere in any way with the war effort; and every contribution that we can make to the success of the armed forces of the country must be made unhesitatingly and must be given priority over all other matters. This does not mean, however, that we can abandon everything except the pursuit of arms. If our armed forces are to be successful, they must be adequately supplied; and, if they are to be adequately supplied, civilian life must be adequately organized to that end. This means not only that private enterprise must continue to function, but also that the agencies necessary to that functioning, to the preservation of peace and order and to the maintenance of morals must also continue to function, and to function with the utmost efficiency.
>
> Nothing is more important to this efficiency of the body politic, to the maintenance of peace and order or to the preservation of the public morale than the proper and efficient administration of justice in the courts; and there is no more important duty of the lawyer in war time than to see that it is so administered . . .
>
> A little less than two years ago the American Bar Association embarked upon a program for improving the administration of justice throughout the country. That program has gone forward with marked success, and in almost every State of the Union the processes of justice have been speeded up and made more efficient. The coming of the war furnishes no reason for abandoning the program but an added reason carrying it forward with greater energy. To the extent that it succeeds, the processes of democracy will be rendered more efficient and the country will be the better able to cope with the problems which the war has brought to us. If democracy is to survive in this world crisis, it must be made efficient in all of its operations; and its efficiency in the fundamental matter of administering justice and operating the legal machinery, without which a democracy is incapable of functioning is primarily your duty and mine. Let us not fail in that duty.
>
> Some reforms can await the coming of peace, but anything which will speed up and simplify the legal machinery of the country is important to national efficiency and morale, and should have our prompt and earnest attention as important to the war effort. History teaches that it is not in times of peace, but in times of war and crisis, when our way of life is shaken and we must perforce reexamine

the fundamentals of our existence, that the greatest progress in the processes of law and government are made."

As I understand it, the question which you members of the Joint Legislative Committee are asking yourselves today is this. "Is there enough public interest in and need for Revision of the New Jersey Constitution to make it incumbent upon us to advise the Legislature to ask the people this November for a definite answer—"Yes" or "No" on whether or not we should proceed further with Revision of our State Constitution at this time?"

As Chairman of the New Jersey Committee on Constitutional Convention, I have tried in these hearings to explain the considerations which unite the hundreds of thousands of members of the many statewide organizations joined in support of this effort to make democracy work better in New Jersey.

I doubt if any single civic project in the history of this State has ever brought together such a cross section of the informed opinion of our people. Read the list of organizations that now urge that the people be asked this November to say whether or not they wish the 1943 Legislature to submit a revised Constitution for their adoption or rejection a year hence. This list includes all the great organizations of labor, the great civic organizations of women, the statewide taxpayers organization, the accredited organization of New Jersey businessmen, the two statewide consumer organizations, and numerous other civic and professional bodies. All of these organizations have appeared before you in the persons of their authorized representatives to discuss the need for and the terms of a sound Revision of the Constitution of this State. All are united in asking that the people at the polls this November be given the opportunity to decide what the next step shall be.

These hearings have given an inspiring demonstration of the capacity of an uncoerced, unterrified democracy to do its own thinking and correct its own mistakes. Of course, "the people" have not swarmed this Assembly Chamber by the thousands. They have acted in the best tradition of republican government in sending their authorized agents to speak for them. The mandate is clear. At least a prima facie case has been made for constitutional revision. The time is now here to ask the people to speak with the voice of authority at the polls. They ask their lawmakers to provide the necessary machinery for the expression and recording of this voice. You can hardly do less in the light of these hearings; the people of this State could not in reason ask you to do more.

In conclusion, let us make one point very clear. We are not asking for a vote now on a revised Constitution. We are simply asking that the people say whether or not the Legislature should prepare and submit a revised Constitution after further study and

discussion. We know that the Constitution that will ultimately be submitted to the people has not yet been written. We hope that it will contain the good provisions both of our present Constitution and of the new Constitution drafted by the Hendrickson Commission. We hope that it will be better than either of them. And we are confident that the people can be trusted when the time comes to exercise good judgment in deciding whether or not to substitute it for the basic law written in 1844.

A government which rests upon the will of the people has no other anchorage than the intelligence of the people.

That is both the principle and the promise of democracy.

We now ask you to recommend to the Legislature that they submit to the will of the people of New Jersey in November 1942 the question of whether they wish to vote another year upon a modernized State Constitution.

May I say to you, sir, and to the members of the Joint Legislative Committee that I wish to express my very sincere appreciation for the very great courtesy which you have extended to me personally during the course of these hearings.

MR. O'MARA: Thank you, Commissioner. The next speaker on the registered list is Mr. Kirk Brown.

MR. BROWN: The declaration in Article II, Paragraph 2, on page 35 of the Report of the Constitution Commission, (p. 933) that all residuary rights not in conflict with the rights reserved by the people shall be embraced within the legislative power is self-contradictory. After the allotment of powers between the divisions of government and after other powers, rights and privileges have been prescribed or proscribed, the residuary powers are not those of the State but those of the people. This is plainly stated in amendment 9 of the Federal Constitution, one in the so-called Bill of Rights, and is repeated in the present State Constitution, and again in the report of the Commission in Paragraph 20 on page 35 (p. 932). That statement declares that the enumeration of rights and privileges shall not be construed to impair or deny others retained by the people. Put that alongside of the declaration that the residuary rights are embraced within the legislative power and how can they otherwise be construed than to say that one is a contradiction of the other; and that being so, it would only remain for some court guided by considerations of policy to decide that the legislative power was paramount.

Such an important change in the Constitution as annulling one of these ancient rights should not come in by the back door, but boldly knock at the front and enter or stay out on its merits and if it does enter, it can only do so by the contrary provisions making room for it by vacating the premises. As an item in the revision of the entire Constitution, this paragraph cannot be approved or disapproved except as the entire rescript is approved

or disapproved. Let it then stand on its own feet and be submitted to the people for ratification separately, and along with it an amendment to the contrary effect in which the present declarations of the reserved powers of the people are repeated and emphasized in order that the people may choose under which theory of State Government they will live.

I therefore again suggest that this Paragraph 2 of Article II be submitted for ratification separately and not as a part of the Revision of the entire Constitution, and with it at the same time there be submitted the following amendment to replace Paragraph 2 and 20 of Article I.

All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people and they have the right at all times to alter or reform it, whenever the public good may require it. The enumeration in this Constitution and its amendments of the rights and privileges of the people shall not be construed to impair or deny others retained by the people. The sovereignty of the State is a grant from the people. The people have the right at all times to diminish or extend their grants. The sovereignty of the State is limited by the reserved rights of the people and by those powers proscribed to it in this Constitution and its amendments and by those powers which the State has granted or shall grant to the United States. This Constitution is established as a safeguard of the sovereignty of the people and to limit and define the powers of their Government.

I have another paper on the subject of clarity in the Constitution.

To the Joint Legislative Committee for Ascertaining the Sentiment Relating to Constitutional Revision.

Article X, Paragraph 2, page 54 of the Report, (p. 953) reads: "Any recital of specific functions, powers or duties in this Constitution shall not be construed in any manner to restrict by implication any general functions, powers or duties of government not inconsistent therewith." If, as contended, the legislative power is unlimited, except as specifically prohibited, what is the necessity for this general and indefinite dedication of unspecified functions, powers and duties? If Article II, Paragraph 2 is right then this is mere surplusage or perhaps an understudy for that Article. In explanation the Commission says that these provisions "are of a technical nature and are required by good legal practice," but industrious search has discovered no one who could explain this explanation. In any event this paragraph is one of a few details that mar this admirable Report but to which so much distrust is directed as to imperil ratification of the entire document. I suggest that this paragraph with Article II, Paragraph 2 be presented as a separate amendment at a future time.

Some of these objectionable details arouse opposition that probably could be put at rest by a revision of their language; the Convention of 1787 appointed a Committee on Style and Arrangement for this purpose. I suggest that such a Committee be set up by asking the President of Princeton University to designate one member and the President of Rutgers a second and these two a third. While such a committee cannot be expected to perform miracles of phraseology yet, working with more deliberation than was possible for the Commission or will be for the Legislature, it can doubtless clear up many moot points and forestall future interpretations by the courts and, of greater present importance, improve the prospects for ratification.

The necessity for clarity of meaning in a Constitution is apparent. Interpretations by the judicial, executive and legislative powers necessitated by lack of definition tend to become permanent and when of a contrary meaning to the original, the will of the people is denied and the democratic principle annulled. Brevity in a Constitution is a desirable property but it should never be employed at the expense of meaning, sense or import. Meaning should be preserved at all cost of brevity and literary style. A notable example of the contrary was the eighteenth amendment of the Federal Constitution; its lack of definition of the phrase "intoxicating liquors" led to interpretation by statute wholly beyond the scope of its language and its intent and ultimately to its annulment after a saturnalia of crime theretofore unequalled in this country. If a definition of that phrase could be put in a statute it should have been possible to put it in the Constitution. The sixteenth Federal amendment is another example of indefiniteness. This has given rise to fantastic interpretations of the term "income" by statute and executive acts, and again the general welfare clause and court interpretations of "interstate commerce." Evidence that such a committee can find work to justify it can be found in Article II, Paragraph 3 on page 35 of the Report, (p. 933) which reads, "The exercise of any powers or discharge of any responsibilities of a legislative or executive character by administrative agencies shall be limited to the effectuation of declared general standards or principles set forth by law and, to the extent that private rights are affected or privileges conferred or withheld, shall conform to established and published practices and procedures which, so far as practicable, shall be of uniform character." This deals with a growth in the anatomy of government of tremendous importance; its language should be of the clearest to guide and control these administrative agencies or it may well prove to be a charter to sail the seas of power unchecked.

Article III, Section VII, Paragraph 9 on page 41 of the Report, (p. 939) is another candidate for such a Committee's labors. This provision that the Legislature shall not pass any private,

special or local laws in certain enumerated cases is in the old Constitution and the people's representatives have made a farce of it because of a lack of definition of the words "private, special or local." Ridiculous categories of counties and cities have been set up in the acts to make their application seem of a general character. Thus in the last two sessions bills have born these descriptions. Counties having a population between 25 and 45 thousand, 45 and 90, 60 and 70, 90 and 150, 120 and 130, 205 and 500 and 250 and 500 thousand. Having a population of more than 195 thousand and less than 25, 40 and 175 thousand and counties bordering on the Atlantic Ocean. Cities of less than 12 thousand and operating under Chapter 108, Title 40 of the Revised Statutes. Municipalities having a population between 5 and 10 thousand and owning and operating water plants and systems, sewage disposal plants and systems, electric light and power plants and systems. Many of these descriptions or categories, as they are meant to do, fit only one county, or city.

The purposes of these bills covers salaries of teachers, county court criers, sergeants-at-arms, mayors and commissioners, clerks of district courts, elevator operators in county buildings, tenure of office, duty of court criers, hours of labor of uniformed employees, exemption from a law, term of morgue keepers, to increase the number of constables, pensions for widows of employees of county clerks and pensions for widows of county book-binders.

Thus for 98 years the legislative power not content with its broad powers, much greater than those of Congress, has ignored this provision of the people's law and gradually encroached upon the proper field of local government till there is little left of home rule and mandatory spending laws are imposed without end. All for lack of a definition.

Such changes in the Report as I have advocated have been made with the purpose of making it more acceptable. Criticism has always been constructive. No objection has been made without a corresponding proposal for a remedy with one exception and in that case no remedy is possible. A desire not to be classed as an objector per se calls for a further reference to that instance.

The Commission says in its lucid "Statement of Transmittal" that "as an instrument of government the Constitution allocates authority, and defines powers." Consider Paragraph 7 of Article III, Section VI on page 39, (p. 937) in the light of that statement. To whom is authority allocated? Why, to any little pip-squeak in Washington who may issue a "Federal administrative rule or regulation." How is the power defined? It isn't. Who can define the power of a Federal administrative agency that has not even been created by Congress and which can arrogate all the power it needs or have it presented by presidential decree. In giving to the Legislature the power to make any Federal rule or regulation

the law of New Jersey without disclosing it the Commission has strayed afar from its own definition of a Constitution. Can the legislative power be entrusted with such a broad charter? What has it done in a similar case? Look at chapters 20 and 211 of the Laws of 1938 for the setting up by a municipality of a corporation known as a local housing authority. The furtive character of these acts is apparent in the provision for secrecy about public business and for the hurried creation of a body, having powers independent of control by State or city, by (I quote the language verbatim) a "resolution voted at a meeting at which it is introduced and taking effect immediately without being laid over or published or posted." I have a photostat of a letter from the counsel of the State Housing Authority stating that these acts were prepared by "the legal staff at Washington" and democratic Congressman Gore of Tennessee said of this legislation, "the United States Housing Authority is guilty of disseminating the most reprehensible, misleading information." If that requirement of a Federal act could be put on the statute books of New Jersey by a subservient Legislature what would another Legislature do with these wide thrown gates? Do not tell us it cannot happen here. It has happened. "In questions of power," wrote Jefferson, "let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution."

If the possibilities of that paragraph for secrecy, nullification surrender of the State's rights, surrender of authority by legislators to Federal office holders; and having as its source some anonymous authors far removed from responsibility to the people, is given to the legislative power and if the eight votes in the Senate retain their power to throttle the will of the people, democracy will be dead in New Jersey. New Jersey can make its own laws. There is no place in America for secret legislation. That paragraph should be withdrawn and its genesis fully disclosed.

With the elimination of this Paragraph 7 and the deferment of a few others which are not co-ordinated with the several general plans embodied in the Report and which by their elision will, therefore, not affect it otherwise, there will be removed a source of opposition that would gravely endanger ratification. These changes which I have proposed are not to be taken as opposition to the Report as a whole; on the contrary I think the Commission did a splendid job with these exceptions and hope to see its life continued and that the Legislature will authorize putting on the ballot at the general election in November next the question:— Shall a Revision of the State Constitution be Submitted for Ratification?

MR. CAVICCHIA: Mr. Brown, may I ask you this: Do you believe with me that the sovereign power of the people is a continuing power?

MR. BROWN: I believe it is. I believe sovereignty resides in the people, not in the persons.

MR. CAVICCHIA: Well then, how can you justify your interpretation of that clause relating to the residuary power, as a curtailment of the sovereign power of the people?

MR. BROWN: I don't say it is. I say it is a direct contradiction of the other provision in the Constitution.

MR. CAVICCHIA: Well, it can't—

MR. BROWN: One of them is wrong.

MR. CAVICCHIA: I understood you to say that your interpretation of that clause is that it is contrary to the political power of the people enunciated in the Bill of Rights. Is that right?

MR. BROWN: Let me read it again. I think that will clear it up.

MR. CAVICCHIA: Just read it briefly, just that portion please, Mr. Brown.

MR. BROWN: The declaration in Article II, Paragraph 2 on page 35 of the Report, (p. 933) that all residuary rights not in conflict with the rights reserved by the people shall be embraced within the legislative power is self-contradictory. After the allotment of powers between the divisions of Government and after other powers, rights and privileges have been prescribed or proscribed, the residuary powers are not those of the State, but those of the people. Now after all, those are defined in the Constitution, the you shall and you shall nots, and the allotment of powers of the judiciary and the executive department. That is what I mean by the residuary rights. Those are claimed to be that of the Legislature.

MR. CAVICCHIA: How can they be otherwise, Mr. Brown? Doesn't the Legislature have plenary powers?

MR. BROWN: A reading of the Constitution would show that it has. My point is that it is in contradiction to this other declaration. Why have two contradictory declarations in your Constitution?

MR. CAVICCHIA: I don't think they are contradictory. That is the point I make. One relates to the sovereign power of the people as a people. The other relates to residuary powers of the Government as the outward expression of the people.

MR. BROWN: Suppose somebody should present an amendment to the Constitution declaring that certain rights are those of the people? The answer would be, the Legislature already possesses it, wouldn't it? The people can't impart any other rights rather than the Legislature because the Legislature possesses the whole field of residuary rights.

MR. CAVICCHIA: Insofar as Government goes, that is true.

MR. BROWN: That is a limitation on the sovereignty of the people.

MR. CAVICCHIA: Absolutely not. I think that is where our great question lies here, that people fail to distinguish between the political power that inheres in the people throughout the ages and the powers of Government as they are defined or distributed in the instrument of Government which the people set up. I think a clear understanding of these fundamentals rests entirely on an understanding of the one and the other.

MR. BROWN: What is left of the peoples' rights—nothing but the power to amend the Constitution.

MR. CAVICCHIA: What is left in the people is the power to overthrow the Government, to alter and to reform as the public good may require, notwithstanding any provision in the Constitution. I contend that there can never be included in a Constitution any provision which attempts to limit the continuing political power which inheres in the people throughout the ages.

MR. SCHROEDER: Are there any other questions?

MR. CAVICCHIA: That is all.

MR. BROWN: May I just answer that? I cite the Federal Constitution as an instance of that very thing.

MR. SCHROEDER: The next speaker will be Dr. Eugene Greider, Chairman of the Good Government Council of the State of New Jersey.

MR. GREIDER: Mr. Chairman and Members of the Committee:

My purpose is to speak very briefly this morning on what I think is the idea most important for our consideration just at this moment. Questions of substance I think have been well canvassed and will be well canvassed again if the question is submitted to the people in November, as I believe that it ought to be, and if they authorize the Legislature, as I believe they will, to present a revised Constitution.

I am speaking for the Good Government Council of New Jersey, although the ideas that I have to express I think could stand on their own merits. It is customary, however, to try to convince the Legislative Committee that one represents a great many other people. The Good Government Council has been in existence for about seven and one-half years. It is composed of twenty-six civic, professional and business organizations statewide in character. The principal interest of the Council has been to make itself and keep itself a true cross section of informed public opinion by constituting its membership in a representative fashion and by studying the questions regarding which it takes a position. It has limited itself specifically to one field, the matter of fiscal and administrative organization and procedure in State and local government. The Council has advocated specifically reorganization measures: one, a fiscal control act which would centralize the management of State finances under the Governor's con-

trol in a rational State Department of Finance, and at other times a more comprehensive reorganization as to subject matter. Therefore, we are particularly interested in that part and we think that the draft of a Constitution submitted by the Commission was excellent on that point, although, like all the rest, we might make some reservation of detail.

The thing that we are really here to talk about this morning, however, is the question of whether the question ought to be submitted at the November election for the peoples' consideration. And although it has been read here many times before, the point rests so firmly on the section that I am about to read from our present Constitution that you will forgive me if I read it again. Article I, Paragraph 2: "All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it." That is the New Jersey Constitution. That is the highest authority under which you ladies and gentlemen of the Committee and all members of the Legislature, both houses, operate. A Constitution that has been in existence and in effect for ninety-eight years without the question ever having been asked of the people whether they so desire to have it revised, without the opportunity ever having been given to the possessors of the inherent political power to say that they desire to have a Revision, seems to me an anachronism. How can a member of the Legislature, if the mere question is submitted to him, in the case of a Constitution that has lasted over a generation, much less ninety-eight years, and particularly a series of generations in which so many changes in the character of public management and the techniques of management have been developed in industry and in our society generally —how can any legislator arrive at any other conclusion than the conclusion that since under the Constitution of New Jersey the people do have the inherent power to change their Constitution, the question ought at the earliest moment, at the first opportunity, to be submitted to them? It so happens that you are the particular people and this Legislature is the particular Legislature in office at the time when that question has crystallized and been presented definitely to you. The buck has been passed to the Legislature, which, I think, is where it belongs. If the Legislature believes that its authorization comes from the people, I don't see how they can do anything except ask the people whether they desire to have a Revision, without raising at this time any questions of the form which that Revision ought to take. If they pass upon that question at a particular election and on the same day they are choosing a Legislature, you know and the people know who the men and women are who will propose that Revision, and furthermore in the succeeding year, following the election there will be an opportunity

to reject that Revision if it is not a satisfactory Revision. Anyone who might have fear as to improper or unwise changes that might be made, that argument is just eliminated by the fact that this is only a preliminary to the actual Revision of the Constitution.

I would like to meet one issue that has been raised so many times that it ought to be met as many times as possible, that is the question of whether we ought to improve our Government while the boys are away. Do we carry on ordinary legislation while the boys are away? If that argument is sound then the Legislature should only meet and approve the budget; it shouldn't raise any taxes; it shouldn't lower any taxes; it should just take the estimates of revenues anticipated under the taxes as they were before the war, pass a budget in accordance with that situation and go home. We must carry on the public business. As a matter of fact, while the boys are away it is our particular duty to carry on the public business in the light of the conditions that exist while they are away, and as effectively as possible to support what they are doing for the country. Under wartime conditions circumstances are different at home and we necessarily have to meet those changing circumstances with legislation, despite the fact that the boys are away. All I think that anyone has proposed is that the Constitution should be revised in such a way as to give effect under modern circumstances to the purposes of the Constitution that we now have. Those purposes, I think, have been lost. The Constitution says the Governor shall be the chief executive, but the Governor can't be the chief executive unless we give him the tools of management, the tools of modern management. And to really give effect to the intentions of the Constitution without changing the form of our Government, the division into the legislative, executive and judicial, but by organizing each of those branches to actually and effectively function under the circumstances that now exist, it seems to me that we are doing only the least that the boys who are away could ask and demand of us in order that our Government may effectively and with due economies discharge its duties to them as well as to the people back home.

MR. SCHROEDER: The next speaker will be Mr. Kenneth Robbie, the Executive Vice-President of the Chamber of Commerce of New Brunswick. Mr. Robbie.

MR. ROBBIE: Mr. Chairman and Members of the Committee:

The New Brunswick Chamber of Commerce desires to be recorded as in favor of the Revision of the State Constitution along the lines proposed.

MR. SCHROEDER: The next speaker will be Mr. Russell Watson, representing the New Jersey State Chamber of Commerce.

MR. WATSON: Mr. Chairman, Miss Brown told me a few minutes ago that she desires to make a short statement and I gladly

waive my place to her if I may follow her, if that has the Committee's approval.

MR. SCHROEDER: Surely, we will be very glad to hear Miss Brown.

MISS BROWN: Members of the Committee: The New Jersey Education Association has been represented at all of the legislative hearings on constitutional revision, and from the discussions at these hearings and a study of the provisions of the Constitution, it is convinced that many changes can be made in our fundamental law to make it better serve the needs of our Government today.

The Executive Committee of the New Jersey Education Association favors a Revision of the Constitution of the State of New Jersey, and believes that the citizenry of the State should be given opportunity to determine by the ballot whether the Constitution should be revised. The membership of the New Jersey Education Association is 28,000. I thank you.

MR. SCHROEDER: Mr. Watson.

MR. WATSON: Mr. Chairman and Members of the Committee:

In behalf of the New Jersey State Chamber of Commerce at this final session of the Committee we desire to address ourselves to that clause of the resolution directing the Committee to ascertain the sentiment of the people of the State as to whether or not they desire the fundamental law of the State to be changed, or in other words, shall the New Jersey Legislature consult the people concerning the timeliness of the proposal that the Constitution be revised.

The New Jersey State Chamber of Commerce is strongly of the opinion that the time is opportune for definite consideration of the Proposed Revision of the Constitution. This view is based upon the developments of the hearings held by this Committee at which each of the articles of the proposed revisions was subjected to critical analysis. We rest that view upon the record which we would like at this time to review briefly.

Before doing so, may I express the commendation and thanks of the State Chamber to the members of the Legislative Committee for the patience and intelligence with which they have listened to the expression of a variety of views concerning the proposed revision. The Committee has displayed a high sense of public duty by its close application to this complex, difficult and important subject during the summer season. For myself, I thank the Committee for the courtesy and impartiality with which the hearings have been conducted.

The question before the Committee and the Legislature is the simple one—shall the Legislature at this time request a mandate from the people at the coming general election to submit a revised Constitution to referendum at the general election of November

1943? Should the referendum vote be in the negative, further consideration of the subject will be ended for the time being. Should the vote be in the affirmative, the Legislature will then have the responsibility of framing a revised Constitution to be submitted to the people in November 1943. It could submit the draft proposed by the Revision Commission as is or with such amendments or supplements as it might see fit to make or it might submit an original draft of its own devising. It should be clearly understood by the public that the immediate question to be determined is not what kind of Revision shall be submitted to referendum, but whether the people desire the Legislature to submit a Revision of its drafting for their consideration at this time.

The hearings have developed a remarkable situation which clearly demonstrates that the Proposal is opportune. The Revision proposed by the Revision Commission is approved by the New Jersey State Chamber of Commerce with certain clarifying changes. It is also approved by the Committee for Constitutional Convention, the American Federation of Labor, the Committee for Industrial Organization, the New Jersey Taxpayers Association, the New Jersey Real Estate Boards, the Bergen County Chamber of Commerce, the New Jersey Teachers' Association, the New Jersey League of Women Voters, the Federated Women's Club of New Jersey, Mr. Spencer Miller Jr., the State Highway Commissioner, Mr. Homer C. Zink, the Comptroller, Mr. Robert C. Hendrickson, the State Treasurer, who is Chairman of the Revision Commission. True it is that many of these organizations and officials have argued for provisions outside the scope of the proposed revision, but it is a fact that without exception they have declared themselves as favoring the draft now under consideration if the Legislature should decide against the additional provisions respectively suggested by them. Many in this group have been classified as modificationists, but they made it clear that they would favor the adoption of the Revision Commission's draft if their proposed modifications were not acceptable.

Almost all of the members of the Bar who spoke yesterday when Article V was under consideration agreed that some kind of revision of the Judicial Article is imperative. Many advocated the proposed Article V; others preferred some different scheme or degree of revision of the judicial system.

Only the New Jersey Association of Manufacturers expressed outright opposition during the scheduled hearings, and even it, notwithstanding that its spokesman has registered at each hearing as an opponent and has spoken in opposition to the major changes proposed, has declared that it is not in opposition, to the bewilderment of everybody else concerned. Its expressed opposition, as we understand it, is not final, but is merely tentative, argumentative and exploratory and the Association's final position will be taken

if, when, and as the Legislature submits its draft of a revision to a referendum. It will be some time before we know whether "Barkis is willin'."

On the record, therefore, if the Committee is to be guided by public opinion as expressed at the hearings, it is impossible to understand how the Legislature can in good conscience and with good grace refuse to put the question on the ballot at this time without violating the fundamental principle of democracy that the people rule.

We are not so naive as to believe that the Manufacturers Association is the only opponent. We fear that powerful opposition has been exerting itself in secret behind the scenes and that it will continue to do so. We confidently express the hope and belief that this Committee and the Legislature will disregard the arguments and persuasion of those who lack the courage to express their views publicly at the appointed time and place.

The opposition arguments have been unpersuasive. In part, they have been trivial; Typical are the objections that the title of Article IV, "Executive and Administration," is redundant; the suggestion that Article IV, Section III, Paragraph 8 might prevent the payment for overtime of stenographers employed by the State; the contention that Article VII, Paragraph 4 which consists of one sentence containing 131 words should be broken up into short sentences. In part, they have been impracticable; for instance, the contention that all decisions of administrative bodies should be approved by the Legislature as a law is passed which would require the approval by legislative enactment of every order of the Board of Public Utility Commissioners fixing a rate; the objection that the Governor should not have the right to remove public officers for cause after hearing and that the public officers should be removable only by impeachment, which would perpetuate the technical difficulties which protect corrupt and inefficient public officers. Some have been based upon ignorance. For example, the confident statement that there is no confusion in State fiscal accounts growing out of dedicated funds and the accounting method based upon two budgets and different fiscal years; the objection to the proposed requirement of Article VII, Paragraph 8 that any State debt hereafter authorized be evidenced by serial bonds, which ignores the fact that for many years municipal bonds, which aggregate seven or eight times the State debt, have been limited to serial bonds with advantage. One was comical. When the statement was made that grievous injustice is worked in the shadowy border zone between the law and equity jurisdictions in which it is necessary to resort to both courts in order to obtain a decision, the reply was made that there are only about 140 such cases each year. Laying aside the obvious comment that the source and authority of the figure was never disclosed, this

answer is akin to the declaration that while it would be a heinous offense for me to punch the Chairman of this Committee on the nose ten times, it would be all right to punch him once. One was born of defeatism, the statement that "You cannot run a democracy upon an efficient businesslike basis," implying that we should rest content with inefficiency and extravagance and sometimes worse in our State government and like it without striving for improvement.

Leaving such amusing and inconsequential trivialities which have featured the opposition, we briefly summarize the major points which were emphasized in the hearings, omitting reference, for brevity's sake, to other relatively minor, but nevertheless important considerations.

If you believe that the present legislative procedure with its delay, unduly protracted discussion, procrastination, lack of definite program, unseemingly maneuverings for gubernatorial and legislative appointments, unnecessarily prolific production of laws, underpay of members and lobbying abuses, is the best system that can be devised, you will favor the present Constitution. If, on the other hand, you believe that without diminishing the power or authority of the Legislature, its procedure should be expedited and improved, its decisions should be made in public session, its members should be adequately paid, its integrity should be preserved, it should have a thoughtfully prepared legislative program and that lobbying should be regulated, you will favor the proposed Article III.

If you believe in decentralized, irresponsible government by 90 autonomous, independent commissions, commissioners, boards and agencies accountable to no one, you will favor the present system of extravagant, inefficient and unsupervised management of the executive business of the State. If, on the other hand, you believe that the executive branch of the government should be administered by a Governor who is a Governor in fact as well as in name with complete power and authority and charged with complete responsibility, but subject to adequate restraint and control by the Legislature, and if you believe that it is the essence of democracy that government can function with adequacy and integrity and in the public interest only if it have correspondingly broad power exercised subject to the approval and will of the electorate, you will favor Article IV.

If you believe in the present judicial system with its court of last resort composed of part-time judges whose work is interfered with by other essential judicial duties, its complex, cumbersome and unwieldly structure, its various subdivisions with their concurrent and overlapping jurisdictions giving rise to doubtful questions of procedure not related to substantive rights, its too numerous and too costly appeals, its lack of an administrative head

and administrative control and direction, you will favor the present Constitution. If you believe that any group of judges, no matter how learned and conscientious, could administer impartially, economically and efficiently New Jersey's complicated, archaic and creaky judicial machine, you will favor the status quo. If, on the other hand, you believe that the present judicial system should be simplified, that conflicting judicial duties should be eliminated, that the court system should be unified and directed by a reasonable administrative head, that the selection of experienced and independent judges should be insured, and that speedy trials should be provided with usually only one and in major cases only two, but prompt, appeals, you will favor Article V. If you believe that the pledge of the last Republican Convention that our judicial system be structurally modernized and the processes of justice be made quicker, less costly and more effective should be redeemed, you will favor Article V or something substantially like it.

I listened with interest to my friend, Mr. Goff. If you believe that the rights of honest and conscientious employees under the State pension and retirement systems should be uncertain and insecure, but that the positions of dishonest and incompetent public employees shall be certain and secure because of the restricted power of the New Jersey Legislature to investigate State and local governments and officials which is much narrower by judicial construction than the investigatory power of the United States Congress and the Legislatures of nearly all other states, you will stand by the present Constitution. If on the other hand, you believe that honest and conscientious public employees should be protected by a strong civil service clause embodied in the organic law and that their rights under the State pension and retirement systems should rest upon a contractual obligation by the State likewise embodied in the organic law and that the Legislature should have the power to investigate the fidelity of any public officer or employee and the performance of any public office, employment or trust and thereby to uphold and preserve the integrity of State and local government, you will favor Article VI. If public employees themselves are satisfied with their present low scale of compensation, they will resist any change. If, on the other hand, they believe with us that more efficient organization and operation, which would be possible under the proposed revision, would eliminate duplicated and unnecessary services and thereby provide more adequate compensation to those who would carry on under the new system, they will favor this Proposal.

Now, Mr. Goff said that the provision for contractual pension rights should be extended to all pension systems. We said when that was under discussion that only actuarially sound systems should be encompassed. He said that new, sound systems should be admitted and the present systems should be put in the path of

soundness and admitted, and we would agree to that if responsible provision for soundness were made. Whether they should be under State or local management is a detail; but, however, local government is supervised by the State. Why shouldn't local pension systems be supervised by the State? There is no difference between Mr. Goff and us in that respect I think.

If you think that the State's finances are best managed by the present method by which certain dedicated revenues are appropriated to certain designated objects and purposes regardless of the extent of the State's fiscal resources or its needs, with its two separate unreconcilable budgets with their varying fiscal years, you will favor what is. If you are proud of the uncertainty and confusion in State finances which is a matter of recent historical fact, you will rest upon your oars. If you believe that the State should have a score of unrelated appropriation bills, you will stand where you are. If, on the other hand, you believe that all of the State's funds should be appropriated by one appropriation bill according to the supply and the need and pursuant to one inclusive budget, you will favor Article VII.

Particularly business men should consider whether any private business could be successfully conducted if the amount realized from the sale of one product were irrevocably dedicated to general advertising, if the amount realized from the sale of another product were likewise dedicated to the payment of executive salaries and if the corporation kept two sets of books upon different fiscal years, one set for executive management and sales promotion and another set for manufacture and production. If they think that any business, public or private, could be satisfactorily conducted by any such crazy and ridiculous system of finance and accounting, they will continue their attitude of opposition. If they believe that public business can be better administered by the same accounting and financial methods which they employ in their private businesses, they will favor the proposed Article VII.

If the method of revision proposed by the Revision Commission be questioned, the answer is simple and direct. The proposed method is precisely like the constitutional convention method of revision in legal principle. Both rest upon Paragraph 2 of Article I which provides:

> "All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it."

Adverse opinions and dicta of years ago of Attorneys-General and Judges and writers which are frequently quoted have lost what little persuasiveness they had. They rest in large measure

upon opinions of the Massachusetts and Rhode Island courts. Time has swept away these arguments. Notwithstanding the cited opinion of the Massachusetts court, Massachusetts has held two constitutional conventions; the cited opinion of the Rhode Island court has since been reversed; the State of Pennsylvania by judicial decision and by actual practice has recognized the validity of the constitutional convention method; yet the Massachusetts Constitution contained a provision like our Article IX and the Rhode Island and Pennsylvania Constitutions contained similar provisions. The argument that Article IX presents the only available method of amendment or revision falls flat before the judicial decisions of these states. Textbook writers unanimously endorse the constitutionality of the constitutional convention method, notwithstanding a provision such as our Article IX.

Those who argue that Article IX is the only method, oppose the weight of judicial opinion, the thinking of text writers and generally accepted practice. They assert that a small group of men who assembled in 1844 possessed the authority, the omniscience and the prescience to lay down an adequate pattern of law and government that could endure through a century of unprecedented economic, industrial, social and political change. They assert that the dead may dictate the lives of the living. They deny the plain meaning of the plain language of the present Constitution. They deny that all political power is inherent in the people, that government is instituted for the protection, security and benefit of the people, and that the people have the right at all times to alter or reform the same, whenever the public good may require it.

The foregoing summarizes the reasons why the New Jersey State Chamber of Commerce advocates the adoption of the proposed revision or something substantially like it at this time. There are provisions in it which we would change. We recognize that no one group could possibly agree upon the precise provisions and precise language of so complex a document. With Benjamin Franklin, we doubt "whether any other convention we can obtain may be able to make a better Constitution." Like him, we are astonished "to find this system approaching so near to perfection as it does." With him, we hope that each of us will "on this occasion lose a little of his infallibility, and, to make manifest our unanimity" give our approval to this instrument.

The opponents say that this is an inopportune time for constitutional revision because people are preoccupied by the tragedy of world war and because many of our citizens who are away in the military service of the country are unable to participate. This is a valid argument. We think that it is outweighed by the stern realistic necessity that the State government in its legislative, executive and judicial branches, be efficiently reorganized, adequately implemented and made strong in the period of the cataclysmic emergency which will follow the war. Such a government will be our main reliance in the post war time, which, as in the preceding crises of our country's history, will again try men's souls.

This is the time to make democracy work.

MR. CAVICCHIA: Mr. Watson, you called attention to the Republican platform of 1941. You didn't mean to leave out the Democratic platform, did you?

MR. WATSON: I didn't know that the Democratic platform contained a similar provision.

MR. O'MARA: He doesn't know anything about the Democratic platform.

MR. CAVICCHIA: I quote from the Democratic platform of 1941; "It will seek a Constitutional Convention to simplify the structure of New Jersey government without interfering with each county's minimum representation and to return to the traditional American system of a Legislature confined to making the laws and an Executive free to administer the laws, with the objective of better service at lower cost."

MR. WATSON: We concur with that plank most heartily.

MR. SCHROEDER: The next speaker will be Mr. Arthur J. Edwards.

MR. EDWARDS: Mr. Chairman and members of the Committee: My present, very brief remarks are actually anticlimatic after the review of Mr. Watson, but they are merely a paragraph of suggestions to the 1943 Legislature when it gets to work on the revision of the Constitution.

The first relates to Article IV, Section III, paragraph 5, which is part of the executive and administrative paragraphs: "The heads of all administrative departments shall serve during the term of the Governor appointing them, at his pleasure, and until their successors have been appointed and qualified." These so-called administrative heads are named in paragraph 1 of the same Section III: "There shall be nine administrative departments in the State government designated as Agriculture, Commerce, Education and Civil Service, Labor, Law, Public Works, Social Welfare, State, and Taxation and Finance." They are to serve during the term of the Governor appointing them, at his pleasure and until their successors have been appointed. I don't pretend to have technical knowledge of State administration and organization, but I do rather recognize two types of State departments:— one of what you call political administration or business administration, such as the Finance Department and some of the others; and the other of what you might call professional administration. I think in the case of the professional administration, such for instance as the Department of Education and Department of Social

Welfare, that the Legislature may well consider whether there should not be an incentive to permanent headship in these departments where the proper professional man has been secured to head it. That is merely a suggestion that they do that. But, I do think there are some departments where there is no profit in removing a professional head, such as the Department of Social Welfare and the Department of Public Instruction. Then, in that, there are three little words. They are to continue "at his pleasure." I believe fully in the right by the proper procedure to remove for cause, but "at his pleasure" is a very weak expression, and we have seen instances in the Federal administration where it simply means a failure to see eye to eye with the chief. Now, the Governor appoints these administrative heads for the period of his term. I think there should be some better, some stronger reason for removal then merely "at his pleasure," their failure to see eye to eye with him, and I ask that you consider that.

The other paragraph is a similar one; that is, Article III, Section III, paragraph 3: "No member of the Senate or General Assembly shall, during the time for which he or she was elected and for one year thereafter, be eligible to hold any appointive office under the authority of this State, including the office of State Treasurer and State Comptroller." There is a certain element of sarcasm in that paragraph considering the makeup of the Commission, but, I for one think public employment is a profession and that there are certain men who do develop aptitude for public employment and I recommend strongly that that phrase "and for one year thereafter" be stricken out. I don't see why if a man develops a capacity for public life and public administration in the Legislature, he should be sent into a monastery for a year after he retires before he could be employed in some service of good to the State. Whether you will make any further change in that than just striking out "one year thereafter" is up to you to consider.

MR. O'MARA: I didn't quite get your position on that. Do you think members of the Legislature should be prohibited from occupying other offices by appointment forever?

MR. EDWARDS: As soon as your natural term of political life comes to an end, I think you should be eligible for reappointment. I don't go further than that. I suggest to the Legislature that it consider liberalizing it still further. I do see a disadvantage in members retiring during their term and putting the public to the expense of another election.

MR. O'MARA: You don't agree with Senator Hendrickson and Senator Jamieson on that statement.

MR. EDWARDS: As exemplified by their action.

MR. CAVICCHIA: When is the natural term of political life ended?

MR. EDWARDS: I mean, an assemblyman under this would be elected for two years and a senator for four years. That is what I mean by their natural life.

MR. SCHROEDER: The next speaker will be Mr. Mortimer Eisner.

MR. EISNER: Mr. Chairman, I want to thank you at the outset for permiting me to speak here at the committee meetings and for your courtesy. I feel like a boy who wants one more whack at the ball in this last statement that I have to make, and it is a point that has already been made, but I should like to approach it very briefly from another point of view and that is this:

Reading the resolution under which your Committee is empowered to sit and hear and make recommendations, it looks as if you are precisely in the position of a trial judge holding court in a case where a jury is sitting. And if that be true, and I think it is true, then it also follows that the procedure that we know as lawyers in the trial of a case must also and should also follow; namely, that when the evidence has been brought in by the plaintiff, in this case, the proponents, and the effort is made by a motion for nonsuit, if there is any evidence sufficient to establish a prima facie case, then it becomes the duty of the court notwithstanding its own feelings or judgments, to submit the matter to a jury. The motion, as you know, for nonsuit must be denied.

Gentlemen, the analogy I draw is precisely that. The evidence that has been heard here, the testimony of a great line of distinguished men in reputable organizations is such that it far outweighs the application to deny the right of the people to speak on this matter. The public in this case is the jury and I submit it is your duty, not a privilege, I say it is your duty and it is obligatory upon you if the most elementary and fundamental rules of law and evidence are followed that you submit this matter now that the testimony is in to the jury, which in this case is the public. Thank you very much.

MR. SCHROEDER: The next speaker will be Mr. Michael Breitkopf, the Past National Commander of the 29th Division Association.

MR. BREITKOPF: Mr. Chairman and members of the Committee: I have listened with great interest here today to the various people that have spoken on this subject, representing as they did many classes of our citizenry throughout the State, but I have yet to hear anyone speak for those who are doing the fighting for our country. Representing the veteran organization that I do, I must say that Abraham Lincoln truly said this is a government of the people, by the people and for the people. Let us never forget that. We appear here as representatives of veterans of the first World War, who were lucky enough to come back. What did we find? Prohibition, one of the greatest fiascos that ever happened in America! We thought we were fighting for liberty.

and justice for all. Instead, some of our liberties were taken from us. We had to fight again, not with bullets, but with ballots to get back those liberties. But we will never let it happen again. We loudly protest against the adoption of any amendments, changes or revision, while soldiers are away at war. Today about four million of our sons, brothers and relatives are scattered all over the world, in Europe, Asia, Africa, Australia and also on this continent, fighting for you and me. The papers say we will need an army of thirteen million. Our daughters and sisters and friends must also be included. These men and women have as much right as you and I to have something to say in government. This is their government, as much as it is yours or mine. We are all partners in this business.

The United States Constitution was adopted 155 years ago. Our present State Constitution is 98 years old. Now an attempt is being made to scrap this State Constitution and adopt a new one while millions of men and women are sacrificing themselves to safeguard the rights, privileges and liberties guaranteed by those Constitutions. What is the hurry? Hitler is in a hurry and these valiant soldiers will stop him. Let us hope soon. It is our bounden duty to wait until they come home. They are willing to die so that our Constitution will live. You should be willing to let them say what should be in that Constitution. The soldiers who are fighting for us today on distant battlefields cannot have that say now. They are performing the most important duty of their lives. Only the other day the New York Soldiers' Ballot Commission requested leave from Secretary Knox of the Navy and Secretary Stimson of the War Department to send 150,000 ballots overseas to New York soldiers in order that they might vote in the coming election. The Secretary of War and of the Navy refused this permission. They ruled that no ballots would be sent overseas from any State.

You can see, therefore, that our soldiers overseas are denied the right to participate in elections. They will have no say in the government until the war is over. I say, therefore, that in all good conscience this proposal to change the Constitution must be put off until our boys return. Thank you very much.

MR. CAVICCHIA: Mr. Breitkopf, would you have the boys in the service come back to the same inefficient and irresponsible structure of government?

MR. BREITKOPF: If our boys had an opportunity to have a voice in the construction of a new Constitution, I would say no, but the way it stands now, we are not concerned so much with the general laws that are passed in this Assembly Chamber or in the Senate—those laws take care of the things that this State needs—, but the Constitutional right is given to all of us and it is certainly being denied to those boys who have no opportunity to vote on it.

MR. O'MARA: Mr. Breitkopf, a newspaper within the last day or two estimated that there were between two hundred and two hundred and fifty thousand men from New Jersey in the armed forces. Do you know whether that is accurate?

MR. BREITKOPF: That is right, sir.

MR. O'MARA: And I suppose the position that you want to take is that if this Constitution were submitted for a vote in the 1943 election and the present requirements of the war continued to increase as apparently they will, there will probably be two or three times that many men in the service.

MR. BREITKOPF: That is true.

MR. O'MARA: Your point is that these men are entitled to some say in what the new fundamental law of the State should be.

MR. BREITKOPF: Just as much so, sir, as all the gentlemen who represent these various organizations who have come here to speak for their people. They should have the right to have some say as to what goes into that Constitution.

MR. O'MARA: I didn't quite get the organization which you represent.

MR. BREITKOPF: Past Commander of the 29th Division Association which is composed of men from New Jersey, Maryland, Virginia and the District of Columbia, but the greater proportion of that division came from the State of New Jersey.

MR. CAVICCHIA: Mr. Breitkopf, the elective process stems from the political power of the people, doesn't it?

MR. BREITKOPF: Quite true.

MR. CAVICCHIA: Following your argument, would you hold the November elections to vote for representatives in office while the boys are away, or because the boys are away would you permit elections to be passed over because the boys who are away have no opportunity to vote on officeholders?

MR. BREITKOPF: No, because that is the general laws that we carry on in our general business under a Constitution which these men have been protected by. There is no hurry to change this Constitution, sir. We are protected. There may be changes made, and I quite agree with you, sir, that there should be some changes made, but I do say that these men should have an opportunity to say what those changes shall be so that we don't come back or they don't come back—And I probably will be in this war shortly myself, and if I come back again and find a Constitution which has been passed during my absence which I had nothing to say about, taking away certain rights and liberties that I previously had, I would certainly feel that I had been discriminated against just as we were in the last war.

MR. CAVICCHIA: Assuming just for the purpose of this point that the proposed Constitution were the one to be voted on, where-

in does this proposal curtail the liberties and freedoms of the people?

MR. BREITKOPF: I am not in a position to answer you, sir, for this reason: That proposition and those purposes have not been submitted to those very people who are to pass upon it, and I say that is the men who are in the service. How could we tell if we were away what was going to be presented? We wouldn't have an opportunity to get any reports on it; we wouldn't have anybody come and tell us what was going to be in it; we wouldn't have any chance to object to what was going in it.

MR. CAVICCHIA: But you would have your chance to campaign against any Constitution proposed by the Legislature which did curtail the personal liberties and freedom of the people while the boys were away.

MR. BREITKOPF: How could we campaign against them when we are serving in the Army?

MR. CAVICCHIA: Let me ask the question this way. Suppose the present Bill of Rights were not at all changed and was submitted as it is now written, how then, despite any changes in the other portions of the Constitution which deal squarely with the structure of government and are separate and apart from the Bill of Rights, would that affect any person's rights and liberties?

MR. BREITKOFF: I don't think you have an argument then, Mr. Assemblyman, for the reason that if the Bill of Rights were submitted to us as it stands, there wouldn't be any necessity for a change in the Constitution because your agencies now would have an opportunity to take care of whatever defects there are in it.

MR. CAVICCHIA: That isn't so. That is the whole question before the Legislature. You are failing to distinguish between the Bill of Rights and the other portions of the Constitution.

MR. SCHROEDER: Any other questions?

MR. BREITKOPF: Thank you very much for your courtesy, sir.

MR. SCHROEDER: The next speaker will be Mrs. Rebecca Barth, the Chairman of Legislation, Consumers' League of the State of New Jersey.

MRS. BARTH: Mr. Chairman and members of the Committee: The Consumers' League of New Jersey is already on record as in favor of the subject matter of the proposed revision. I am afraid, however, that we can't quite agree with an argument such as Mr. Breitkopf just made and that is why I am speaking today. We feel that time is precious and should not be wasted. While the whole world is fighting to determine whether or not democracy shall survive is the time for us at home to mend the fences of our own democracy so that we will be able to take on the reconstruction that lies ahead for all of us. And I think if the men in the armed forces were given a chance to say whether or not they were in favor of a revision at the present moment, I am almost certain that the majority of them would agree with us who have been arguing here all summer. No more than they would wait to ask for instructions back home as to whether or not they should start an offensive against the Japs or Germans should they expect us or do they expect us, who have such an important job to do here, to wait to ask them whether or not we should preserve something for them to come back to. Therefore, we of the Consumers' League feel that it is extremely important that the question appear on the ballot in November, whether or not the people of the State of New Jersey want a new Constitution presented to them for their approval or rejection next November. I think that is a job for this Assembly, or rather a duty it owes to the people of New Jersey if we are going to preserve democracy here.

I should also like to add the thanks of the Consumers' League to those you have already had for the gracious manner in which these hearings have been conducted. I think they, themselves, have proved that, at least in New Jersey, democracy will survive.

MR. SCHROEDER: Thank you very kindly. The next speaker will be Mrs. John J. Cox, the State Chairman of Legislation, New Jersey State Federation of Women's Clubs. Mrs. Cox.

MRS. COX: Mr. Chairman and members of the Joint Legislative Committee: In May 1941, the New Jersey State Federation of Women's Clubs in convention assembly at Atlantic City, adopted without a single dissenting voice the resolution favoring constitutional revision and on that we take our stand. We have been represented at all but a very few meetings conducted by your group here. We concur in all that has been so eloquently said by previous speakers as to the patience and diligence of the members of your Committee who have listened to the arguments pro and con. We have been impressed by the straight-forward presentment of the real issues by the proponents of constitutional revision. We have been depressed by the clinging of the opponents of constitutional revision to what we believe are arguments which will not stand up. They are specious and hollow and far-fetched.

Among the latter we shall cite only two: one, the so-called handicap imposed upon the absentee soldier. I think most of us are willing to agree that the soldier in this war is intelligent and forward-looking. We do not believe that he will sit patiently by and see continued the rickety machinery of government which inevitably has brought slow-downs in our own State in the prosecution of the war. We do not feel that any handicap is being imposed upon the soldier, when in his absence, the people back home are standing by as all of us are, coming here to Trenton from great distances in all parts of the State to see that the things for which he is fighting are retained; we are holding the fort for him. In fact, I think he will be probably greatly assured to know that

we are continuing to help in the preservation of those ideals for which he is fighting.

The other argument which has been advanced is the lack of interest on the part of the rank and file of the voters and the fact that it does not seem to be wide-spread or spontaneous. Again we ask: Has anyone seriously proposed that because a bare 25% of the voting population of New Jersey bothered to come out to vote in the primaries Tuesday that those primaries be abolished or that any other democratic process be held in abeyance merely because a large percentage of our voting population is otherwise engaged at the moment or that these preoccupations that we are hearing so much about make it impossible to sit in judgment upon the question before us? I dare say that every person in this room is preoccupied to a certain extent with the prosecution of the war, and yet we have found time to give thought to this very serious and very pressing question before us. We do not believe that we should await that indefinite future date, the millenium, if you will, which some say will be a better time than the present time. We do not believe that we should wait until every single provision of every article of the proposed Constitution meets with the approval of every person who has appeared before you in order to submit this question. We feel that time and the elasticity of the amending process inherent in the Proposed Constitution will take care of those matters. We do urge upon this Legislative Committee that you bring in the recommendation that the referendum be submitted at the November election to the people of New Jersey, giving them an opportunity to be heard, regardless of the fact whether 25% vote on the question or 10% or 30% or what have you. We do not believe that the indifference of a great number of the voters of the State to the problems of political science should be used as a yardstick for measuring such great, progressive movements as this. We believe that these non-partisan groups which have stood in favor of constitutional revision are in themselves the material of which the leadership has always come for great forward movements and I think that the rank and file of the voters can saf ly trust to these people who are their representatives here today who favor constitutional revision.

MR. SCHROEDER: The next speaker will be Mr. Jack Brennan, National Trustee of the Marine Corps League.

MR. BRENNAN: Mr. Chairman and members of the Committee and those present: I wish to express my pleasure in being afforded an opportunity to state my views concerning this very important matter. I am pleased to advise you that I have been identified with many interests, particularly Veteran groups and have always displayed a sincere interest in not only the welfare of the government, but also the good of our people.

It has been my good fortune to be the Legislative Representative of the Marine Corps League, Publicity Chairman of the State Department of the Veterans of Foreign Wars, Publicity Chairman of the County Council of Veterans of Foreign Wars, and a member of the American Legion, Past State Commandant of the Marine Corps League, and National Trustee of the Marine Corps League, having been elected six consecutive years unanimously. I have been active as a commentator on the radio for several years and have toured the State from one end to the other addressing all classes of Veteran groups. I was responsible as representative of the Veterans of Foreign Wars in first calling the authorities' attention to the subversive activities operated by the German-American Bund at Camp Nordland, Andover, New Jersey. I served two terms as Commander of the General Joseph Wheeler Post Veterans of Foreign Wars and I have been active in community welfare chest drives.

I hope that you will pardon the lengthy statement of my activities, but I merely mentioned those items to offer you some information as to my experience.

To begin with, without the Veterans there would not have been any government. It was their struggles and sacrifices that made it possible for our present government to exist. Laws were made after the battles were won.

When I learned of this meeting today, I couldn't let the opportunity go by without making my feelings and views known on behalf of them.

I beg to inform you that with respect to drafting a new Constitution in place of our present one or again with respect to changing our court system by a series of amendments, I say this is not the time.

I served my country in the past war and I feel as though I can say something worthwhile from a Veteran's standpoint. I made it my business to canvass large groups whose activities are varied and especially with all kinds of Veteran groups. I am, therefore, acquainted with their viewpoint. I beg to inform you that the consensus of these people is that we must do everything in our power now to win the war and nothing else. Our minds must be kept clear of any matters that might disturb our efforts for victory. It is my belief that our Constitution has gone a long way since 1844 and a few more years will not affect the destiny of the people of our State as much as the loss of the war by America. It is my personal notion that it is not necessary that any more time be lost in considering the merits of this Constitutional proposal. We have before us a gigantic task and up to this moment we know our road to victory has not been an easy one. We shall not let any controversial matters interfere, such as this measure, with our progress for victory.

Where is the demand for such a change at this time and how

many of our citizens of New Jersey are demanding this change? I heard references to Justice Parker. Justice Parker stated that the lawyers are concerned with the administration of this law, of any law. Now, if that is the case, and I also heard that the American Bar Association was in favor of changes, but here in New Jersey recently the State Bar Association voted down by three to one any consideration or any change at this time. That was on May 23 at Atlantic City, and I would like to read that resolution in part concerning the Veteran's viewpoint:

> "WHEREAS, there should not be submitted to the people of this State any proposed Constitution at a time when our country is at war and so many of the finest of our citizens are in the service of our country, scattered to the far ends of the world, and by reason thereof will be unable to have knowledge of, consider, or vote upon the proposed changes, and the time of those not in the service is entirely taken up in pursuits which directly or indirectly assist our National government in furthering the war effort;
>
> NOW, THEREFORE, BE IT RESOLVED, that the New Jersey State Bar Association, in convention duly assembled, strongly disapproves the said report and recommends and urges its rejection by the Legislature, the Governor and the People of this State."

This may be found in the New Jersey Law Journal, Thursday, May 28th, 1942.

Who has asked for any change in the court system? Our court system has been a credit throughout our nation and we don't have to be told by outsiders how to run our courts. "Jersey Justice" has been the byword of the nation and it still is. You can get a fair trial in any part of the State of New Jersey, and why all this hubbub about the change in courts when we are engaged in the greatest conflict that our country has ever been in to save our courts and form of government.

How many of these men who are advocating such measures have served their country? Where were most of them in the last war? Unfortunately many former service men are urging this change, particularly when they know that the life's blood of our country is now in service. Let me say to the committee today, don't make the mistake that was made in the Prohibition Era when the boys were fighting overseas to keep America alive. There were certain busy-bodies in bomb-proof jobs who had unpopular laws adopted while the boys were fighting and dying on the battle fields to protect them. Do you remember the havoc that was wrought? Do you remember the worry? Do you remember the hypocrisy? Do you remember the answer of the American veterans when they came back from the war the last time? Were they grateful? They were not. They felt that they had been doublecrossed, and so we appear today at the hearing to do with Constitutional changes and change in the courts in which they have no rights whatsoever to express their opinion. The veteran was stabbed then, gentlemen, and I say to you men in the Legislature now, don't stab him in the back again by doing something in which he has no say. I think it would be better for all legislative bodies to begin to consider ways and means of taking care of these boys when they return from the battlefield. This is no time for politics or experimentation. One of the men mentioned that all power is inherent in the people. With that I agree. People have the right to alter or revise the framework of the government whenever the public good may require it, but I ask you: Does the public good require a new Constitution or a change in our court system at this time or a modification? The public good, again I say to you gentlemen, requires that you bend every effort to work and produce materials for our boys in the front and do everything we can to keep their morale high. Experimentation without their consent would be frowned upon by them. Let us give our time, our wealth, and attention to immediate victory.

Let me say to you that if there is to be any conference on making any laws, let the veterans of past wars, and those who will be the veterans of this war, consider ways and means of passing laws that will help these boys when they come back from this terrible war. Who will guarantee the boys any rights that are justly due them? Let our veterans say what is to be done about a new Constitution and the protection of the rights that our boys are fighting and dying for.

Not once have I heard the proponents of these changes say that the veterans will be protected. It may be New Jersey is the homefront. Does that mean New Jersey is the homefront for business interest? Does it mean that the veterans have no say; that all we consider here is New Jersey? Or are we going to consider those 250,000 boys who are unable to vote? Are we going to pass these measures and say to them, "We don't care about your vote. We are only interested in the homefront of New Jersey. We are only interested in business and making money while you are away. We don't care whether your rights are disregarded or not." Don't let that happen, gentlemen of this Committee. Return to your legislative body and with the sincere interest of the veterans at heart disregard any changes in these laws. I would like to know one thing of these proponents. Have they considered what Marines on the Solomon Islands are doing? Do they think that these boys who are faced with attack day after day by the Japs—do they think they have a treatise on the change in this Constitution and court system in their pockets? Have they got the time to take out from killing Japs to read it over and express their views? They have

not. They are more concerned with looking after your welfare and you gentlemen certainly are not looking after theirs.

In all our patriotic gatherings we are urged to keep faith with those who are about to die. Do you think if word gets to our boys on the many fronts that we are discussing constitutional amendments while they are fighting and dying for us, that they will be pleased to hear such news? I don't think so.

What we have to do in America is to build morale among these men and also to build morale among our people. Our duty is clear, namely, that we must encourage them and let them know that while their minds are on their business, our minds are on their welfare, morale, and to protect their say in our government while they are gone.

I noticed that in all of our States of the Union nobody has asked for a new Constitution of the United States and that Constitution has stood for a great number of years. I believe there is no State in the Union today that is considering any changes in the Constitution or in the court system. They are patriotic enough to realize that there are veterans of this war to be considered. When we look back and realize that the Constitution of the United States requires no change today by any group and no group is demanding it for their own selfish interest, I say to you that New Jersey does not need a change. We founded this Constitution in 1844. It has survived the Civil War and the Spanish-American War. It survived the last war and I certainly think that it can survive this war until those 200,000 to 250,000 men now in service—and yes, many more to be—can come back and state their views.

Now, I want you gentlemen to know that I am speaking from my heart. I am speaking as a veteran, as one who has served in the last war and who within the next few months expects to be in the war again. I am not employed by any county, State or city agency. I consider myself a free citizen and one who came here to speak his mind. And I just want to leave one further thought, and I know that the veterans of this war will remember a great deal when they come back. I believe it was Thomas Paine who said—and if I don't quote him correctly I hope you will forgive me—"Most laws are made by men who are about to die and these men only wish to control the activities of the present generation when they are in the grave."

I say to you gentlemen, let the generation of today who is ready and willing to lay down their lives, let them come back and have a say about this court system change and a new Constitution. Do nothing now because if you do, you will have an Army and a Navy and a Marine Corps returning who will be far more intelligent and smarter than the last World War veteran. They are going to demand their rights and any person who dares to interfere or take from them the right to vote or make any changes without their consent is going to hear from them. I say to you, I am not for or against any change, but I do demand that the veterans of every war and the men now in service be given an opportunity to vote upon this question and that it be deferred until after the war is over.

MR. SCHROEDER: Thank you very kindly. I will declare a recess until 2:30, at which time we will continue this hearing.

(Recess).

PUBLIC HEARING

September 18, 1942

Afternoon Session

General Discussion Including
Hearing on the Desire of the People to Have Their Fundamental Law Changed.

The Joint Legislative Committee re-convened in the Assembly Chamber at Trenton on Friday, September 18, 1942, at two o'clock P. M., pursuant to announcement previously made.

The Chairman opened the Hearing and the Hearing proceeded as follows:

MR. SCHROEDER: The first speaker this afternoon will be Mr. H. Earl Probst representing the New Jersey Farm Bureau and the New Jersey State Grange.

MR. PROBST: Mr. Chairman and members of the Legislative Committee:

On behalf of the governing bodies of the Farm Bureau and of the State Grange we have been happy to attend these hearings and to present in their order our views upon the several branches of the subject before you. These views always have been expressed either with approval or with constructive criticism of the Revision Commission's generally excellent work; for which, again, we desire to express our admiration. If in today's observations stronger language appears than before has been the case, it must be understood to be because of our earnest desire to impress upon the public and upon the Legislature the serious nature of the suggestions proposed regarding the method of submission and the serious consequences of their adoption.

Now we must approach the controversial question of submission. As was said in our letter of June 11 to the members of the Legislature, we must be unalterably opposed to the plans suggested in the Commission's report. The adoption of a Constitution, or of any amendment, in the way they suggested, or in any way other than that provided in the present Constitution would be illegal, and the certain end of illegal political constitutions is revolution with its attendant strife and anarchy. The same observations may be made of the adoption of a convention-formed Constitution, or of convention-adopted amendments, in any other way than in the manner provided in the existing Constitution. In support of these broad statements we submit the following argument.

Before beginning the argument, however, we do desire to say a

few words in general defense of our present Constitution. Though during your several hearings we have submitted a larger number of substantial suggestions for amendment than perhaps anyone else, and though there are in our minds many other suggestions so unusual that it did not seem worthwhile even to suggest, we do not want it understood that we share the opinion of many that our present Constitution is not a worthy, workable, and, according to accepted standards, a generally satisfactory document, comparing favorably upon the whole with those of other States. What we have been trying to do is to make a good thing better, not to supplement a bad thing.

Regarding the charge of antiquity, we would remind its critics that of the original States, excepting those whose constitutions were affected by Civil War reconstruction, more than half are older than ours, as we understand, one having been adopted in 1780, others in 1782, 1786, 1818, 1819 and in 1821, while the Federal Constitution was adopted in 1789. But more important, since when has a long life become a fault in constitutions? To us it is a badge of honor. Do we condemn the Federal Constitution because of its age? Do we condemn the English Bill of Rights, the Magna Charta?

Is our Constitution obsolete? Not unless our Federal Constitution is obsolete. In form and in substance our State Constitution more nearly resembles the Federal document, all things considered, than perhaps the Constitution of any other State. No written Constitution is perfect. In the very nature of our industrial and our social constitution they cannot be. It is our duty to do what we may to make them better, but we should not condemn as bad that which the great majority of the people have not thought it worthwhile to remove. And the long history of almost fruitless effort to amend our present Constitution suggests something of the nature of popular opinion regarding it, notwithstanding our own opinions and those of other well-meaning persons. Surely the bitter condemnation lately imposed upon it is unworthy of thoughtful persons.

There is one more preliminary thought. Almost all American constitutions are the effect of orderly and authorized procedure. Where they have been the outcome of conventions, it is because such conventions have been authorized in an existing document. Where they have been the outcome of legislative enactment it likewise is because of similar authorization. Only at the beginning of the Republic have either the people of the several States or their legislatures adopted constitutions without specific authority. The two Constitutions of New Jersey both were adopted without previous authority; the present one because no authority existed anywhere; in the previous document, the action was taken because of necessity. It was clearly revolutionary, as shortly will be seen, but it was justifiable revolution. And it should be noted here that so

far as we have been able to learn, no State since the adoption of our 1844 Constitution has undertaken to adopt a new constitution or an amendment to an existing constitution except upon the authority either of an earlier document or of that of the Federal Government, as were the cases when territories were admitted, or where a confederate state was reconstructed.

We shall now proceed to consideration of the method of submission of the proposed amendments.

Method of Submission: To understand the different methods of submission one must first understand what constitutions really are. It must be recalled that in States of free people such constitutions are not grants or concessions of sovereigns to be changed or revoked at the sovereign's will, even though the sovereign be the people themselves. They are contracts; that is, they are such if the doctrine of the sovereignty of the people and the limited nature of the State, the doctrine that "all men are created equal," or the doctrine of personal self-government, is accepted. Only if the State still is to be regarded as sovereign and the people as subject —if we are to accept dictatorship in any of its several forms—may we disregard the contractual nature of written constitutions.

Our constitutions are corporate charters or articles of incorporation. The whole people form a limited purpose corporation for the benefit of themselves and of their successors. As with all charters of limited purpose corporations, they become contracts, contracts between the people collectively, between the several individuals, between the people both collectively and individually, and also with the corporate State. As such, they are binding upon the several parties and interests thereto. As with all contracts, every one a party thereto has an obligation according to its term to every other individual, to the collective people, and to the corporate State. Conversely, both the collective people and the corporate State owe corresponding obligations to all people and to each other.

Among the provisions of our present Constitution is a detailed way to effect its own amendments. This constitutes a contract obligation binding upon all the people. In substance, it is the way, the only way, employed by many States and by the Federal Union. This makes this provision a law, a part of the law of contracts, the primary law of societies of free men. To undertake to change the Constitution in any other way manifestly would be illegal, would be legally unjustifiable, would be unjustifiable revolution.

How may any party to such contracts be relieved of the obligations imposed by the contract? Obviously it may be done only according to the terms of the contract itself or by repudiation; and the latter, when the charter of a political state is the contract involved, is revolution. Accordingly, the adoption of our present Constitution, as has just been seen, was the result of revolution, but revolutions are justifiable or unjustifiable according to the moral or the legal reason at issue. The American Revolution was justifiable because of the reasons enumerated in the Declaration of Independence. The constitutional revolution in New Jersey in 1844 likewise was justifiable since the government under the old Constitution had ceased to be sufficiently responsive to the interests of free people, and afforded no means for its own amendment.

The Slaveholders' Rebellion was unjustifiable upon two principal counts. First, was the continued enslavement of some of the people against our expressed declaration that "all men are created equal"; and second, the disposition to violate one of the express purposes of our Federal charter; that is, "to form a more perfect union." In both the justifiable and the unjustifiable cases existing constitutional contracts were violated. Existing constitutions were repudiated and new ones substituted. In the case of the Slaveholders' new constitution and of the proposed New Jersey effort there would be almost an exact parallel, both new constitutions would have been adopted in the face of existing constitutions to which all were parties, in an unauthorized or unconstitutional manner. Then, as now, there was assertion on the part of those desiring to change that the old Constitution was obsolete in that it no longer protected property rights of slaveholders, and that they proceeded to form a new Constitution through the convention method; that is, the parallel would be complete unless there existed a moral reason in the New Jersey case for a revolution. This shortly will be considered. But first, we should examine the validity of the assertion that there is implicit in the people power to do anything politically with its government, this being one of the arguments of those who seek constitutional conventions or other shortcuts to the achievement of popular political desire, whatever the desire may be.

Proponents of amendment by convention and of various other methods assert authority for their plan in the second section of Article I of our present Constitution. This Section is a part of the Bill of Rights. Properly understood, it states one of the most profound of all political principles. The section reads, "All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have the right at all times to alter and to reform the same whenever the public good may require it."

Of course, but what is meant by "the people"? And what is meant by "the public good"? Who is the judge? Let us consider first "the people." They are words of many meanings. In what sense are they here used? Should "the people" be regarded as sovereign individuals, enjoying their inherent right to govern themselves; or as such individuals while voluntarily associating through agreement to engage in common enterprises, including political states, in an orderly manner, in pursuance with pre-

determined rules of procedure; or as "the people" merely as emotional masses, making and changing their rules of conduct as they proceed? The second idea seems here to be the true one. The use of the words in the latter sense, indeed, is common especially among the uninformed and the lawless. It is "the people" in this sense that sometimes establish, though they do not long maintain, mob government. Dictators soon take over. It is "the people" in this sense who destroy those with whom they presently disagree. It is "the people" in this sense who support insurrection. It is "the people" in this sense who make their own laws to meet their fancied needs as they appear and who change the rules of life's game as they play it. It was "the people" in this sense who in their supreme criminal act demanded the crucifixion of the Saviour of mankind.

This, of course, is not to imply that the Commission or others who propose unauthorized methods of amending the Constitution were thinking of "the people" in this sense, yet it seems the only sense in which they can justify their argument. We prefer to think that they were not "thinking" at all of the consequences of their amazing proposal. "The people" of course are sovereign. They act both as individuals and as groups. But when they legally act as groups, they act only in accordance with the rules determined upon before action is taken. And when they determine upon these rules, they do not do so according to the will of a mere majority or perhaps of a lesser number, but only according to the will of the entire responsible and socially minded people. "Majorities" do not of right lawfully begin to function until authority is given them in the rules so made by the whole people. Finally, when substantially the whole people do act against a particular order previously established by themselves, they act as revolutionists—justifiable revolutionists sometimes, but revolutionists. The people are, indeed, the court of final jurisdiction, but they act as a "court," not as an impetuous or unregulated "social group."

And what is meant by "the public good"? There remains to be answered, what do we mean when we speak of "the public good"; and who may determine what it is? Again we must have recourse to the proper definition of "the people," and to that which may constitute justifiable revolution. And again, "the public good" is not that which we may think or that which any group or even any majority may think. It is that which reason supported by substantially the entire society thinks. It is justice, justice ascertained by rational and approved processes as all justice must be ascertained. Finally, the principle here relied upon was first formally expressed in the Declaration of Independence. And it was that very document and this very statement which sustained the American Revolution. Furthermore, the statement of these principles in that document was followed by these words, "Prudence, indeed, will dictate that governments long established should not be

changed for light and transient causes, and, accordingly, all experience hath shown that mankind is more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But . . . " Who would assert that government under our present Constitution merits revolution upon such authority?

We must now inquire whether there is any other moral reason for a revolution because of the State Constitution at this time. Considering the nature of the Constitution, its similarity to the Federal Constitution, the relative freedom, peace and happiness of citizens, their relative protection and security, the manifest lack of popular interest now as upon previous occasions when changes were proposed, hardly a person it seems certain would assert a moral reason. Indeed, the most that at any time has been asserted is that many provisions are not as workable as they might be made, that others are obsolete, and that in some cases new provisions should be inserted. All are proper subjects for amendment, possibly also for an entirely new Constitution, when brought about in a legal way, but not when brought about in an illegal way.

It is true, of course, that individuals who do not approve of that which exists may regard the existing thing immoral. From one's own personal standpoint it may be so. Each man sets the standard of his own moral self. But it is society, not its individual members, who set standards of public morality. Individuals make society. But among free people no individual or particular group of individuals controls society or creates its standards or makes its customs. As before stated, probably no one has suggested greater desire for change of Constitution than we have or has presented more constructive suggestions for change than we have. Yet we do not regard ourselves justified in assuming that society must regard the Constitution an immoral institution simply because it is not altogether satisfactory to us. Furthermore, as we have just observed, it is the opinion of the entire society that determines, not by mere majority as so many thoughtlessly have asserted, but only by numbers so overwhelming that there can be no reasonable question of minority rights remaining—a matter far too little understood or recognized by impatient or despotically minded individuals or majorities.

Again, and of major importance, it must be remembered that as we have just observed in contracts generally, and constitutions are not exceptions, vested rights are likely to be created. To destroy a vested right in itself is an immoral act, unless the right itself is actually put to immoral uses. And, again, without legal or moral reason it would be unjustifiable revolution. It would be government by force, not by right. It would be the very thing we deplore in Hitler, and in our American political bosses.

Constitutional Conventions: But do not many States simply

amend their constitutions through popular conventions with popular ratification? Must that be regarded as revolution? Many States do amend constitutions through convention, but only, as already indicated, where there is constitutional authority to do so, except, of course, as we have already indicated, through revolution. Many constitutions provide for such conventions. The Federal Constitution does not. Ours does not. Either may be made to do so in the lawful way just indicated. But to bring the issue distinctly before you, it seems pertinent here to inquire whether advocates of adoption by popular referendum of a new Federal Constitution prepared by a convention or offered in any other unauthorized way would suggest the amendment of the Federal Constitution in that way. We are sure that all will agree that the Federal Constitution so adopted, indeed, would result in another revolution, alongside of which the slaveholders' effort might become insignificant. Yet it is conceivable that now existing subversive interests might sometime attempt that very thing.

It is proper to say here that in early days when the idea of written constitution was new, and, as in our own case, sometimes hastily prepared, there were several cases where unauthorized conventions were held. But diligent search has been made in our behalf, and we have learned of no such case since the adoption of our own Constitution in 1844, even in States growing out of reconstruction after the Civil War. Such States had their authority of course in the Federal Government.

What might be the consequence of the adoption of an unauthorized constitution? As has just been said, it would be revolution. Of course, if there should be no popular objection as was the case in 1844, or if those who opposed failed to take prompt action, laches would intervene in behalf of the new Constitution. But if definite objection should be promptly asserted, and there should be sufficient strength, either moral or physical, supporting it, there would be trouble without end. There would be two constitutions, the partisans of each claiming theirs to be the true one, with inevitable confusion and strife, if not actual anarchy. Nor would there be any authorized agency, judicial, political or physical power.

Consider a possible concrete case. Assume that a new Constitution should now be adopted with so definite a cloud upon its legality, upon the recommendation of interests opposed by a successful political leader and by his followers. Could they be expected to sit idly by? Hardly, if our knowledge of such leaders is anywhere nearly accurate. And what then? If the proponents also should be equally determined persons, situations now inconceivable would develop. Administration of justice would be impeded if not actually brought to a standstill. Contending police departments would be in open conflict. The military department would be in the hands of conflicting generals. There would be undoubted physical violence. Civil war well might result.

One further thought regarding political revolution. They are successful or unsuccessful only according to the respective strength, physical, political and moral, of those who support and who oppose the revolution. In the case of the American Revolution there was sufficient strength to make it successful. In the case of the New Jersey State Constitution in 1844 the opposing strength was negligible. In the case of the Slaveholders' Rebellion, immoral as it was, a terrific struggle ensued. What would happen in New Jersey if a new Constitution should be adopted now with substantial question regarding its legality? It would depend of course upon the nature of the change and the temper of the people. In view of existing conditions who can foretell what that might be? The law of the "survival of the fittest" supplementing the "law of the jungle" well might prevail.

MR. CAVICCHIA: Mr. Probst, on that very point of two constitutions, are you familiar with the Virginia Case—

MR. PROBST: I am not a student of law.

MR. CAVICCHIA:—decided by a Federal court?

MR. PROBST: I am not a student of law as I said before.

MR. CAVICCHIA: Let me point this out to you. On the very question you raise, the court said that whether or not the people of the State of Virginia had duly adopted the constitution in controversy in this case is a political question not to be disposed of by this court, but by the legislative and executive departments of the government of this State. Those departments having recognized and promulgated that constitution, having declared it valid and in force, it consequently is the fundamental law of Virginia, so to remain until it is changed by the people of that State or overthrown, not by the courts, but by revolution. Now, you have tried to draw an analogy between an ordinary corporate charter and the charter of a State. You place them on the same level, don't you?

MR. PROBST: That is right.

MR. CAVICCHIA: Do you know that a corporation which is created by a corporate charter is a creature of the State? Would you say, then, that the people are creatures of the State?

MR. PROBST: Absolutely not. The State is the creature of the people.

MR. CAVICCHIA: The State is the creature of the people. In admitting that, aren't you contradicting yourself?

MR. PROBST: I don't think so.

MR. SCHROEDER: Are there any other questions?

MR. MCMANUS: I understood Mr. Probst to say that no other organization has offered as many constructive suggestions for an improved Constitution as the Grange. I would like to ask him to enumerate those suggestions and tell us when they were made. I

am a member of the Grange and it is the first I have heard of it and I was wondering if he—

MR. PROBST: If Mr. McManus is a member of both the Farm Bureau and the Grange, he will understand how we are governed. Mr. Watson spoke as a representative of the New Jersey State Chamber of Commerce of which we are a member and we were not called.

MR. SCHROEDER: The next speaker will be Mr. James D. Connell representing the State Junior Chamber of Commerce.

MR. CONNELL: Mr. Chairman, at this time I would prefer to defer to the representative of the Newark Junior Chamber of Commerce who has a word to say. Mr. C. Russell Kramer.

MR. KRAMER: Mr. Chairman, Miss Preen and gentlemen of this Committee:

The Newark Junior Chamber of Commerce is part of a nation wide and Statewide organization of the younger business and professional men who are interested in civic and community betterment and progress. The Newark Junior Chamber counts among its membership the younger leaders of the business and professional life of New Jersey's largest city. We emphatically favor a revision of the Constitution of 1844 which does not adequately serve the needs of the New Jersey of 1942.

Action for Revision of the Constitution should be undertaken at once. The longer we delay in making the many needed changes in our fundamental law, the longer we continue the many outmoded practices which hamper efficient and sound government. This is especially true in a State which plays so large and important a part in the nation's war program. We have no hesitancy in urging this acton at a time when many of our members have been called away to serve in the armed forces. We feel it is our duty to give them, who are serving with their lives to preserve our form of government, a sound and efficient working government to which to return.

We have made a careful study of the Report of the Constitutional Revision Commission which has been referred to this Joint Legislative Committee. Several detailed changes, additions, and omissions have been proposed in the course of this study. This is only natural in an organization of members who earn their livelihoods in many different fields of endeavor. A constitution, however, should embrace only the framework of our fundamental law. We are unanimously agreed that the revision submitted meets the needs of the people of the State as a whole, and we urge that such revision, or one in substantially the same form, be submitted to the people for vote.

The Constitutional Revision Commission has labored long. You ladies and gentlemen, the members of this Joint Legislative Committee, have likewise labored long and given generously of your

time and energies during these past several summer months to give the people of New Jersey an opportunity to publicly express themselves on this momentous question. The need for change is practically unquestioned. The best in thought and research has been presented.

George Washington made but one speech during the entire Constitutional Convention in 1787 and that was brief, only sixty words. Those words alone, however, would entitle him to greatness. Some members were suggesting that half measures would please the people more than thorough-going reform, when Washington interposed with his immortal speech which inspired the whole Convention. "It is too probable," he said, "that no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If, to please all the people, we offer what we ourselves disapprove, how can we afterwards defend our works? Let us raise a standard to which the wise and honest can repair; the event is in the hand of God."

We urge that you recommend to the Legislature that a Revision of the Constitution in substantially the same form as presented by the Constitutional Revision Commission be submitted to the people for vote with all possible dispatch.

MR. CAVICCHIA: Mr. Kramer, the Newark Chamber of Commerce last night appeared by a representative and declared itself against revision at this time. Does your Association have any connection—

MR. KRAMER: No, the Newark Junior Chamber of Commerce is entirely independent. We have no connection with them at all and we do our own thinking.

MR. SCHROEDER: The next speaker will be Mr. James D. Connell representing the State Junior Chamber of Commerce.

MR. CONNELL: Mr. Chairman, if I may, I would like to make a statement for the record in behalf of the New Jersey State Junior Chamber of Commerce. I have sat at these hearings in behalf of the New Jersey State Junior Chamber of Commerce, a representative organization of young men between the ages of 21 and 35. I have sat more or less as a listening post to report back to our State organization the pros and cons of the question under discussion. I must admit that at this time I am not prepared to give you the statement of stand of the State Junior Chamber of Commerce. As you have heard from the representative of the Newark local, there is a great deal of sentiment in favor of an immediate revision of the Constitution. On the other hand, there has been submitted to me statements and memoranda by various other locals which are just as strongly opposed to the present Revision in view of the fact that it is deemed that the time is not opportune, as has often been mentioned here today, and that this question should be of vital and paramount importance and belittled by no other issues, whereas at

the present time it is felt that the young men who should have a voice in the affairs of the revision of the Constitution are engaged in a far greater and more important matter of issue.

I would ask the indulgence of the Committee to continue my report to the State, and anticipate that within ten days I will be able to place in the hands of the Committee a statement or memorandum of the feeling of the New Jersey State Junior Chamber of Commerce.

MR. SCHROEDER: We would appreciate it if you would submit that statement within five days.

MR. CONNELL: I shall make every effort to.

MR. SCHROEDER: The next speaker will be Mr. Thomas J. Graves representing the State Chamber of Commerce.

MR. GRAVES: Mr. Chairman and members of the Committee: I simply desire to read a letter which Mr. Watson failed to include as part of his remarks this morning.

September 15, 1942.

Honorable Lloyd Schroeder, Chairman
Joint Legislative Committee
State House
Trenton, N. J.

Dear Senator Schroeder:

I had planned to appear in person before the Joint Legislative Committee, but unfortunately pressing affairs connected with the war effort will prevent my doing so. My duties as Special Assistant to the Administrator of the Federal Security Agency require my presence in Washington on September 17th and 18th. I therefore ask the privilege of submitting the following statement, and that I be recorded as supporting revision of our State Constitution now:

I am a resident, voter and taxpayer of West Orange, New Jersey, and President of Merck & Co., Inc., a New Jersey corporation with its main offices and principal plants and laboratories at Rahway, New Jersey.

During the past ten or twelve years, it has been my privilege, as a citizen, to participate in a number of movements aimed to secure for New Jersey a better brand of State and local government. I am a member of the New Jersey State Chamber of Commerce, an organization of business men which for twenty-six years has sought, as one of its major objectives, to place the government of our State upon a sound, businesslike basis, capable of rendering efficient service with a minimum of wasteful spending. The business men of New Jersey believe that our State and local government can be conducted with genuine efficiency, and furthermore, that our citizens and taxpayers are fully entitled to that kind of government and should tolerate nothing less. I make this statement because I wish to refute a remark which one of the participants at these hearings is said to have made a few weeks ago, to the effect that business men do not expect government to be run with business-like efficiency under our democratic system. We not only expect it, but we demand it.

I think that business men must have a keener appreciation than any others can possibly have of the importance of a sound organizational structure for any kind of successful enterprise. A business concern which is founded upon a poorly-planned or outmoded corporate structure is terribly handicapped in its effort to hold its own in today's highly competitive world of trade.

The State of New Jersey is a corporation, and a large one. Its 4,000,000 citizens and taxpayers are both its stockholders and customers. It spends more than 350,000,000 tax dollars every year to operate local and State services demanded by our residents. Surely, so huge an enterprise as this should be given the soundest possible structural foundation. This is why I, and many others like myself, favor the revision and modernization of our State Constitution, such as has been proposed by the Legislative Commission headed by Senator Robert C. Hendrickson.

Now is the time for our Legislature to effect a sensible, thoroughgoing revision of our State Constitution to provide business-like administrative, financial and judicial machinery with which our State may operate effectively in the difficult years that lie ahead of us. I believe that the proposal of the Legislative Commission is good. No doubt it can be improved; perhaps a better plan could be evolved. But to date it is the *best* plan proposed. I therefore urge its adoption, and to this end that it be submitted to the electorate at a general election. Its provisions for future amendments are designed to take care of what experience will show to be desirable changes.

Faithfully yours,
(Signed) GEORGE W. MERCK.

MR. SCHROEDER: The next speaker will be Mrs. Dorothy S. Isserman, State Chairman of Social Legislation of the New Jersey State Conference of the National Council of Jewish Women.

MRS. ISSERMAN: Gentlemen, at the first session of these hearings our organization submitted a statement which was received by your Honorable Committee with true courtesy and respect. We should like to thank you for your consideration.

We have paid most careful attention to the specific points brought out during these hearings. Nothing stated has caused us to change our original thoughtfully considered opinion. Quite the reverse! Everything points to the crying need for a new New Jersey Constitution.

We speak as Mrs. Average Citizen and—if we may be so presumptuous—even Mr. Average Citizen, intensely and actively in-

terested in obtaining a better instrument of government than we presently have.

This Honorable Committee has it in its power to wield great influence with the New Jersey Legislature. We know you will help your people, the citizens of New Jersey, attain their desired goal. The very least that we should receive is the opportunity to vote at the next election on the question of the desirability of having a new Constitution. Put a fair question on the ballot. The people will respond fairly.

MR. SCHROEDER: The next speaker will be Mr. William Dodd, the National Vice-Commander of the Disabled American War Veterans.

MR. DODD: Mr. Chairman and Members of the Committee:

I have listened attentively today to the proponents of the Proposed Revision of our State Constitution. I am the National Senior Vice-Commander in Chief of the Disabled American Veterans of the last war, the second ranking officer in these United States and a resident of the State of New Jersey. I am deeply interested in the welfare of my State and the welfare of the men who are serving in the armed forces from my State. After listening for several hours here today, I can thank the good Lord that we have veteran organizations that are ready to respond and come before your distinguished group to defend the rights of the men who are called upon to serve all over this globe in defending our liberties and our freedom.

Oh, I have heard it so many times that it lightly passes over, these men are a small minority, possibly 250,000 men in the armed forces; why should they worry? We on the homefront back in New Jersey will protect their interests. We heard the same story in the last war. I was Department Commander of New Jersey and for many years served on the Legislative Committee of my organization. I remember the numerous times and the costly efforts we had to make to come down here to get beneficial legislation for disabled veterans and veterans, and in all cases most of the proponents of this measure were always utterly opposed to the veterans' benefits in the State of New Jersey.

We are going to hear from the most distinguished group of veteran leaders that were ever in this Assembly Chamber, representing various organizations. They are not asking you to postpone; they are not asking you to discontinue governmental functions as was stated here today; they are asking you gentlemen to continue the functions of government that have existed satisfactorily for ninety-eight years, for at least one or possibly two or maybe three more years until those first citizens of New Jersey, the men who are serving in the armed forces of this nation—many of them are dying to preserve liberty—come back. What group of citizens is more entitled to have a say in government

than the men who are willing to die for their country if necessary. Yes, gentlemen, there are 250,000 of those men. They have a right and a definite right, and you gentlemen will have to consider that right, to consideration when it comes to the matter of changing the entire Constitution of the State of New Jersey, not suspending any one function or changing any particular function, but the entire Constitution. You don't change that every year. Those men will not possibly during their lifetime when they return have a chance to have a say again about revision of the Constitution.

I would like to now read my statement, if you don't mind, gentlemen, and furthermore remark that the statement was made here this morning that those men will have the opportunity to vote on this question when it comes to them through the proper procedure of election. The people who made that statement have not been keeping up with the times and the statement of the Secretary of War who only two days ago stated under no circumstances will the men in foreign service be able to receive ballots or be permitted to vote. It might possibly give away military intelligence to the enemy. So no man who is on the battlefront of the world will be permitted to vote on this question by authority of the Secretary of War.

I am appearing here today before you as a representative of the Disabled American Veterans of the last World War for the purpose of expressing my views on the proposed constitutional revision plan which is now before your honorable body for consideration. It is well that you gentlemen have deemed it wise to hold these public hearings in order that you may get a free expression of opinion from our citizens who are deeply interested in this question and it is particularly important at this moment when we are engaged in a war upon which our very salvation as a nation depends that you be enabled to determine the opinion of veterans who have gladly gone over seas and placed their lives at stake for the preservation of our great democracy. Over twenty years ago this country engaged in a war with Germany and the Central Powers for a great cause which was succinctly expressed by President Wilson in the immortal words "to make the world safe for democracy." Although twenty years have passed, we have learned that the sacrifices which we made and the blood which was shed upon Flanders Field was in vain because to our sorrow we now realize that the world was not made safe for democracy and the job which we thought we had finished at that time must needs be done again.

Today, however, we are engaged in a greater conflict to preserve our democratic processes of government. Already we have four million men under arms scattered throughout the four corners of the globe and American blood has been shed in the defense of Wake Island, Midway, Battle of the Coral Sea and the unforgettable treachery of Pearl Harbor and by those heroic bearers

of the spearhead of democracy, the United States Marines, who so gallantly stormed the Solomon Islands. They are fighting for the principle of democracy and yet even as they are dying and as nine million more of their fellow countrymen are being called upon to bear arms in defense of democracy, we find that a few selfish people in the State of New Jersey are determined to crush the very principles of democracy under foot for which these men are shedding their blood. Gentlemen, this same thing happened over twenty years ago as the blood of my comrades was being shed upon the Fields of Flanders. Then as now, in the absence of those who were carrying the banner of democracy, a few selfish gentlemen in this country conspired to put over upon the people and upon the soldiers who were carrying on the battle of democracy the most diabolical hoax ever conceived to deprive our people of their right of personal liberty by means of the passage of the 18th Amendment to the Constitution. The so-called noble experiment "Prohibition."

I need not recall to you gentlemen sitting here the disgust and the resentment that welled up into the hearts of every soldier who returned from the battlefields of France victorious, exultant in the thought that he had won our country's battle for democracy, only to find that here at home its very prineiples were prostrated in his absence. Today it is evident that some people in New Jersey have not learned the lesson that it does not pay to rob the soldiers of the United States of their basic rights while they are away fighting for the defense of their country. Gentlemen, when I refer to basic rights, I use the term advisedly, because now even more than in the last war they are being robbed of not individual rights as occurred in the last war with the prohibition amendment, but this time they intend to scrap the entire Constitution which is the whole basis of all of their liberties.

I stand here, gentlemen, and propound the question to you sitting as representatives of our democratic form of government and say to you on behalf of those members of the armed forces who cannot be here to speak for themselves, do you propose to take this drastic step in their absence? I say further, if gentlemen, your answer is in the affirmative, who among you will dare to raise his head and face the returning soldier from the battlefields of the far corners of this globe and defend his action in voting to destroy their liberties while they were off protecting our country? The men who are members of my organization, the Disabled American War Veterans, many of whom today after a period of twenty years still lie maimed and helpless in government base hospitals throughout this country because of their sacrifices to preserve democracy, are the inspiration for my appearance here today. The gallant men who have fallen at Pearl Harbor, Wake, Midway, Bataan, Corregidor, are my inspiration for appearing here today. Their comrades who are still courageously carrying

on for them and for you are my inspiration for appearing here today. I could not look a returning soldier in the face if I did not remain true to my duty and appear here today and espouse their cause, and I say to you gentlemen that if you go through with this plan, if the Legislature scraps or revises this Constitution in the absence of these men, you will never dare to face them upon their return and defend your action.

The treachery of Pearl Harbor was committed by a foe from whom such tactics can be expected, but my comrades do not expect treachery from their representatives in Trenton. Gentlemen, I beg of you on behalf of all of my comrades that you do not deliver to them a stab in the back while they are off on the far fields of battle defending you.

My National Commander some two months ago requested me to go to Tilton Hospital at Camp Dix to meet sixty-nine men who were badly wounded and disabled in the Phillipine Islands. The leader of that group was a man who was a First Lieutenant of Infantry in the last World War who was in five major engagements. This man on the 13th of December was wounded thirteen times and lost a leg in action with the Japanese. Most of those men lost eyes, arms or legs. This man said to me, "Bill Dodd, the thing that hurts us most is not the loss of our limbs, our arms and legs, it is the complacency of the people back home. Business as usual; pleasure as usual; and politics as usual. God Almighty, can't those people see we are fighting desperate enemies? Will you carry the message and tell them if they don't wake up, if they don't stop fooling around and fiddling around, we are going to lose this war?" What do we do here today? We should be giving every minute of this time to this war effort. We are wasting it. We are causing and bringing up dissension and dissatisfaction throughout our State.

If the State Constitution was good enough, gentlemen, for ninety-eight years and if it has not caused any untold hardship, where is the colored man in the wood pile that we must automatically and immediately while those men are serving and dying for our country change it overnight? Are the proponents of this measure afraid of these men when they come back from service? Those men are going to organize when they come back and we are going to protect their rights because we know, we are in touch with those men. We meet their families at flag dedication services. They are asking us to protect their interests and we are going to.

You are going to hear from a distinguished group of veterans today who are going to ask for God's sake don't try to put anything over on these men who are going to protect the freedom of the world.

MR. MCMANUS: May I say something with reference to that?

MR. DODD: Mr. Chairman, before this gentleman breaks in, at this time I have a list of distinguished veteran leaders.

MR. SCHROEDER: Will you hold your question a moment please?

MR. DODD: At the conclusion of the talk I will gladly answer any questions. At this time, the hour is a little late and I don't want the men and women who sacrificed to get here to miss up, with the permission of your Committee I would like to present those distinguished veteran leaders, men and women and the Gold Star Mother, for their short, brief remarks.

MR. SCHROEDER: You may do so, sir.

MR. DODD: I am going to now present to you a man who has done much in the interest of our State, the Past State Commander of the Veterans of Foreign Wars, Mr. Peter Lutz.

MR. LUTZ: Mr. Chairman and Members of the Committee and those assembled:

I served in the war and was Department Commander of the Veterans of Foreign Wars from 1940 to 1941. I gave before the Governor of the State of New Jersey, Governor A. Harry Moore and Governor Edison, and the Houses of the Senate and Assembly the pledge of 35,000 men and women belonging to the Veterans of Foreign Wars and their auxiliary to support the Constitution of this State and the United States. I didn't see any of our opponents pledging themselves to support the Constitution of this State.

I head an organization I am proud to head. Every member of the Veterans of Foreign Wars is a man of honor. The only man who is eligible to urge this is the man who smells gun powder, not face powder. I come here with the plea that my sons on the other side and other men's sons on the other side be given an opportunity as all citizens in this country to vote for the Constitution, and I will say here, without fear of further contradiction, if this Committee feels like putting it on the ballot, they will have the biggest fight from the veteran organizations they ever had on their hands. I am going to read just a few statements I put down here on paper.

The Declaration of Independence stated that governments are instituted among men, deriving their just powers from the consent of the governed. Our forefathers fought and died for that fundamental principle of democracy. Today, our sons and brothers are fighting and dying so that democracy will survive. Today, I, as a veteran of the first World War, who did my bit on the battlefield to help preserve our liberties, am here. I cannot be a soldier again, but I can protect the millions of men who are scattered all over the world away from home. They have as much right as you and I to have their voice heard in any drastic change in our Constitution. This proposed new Constitution basically alters important phases of our government. I strongly protest against any amendment or change in our Constitution without the consent and approval of those who are sacrificing themselves on the altar of freedom. While I was away during the last war, the United States Constitution was amended and prohibition was foisted upon us. I was sore. Today, an attempt is being made to amend the State Constitution. If that is ever done, you can be certain that the veterans of this war will be sore. These soldiers resent any change in this government by those who remain at home while they are sacrificing their fortunes and lives to preserve life, liberty and the pursuit of happiness in our beloved country.

I want to also say if this Constitution is put before the people and the people are allowed to vote and the people do succeed in getting their ambitious political gains, they will deprive my sons and all other sons of the rights and privileges for which we veterans fought for the last twenty years in these halls to put on the statute books giving the rights of preference of appointment. They are justified and entitled to all preference over all men.

I thank you gentlemen and would again warn that if it goes before the public, we veterans will fight and we can fight.

MR. DODD: I now present the National Commander of the Catholic War Veterans, Mr. Charles Brophy.

MR. BROPHY: Mr. Chairman, Members of the Legislative Committee and Ladies and Gentlemen:

I am a privileged character in this State. I have the right to go to the polls to cast my ballot on election day for the people whom I see fit to administer the laws of the State of New Jersey. I still have another advantage over the average citizen in that I have a greater privilege and that privilege was conferred upon me by the United States Government. Back in 1916 our country was embroiled in a little difficulty on the Mexican border. I responded to my country's call and served on the Mexican border. Immediately upon my return, I continued my affiliation with the National Guard of the State of New York and upon war breaking out in April of 1917 I was immediately inducted into active Federal duty. That didn't give me any privileges over the average citizen. That didn't give me any right to raise my voice in the Assembly Hall in any state constitutional building, but the right was given to me by the enemies of our country. I am a disabled veteran I am proud to say. I owe everything to the United States. Not one day of the many days I spent in the hospital have I regretted the fact, as I lay there and thought back over the possibilities of my doing service to my country, that my people came here and settled in America, and I owe them a duty. I owe this country a duty. And I was glad in part to repay it.

I have been active in veterans' circles. I have toured this entire country in the interest of veteran activity. I am proud to say that in no State in the Union has a legislative body been as generous as you have in the State of New Jersey to the veteran of World

War Number One. I don't say that the people of the State of New Jersey have been the generous ones. It has been the men of the type of Bill Dodd and the other men who came down to this legislative hall and fought to have enacted these laws that are now on the statute books protecting the rights of the veteran. I say to each and every one of you here this afternoon, perhaps you have somebody in service, perhaps you have not, but your Uncle Sam has said to you, as you will recall if you have read the papers of late, that each and every man, woman and child will be enrolled in some part of the service. Only in last night's paper we read where the plans are being formulated for drafting the womanhood of America. Are we going to say to these people, 250,000 at the present time, but with this rapid expansion of the armed forces they contemplate having 13,000,000 men under arms in 1943—are we going to say to those 13,000,000 men who will be under arms and the other 30,000,000 people who will be working to support them, that we here in the State of New Jersey, that we here in the United States, do not recognize the fact that our country is at war, that we have plenty of time to go around discussing the possibilities of creating dissension among the ranks of those, the real Americans, who are doing their duty to their country. Everywhere throughout the country, and each and every one of you is guilty of it, you put on your windows, you put on the letterheads of your firm the fact that this is an all out war. You haven't demonstrated it here today. I say you are unmindful of the fact that you are American citizens when you try to enact into legislation laws that will change the entire Constitution of the State of New Jersey without giving the people of the State of New Jersey the right to vote upon it. The Secretary of the Navy and the Secretary of War have told us that the men will not be given the opportunity to cast a ballot, which they rightly deserve, to elect those who might administer the government while they are away doing their duty for us. They are not doing a duty for themselves. Their responsibility has been taken up when they raised their right hand and took the oath of allegiance as a member of the armed forces of the United States.

You had a great demonstration only last week in the State of New Jersey of the attitude of the people of the State of New Jersey toward constitutional form of government by their refusal to come out and vote at the primaries. There isn't anyone in the legislative body who wasn't astounded at the fact that so few people responded on that date to cast their rights to vote to select people that might run as candidates in the November election. You were all horrified at the 25 per cent of the enrolled voters who went to the polls to vote. You felt, well, perhaps we haven't put up the proper candidates. I challenge you on that. You have. You have put up men here in the State of New Jersey and women who are qualified to carry on the laws and the dictates of this

country. It wasn't the fault of the poor individual who was campaigning for office that the people didn't respond. No, the people of the United States are war-minded. It is in each and everyone's heart. Our duty first is to our country.

There is a man's picture hanging here in the Assembly Chamber, the man who is known as the father of our country. And I dare say there isn't a kinder face than that of George Washington. On the opposite side we have Abraham Lincoln. Those two men built this country for us, and while they were building it—it was during trying times, the Revolutionary War and the Civil War—their thoughts were not on changing the Constitution at that time. Their duty, the oath that they took when they took office, was to administer to the rights of the people who elected them. Immediately following the war your legislators came back from service—and many of them have gone from this legislative body—with new and broader ideas as to the requirements of the American people and especially their people at home. Their vision had been broadened by the war. Conditions had changed rapidly and they brought back legislation that has stood up in the Court of the United States Government. I say why should we all of a sudden decide that immediately we should push, push, push until we put this through while the people are doing the job for us on the other side. Why not let us wait awhile? There is no immediate rush. These laws have served us in the past. You have heard here week after week while the Assembly was in session about the possibilities of amending laws here in our State. What have been the results? The people went along in their normal pursuit of happiness, everybody working for what they thought was the best interest of the community. Then, immediately, we are plunged into this war. Some of our most able legislators have been taken back into service. I dare say that the majority of the members of the Assembly will be in before 1943 because the United States Government at the present time has enlisted the men of the last war up to the age of fifty-five. There are not many members of the Legislature who served in the last war who won't fit in there. Your United States Government says under the draft law, "We are taking the cream of the country, the 'A Number One' people, those who stand high." It is the intelligent people of the country who have responded to our country's call. The poor man who is lacking in education and hasn't had the proper schooling and training that the average person gets has been a little retarded mentally. The result is when he appears before the draft board and signs his questionnaire he has to admit that he can't read or write. Still, if he is strong enough with the minority leaders left here in America, if he is strong enough politically to sway a small minority while our boys are off fighting on distant shores, you the people of the State of New Jersey will elect him to your Assembly Chamber. You will elect him here to enact laws. You will elect him to

carry on the duly authorized authority of the Federal Government and the State Government with the result that when these people return from service, what have they got? They have a hodgepodge form of government that a certain few wanted immediately to enact. They didn't trust the man to wait for his vote for him to decide it. They trusted him to shoulder the gun and go out and fight the enemy. I tell you that the fifth columnists are not just in certain industries; they are throughout the whole of the United States, and it is our duty to continue fighting them.

I ask you as loyal citizens of the State of New Jersey, as loyal citizens of the United States who know your duty, and your duty is that you will carry on constituted law and authority, to give each and every voter, each and every citizen of our State, the right to express himself before you enact any law.

MR. DODD: Mr. Chairman, I will present the Commander of the Third District of the Veterans of Foreign Wars, Mr. George Thornton.

MR. THORNTON: Mr. Chairman and Members of the Committee:

As a representative of the Veterans of Foreign Wars, Third District, all of whom are veterans of the last World War, I wish to protest with all the vehemence I possess in expressing some of my views in strong opposition against the adoption of any changes, revising or scrapping of our present Constitution. My reason in doing so is that at the present time thousands of the citizens of New Jersey are scattered and distributed throughout the world engaged in this great World War II. In fact they are fighting to preserve the principles of representative government and for the preservation of those sacred ideals and principles for which the United States of America has been engaged in many a conflict: to maintain and particularly preserve and keep steadfastly the freedom of speech, the freedom of assemblage, the freedom of religion, the freedom from want and fear. It is only common justice that our men and women also who are willing to sacrifice their all to maintain the institutions and ideals of our government should have something to say in its conduct, and there should under no circumstances be a deprivation of their legal, just and equitable rights. During World War I, while over two million American men were engaged in conflict with the foe on foreign fields of battle, the Prohibition Amendment was cleverly put over, into effect; the consequence of that act is well known to each and every one of the legislators, for in its wake followed rampant crime, racketeering of the most vicious type, vice, intimidation and malfeasance in office of governmental officials, bribery, conspiracy and multifarious forms of debauchery. I feel confident that you do not want this state of affairs or condition to arise again nor a repetition of this. Be it not said that the young men and women who will return from this conflict at some future date—hoping,

as I know they will, that they will return victorious, and that it will be soon—should find that in their absence changes or revisions in our Constitution were effectuated without their voice or consent being given and their concern and interest being disregarded in a matter of such importance. I therefore respectfully urge and appeal to you that you take no action in the modification, revision or change of our Constitution at this time. Thank you, Mr. Chairman.

MR. DODD: Mr. Chairman, I now present the Commander of the Chin Strap Division, Jersey City Post, of the 29th Division, which takes in its membership all of the men from the National Guard who served in the last war. Commander William Havron.

MR. HAVRON: Mr. Chairman and Members of the Committee:

You have heard these different veterans opposed to bringing this vote out without the consent of the soldiers. If those who are opposed or who are willing to get this on the ballot would go down to Camp Dix or meet the soldier on the street and ask him how he feels about it, he will tell you he wants a vote when he comes home. That is what he wants; the vote. He doesn't want the vote taken away from him. I would also like to add that those who are so anxious to put this on the ballot should talk to the mothers of the boys who are now in the service and see the answer they will get from them. It will be well remembered by the boys if this thing goes on. We veterans will fight it to the utmost throughout the State of New Jersey.

I also happen to be a member of the National Finance Committee of the 29th Division and in October we are having our state convention, and you can bet your life that every veteran in the 29th Division will go out and fight this to the utmost. I can say right here if it is put up that the veterans and the mothers of the veterans will never forget those who helped to put it there.

As a veteran of the last World War, I come to protest to any constitutional change in New Jersey at this time. The present Constitution has stood one hundred years with only a few amendments. The amendments were submitted to the people of this State before they were finally adopted. Not one of those changes was ever submitted to the people while our boys were on foreign shores fighting for the United States.

As a veteran of the last war I know what it is to have certain inalienable rights taken away from you while you were away. Prohibition was thus given to us. Soldiers away should be considered. That is a thing I would like to bring up. Ask the soldier how he cursed; ask him what he thought when they pulled over prohibition. If you want to put this on the ballot and hear some cursing, you will certainly hear it this time.

Nor is it alone the soldiers and fighting forces who should be considered. Even we at home are concerned with more serious

business at the present time. That is another fact I would like to bring out. In this last election you saw the small vote that came out. Ask the man in the ammunition plants or shipyards how he is concerned with the Constitution. He doesn't want to be bothered with that stuff at this time. He has armaments to send to the boys on the other side. He isn't thinking about the Constitution; what he is thinking about is producing for the war and giving the boys something to fight with. That is what we should be thinking about instead of changing the Constitution. Will the men in the ammunition plants, the shipyards and every other kind of war work have time to study the advisability of a constitutional change at this time? They are more inclined to obtain some rest and get some relaxation from the steady grind of war work and justly so. Gentlemen, this is no time to propose such a change.

It also strikes me at this moment that the proponents of this change might be taking advantage of these times. There are very few people who are interested in anything but the outcome of the war and they are justified. Their first interest is their country. This is no time to burden anyone's mind with so momentous a study as a constitutional change.

We are in an all out war. We are trying to preserve democracy by changing our fundamental law while 25 per cent of our citizens are away in the military forces and 50 per cent are busy with the war effort in other fields. I am forced to doubt the sincerity of the persons who are proposing such change today.

I am forced to stay at home in this second world conflict because of my age, being over forty-five. But, I am afraid if the people of this country don't wake up to what this thing means and we let these deliberate slackers who are walking around the country and trying to duck the draft, and the young ones who won't join the Army go, believe me you won't have to worry about a Constitution. I will say this—that I am only hoping that they put the draft age up to fifty or enlistments up to fifty so I can go back and show a lot of these so-called Americans; whom I call deliberate slackers, what the old veterans can still do. I do, however, have the same feeling of love of country that caused me to join the armed forces of the United Staes in the first World War. Some of the reasons why I do love this country are freedom of speech, freedom of religion, freedom from want, in fact, democracy as we know it. I think those who would pull such a deliberate trick as to put an amendment on the ballot when the boys are away and cannot vote for it are in the same class with Hitler. That is my thought. And I am going to use every means within my power to prevent our way of life from changing while our youth, the life blood of this country, are away. I consider a constitutional change too important and fundamental at this time. It is my suggestion, therefore, that this important matter be put off until after the war, so that the boys who are laying down their

lives and lying in hospitals wounded have the right to come back and cast their vote.

MR. DODD: Mr. Chairman, may I present the State Department Senior Vice-Commander of the Veterans of Foreign Wars, Mr. Chris Edell.

MR. EDELL: Mr. Chairman, Members of the Committee and those present today:

I am indeed happy to have been privileged to say a few words in behalf of a great, formidable and unique organization, similar to those which have been expressed previously by some of the veterans, with reference to those men who have served their country and fought in defense of this great democracy, and rededicated ourselves to the principle that the founders and the forefathers of this great nation fought for.

We represent veterans of the Civil War, the Spanish-American War and World War I. We have reason to boast of our potential strength because very recently 450,000 veterans were called to meet in conclave in Indianapolis; eighty-four Civil War veterans responded. So you see we do represent four generations. It is needless for me to say how the veterans feel with reference to this constitutional amendment. We believe this is not the time to do it when hundreds and thousands of men and women are serving their country in this emergency and are not in a position to be heard on this subject today. They are showing their patriotism to their country, not by race or color, not by their religious or political affiliation, but by virtue of those God-given rights, exemplification of loyalty manifested purely from the heart, fighting in defense of this great democracy, and that is just what they intend to do. They will come through with flying colors. We will be the victors. We will have not only ultimate, but everlasting peace, not only here, but for the rest of the world.

Would we at home keep faith with them by attempting to revise the fundamental laws in our State at this time without considering the Veterans' Preference Act? We can hardly be considered keeping faith. There will be many reasons why some changes should be made. None can be greater than the fact that the men and women in our armed forces should have their rights adequately protected in the revision of the Constitution which they have so keenly enjoyed down through the years. There has been reference to one of those great wartime presidents, Abraham Lincoln, and we can go back to November 19, 1863, when Lincoln on that memorable day at Gettysburg said of those men who had made the supreme sacrifice:

> "We cannot dedicate; we cannot consecrate; we cannot hallow these grounds because the brave men who fought and died here have consecrated it far beyond our poor power to add or detract. People will little note nor long remember

what has been said here, but they can never forget what they did here."

And so it is, Mr. Chairman. Those are the sentiments that we express in behalf of the Veterans of Foreign Wars, the Department of New Jersey. We believe, however, as I previously stated, if there is a revision of the Constitution, it should emphatically include specifically those God-given rights vested down through the years, preference given to those men who fought for the preservation of our liberties.

MR. DODD: Mr. Chairman, it gives me great pleasure to present Mr. Thomas Kochka, Commander of the American Legion, from Hudson County.

MR. KOCHKA: Gentlemen of the Committee, I could go on for hours talking about veterans, but I think that your answer will come if you put it on the ballot in November.

I have requested permission to speak before you because, not only am I a veteran of the World War, but first, I am a citizen vitally interested in the change of any law which affects the people. or government of this State. So I speak in my dual role of veteran and citizen.

Today we are engaged in a world-wide war; a global war our President has called it. And on those many bloody fronts, scattered over the earth, our American boys, brothers, relatives and friends, are fighting to defend democracy, which includes such precious rights as the right to live as a free people, the right to choose the church we want to worship in, the right to select the school to educate our youth, the right to speak and read freely, and the right to a voice in our government, or in a change in the form of our government.

Those are some of the important things our boys are ready to sacrifice themselves for. Shall you, while they are fighting for you, deprive them of a privilege and a right that this country of ours is founded on?

History will bear me out that, from the first days of hardship at Plymouth Rock, through the bloody Revolutionary War, through the Civil War, and on to today, the attempt to change our form of government, or even the method of it, without the voice of the people, is deeply resented, and those responsible must answer for their actions.

Let's look at this fairly and calmly, not as a political proposition, but simply as a civil and patriotic problem. Remember—the people are not clamoring for this; much publicity has been given to it during the past year, and yet there is no public demand for a change.

The present Constitution has been good for all these years, and if there is a weak or deficient part that needs changing, do we have

to do it in these times, when all our efforts should be devoted to winning the war?

What's so urgent about a change in these perilous times? Shouldn't all our efforts be applied to absolutely essential things? These changes, if they are necessary, can wait until the boys who have a right to approve or disapprove of them return home victorious and at peace with the world.

Yes, when we have won the war and won the peace and when everybody who has a right to a say about it is here to say it, that is the time to consider changes—not now!

MR. RODD: Mr. Chairman, I now present the Commander of one of the largest American Legion Posts, Commander John Lauten of the Albert L. Quinn Post No. 52.

MR. LAUTEN: Mr. Chairman and Members of the Committee:

The snipers are at it again. With the head turned the other way comes the rabbit punch. It was done before, a quarter of a century ago, and was successful. Another try is being made today. During the last war Prohibition was put across, and we are still suffering from the evil forces let loose by that legislation, and had those who had the best interests of the country at heart been in a position to intelligently consider the question, that piece of legislation would never have passed.

Now four million of our youth are fighting the cause of democracy; millions more will shortly follow in that great fight. Is this the time to enact a revision of the Constitution when those whose greatest interest lies in the cause of good government are engaged in other pursuits? Should this important legislation be passed at this time without the considered opinion and thought of the youth of our country for whose benefit legislation should be enacted?

We, the veterans, resent the haste in which it is attempted to change and revise the Constitution, under which we have been living for such a long time, at this time. These matters require the grave deliberation, the studied thought, of all of the people, and it is not now that the liberties of those who are fighting to preserve our method of government should be interfered with. Those who remain at home should fight to protect the interests of those fighting at the fronts for the survival of humanity. To those legislators who from selfish motives are supporting these reformers and revisioners, we issue this challenge: They shall pay when the youth of the country return to take its rightful place in our government. While our boys are figthing for the four freedoms on land, on sea and in the air on foreign shores, let us keep for them inviolate the four freedoms within the borders of their own State.

MR. DODD: Mr. Chairman, I am now going to present a great leader of a great organization whose membership is 44 per cent

veterans, the State Chairman of the Civil Service Employees' Association of the State of New Jersey, Mr. Joseph Mulligan.

MR. MULLIGAN: Mr. Chairman and Members of the Committee and ladies and gentlemen: I have listened attentively to the expressions of the various representatives here today. Down in Washington they have a monument to the father of this country. You can look at that monument from Georgetown or Chevy Chase or Capitol Hill. People standing in those various places see the same monument, but from their positions they will see it differently. Today we have those various differences of opinion as to this proposed revision of the Constitution. I did not have the privilege of going overseas. We were confined here in the Quartermasters Corps doing our job; but we believe, these men who represent the veterans' organizations here and the ladies' auxiliaries, that this Legislature of New Jersey down through the years has gratefully recognized an obligation placed upon them by the men and women who served this country in time of emergency and should have the preference in serving this government and its subdivisions in time of peace. There is a great menace to the preference of veterans contained in the proposed revision of the Constitution as presented by this Committee. We are committed to protect the interests of veterans and their dependents and also the veterans who will come back after this conflict is over. One of the speakers quoted Washington's statement, but Washington subscribed to another statement which has been referred to here and I touch upon that, that all just governments derive their powers from the consent of the government, and that doesn't mean any particular group nor does it mean a combination of groups. It means that every individual having the right of suffrage—and you cannot take that away from them—shall have the privilege of giving expression to whether or not they wish to live under the provisions of the Constitution which is going to be the basis of government in the years to come. It has been pointed out here that a tremendous number of our men and women will be deprived of that privilege if and when it is decided to push this thing upon them without deliberation.

We have faith in the men who are elected to this Legislature of the State of New Jersey and believe they will recognize the right of these men to have a voice in deciding whether or not the provisions of that Constitution that are proposed will be acceptable or not.

We contend that there is nothing to be gained by hasty action. We are desirous, and I am just concluding, that your Committee and the Legislature take cognizance of the fact that possibly the deciding factor will not be allowed to cast its vote if this thing is put across. There is nothing to be gained by hasty action and we therefore request that this thing be taken cautiously. That there are grievances, that there are some matters that should be

changed, that some measures of reform are necessary, we agree; but we do not agree that this is the time to put across a revision of the Constitution when the consent of the governed cannot be obtained because a considerable number of them are deprived of the right to cast their ballot for or against those changes.

MR. PYNE: Mr. Chairman, may I ask a question?

MR. SCHROEDER: Will the gentlemen submit to a question?

MR. MULLIGAN: Yes.

MR. PYNE: Sir, you mentioned the fact, I think, that there is some threat or menace to the rights of the veterans.

MR. SCHROEDER: Will the gentlemen step forward.

MR. PYNE: I think you said that there was some threat to the rights of veterans involved in the proposed revision. Is that any specific revision?

MR. MULLIGAN: I didn't say a threat. In the combination of the educational and civil service features, no protection is guaranteed us that the veterans' preference of those features will not be eliminated.

MR. PYNE: There is no such guarantee in the present Constitution.

MR. MULLIGAN: Not in the present Constitution, no. I submit to you that any reforms that are necessary could be effected by legislation.

MR. DODD: I heard a remark made here today about the womanhood of New Jersey. Those who have given their husbands and their sons to the service of our nation certainly demand respect and consideration. I am now going to present some of our distinguished leaders in the women's ranks of our Auxiliary in the State of New Jersey. I present our distinguished County Commander of the American Legion from Hudson County, Mrs. Julia Tiene.

MRS. TIENE: Mr. Chairman and Members of this Honorable Committee: I have been associated with the veteran organization for almost twenty years. A great number of years have been spent in welfare work which brought me in close contact with the home and with the women, and so I feel well qualified to appear here today in their behalf and I also know that I express their sincere sentiments.

The organizations here today are made up of the veterans of the last war, and the various women's auxiliaries, which auxiliaries in turn are made up of wives and mothers of the heroes of that last great struggle.

And speaking of wives and mothers, let us remember that a deserving tribute should be paid to the women of America for the part they have played, are playing, and will continue to play in the battle for freedom. The mothers of America have gone

down in the valley of the shadow of death to bring forth sturdy sons upon whom this nation now depends for its national existence.

These sons today have dropped their books, their shovels or whatever implement of trade they may have handled, and have taken up the sword. Their country called. They answered cheerfully.

And what of us here at home? We are thinking of changing the basic law which has governed these boys and their fathers before them without their having an opportunity to express their views on the subject. Why we ought to even stop thinking about it at the present time in fairness to them, and spend our time and effort on things that will hasten the time of ultimate victory and help bring these boys back to the waiting arms of their mothers, wives and sweethearts.

Oh, yes, there are those who will ask, "Must governmental procedure, legislation and law-making cease for the duration?" But these are the same smug individuals who are annoyed because they must give up their automobiles and make a few other sacrifices for the war effort. Thank God there are but few of these.

Gentlemen, unless we abandon this entire plan for the duration, I am afraid that we will hear from the mothers, wives and sweethearts of the boys from New Jersey now in service. I am sure that you gentlemen join with me in saying that the wives and mothers of New Jersey deserve your consideration, for they are truly playing a vital role in the prosecution of this war and truly merit the prayer of thanksgiving from the lips of every citizen, "God bless the women of America."

Let us, therefore, in deference to the women of New Jersey, abandon this plan of changing or revising the Constitution until their men, our men, have achieved final victory, that victory which shall mean a finer, nobler life for all mankind.

MR. DODD: Mr. Chairman, I now present the President of one of the largest women's auxiliaries in the American Legion, Mrs. Lillian Schwarzrock of Albert L. Quinn Post No. 52.

MRS. SCHWARZROCK: Mr. Chairman and Members of this Honorable Committee: At the outset, let me, on behalf of myself and my colleagues, express my appreciation for this opportunity of appearing before you.

I represent today the mothers, wives and sweethearts of veterans of the last war, and have read with alarm that there is a movement under way to change, revise and in fact perhaps scrap the present Constitution of New Jersey.

I am inclined to believe that some of you gentlemen are also veterans of the last war and I cannot conceive of any veteran subscribing to tampering with the Constitution after the bitter lesson that we all had in 1919.

If these proposed changes and revisions of our Constitution are submitted to the people to be voted upon, the argument will be advanced that our soldiers in service will have an opportunity to vote as ballots will be sent them. We need only to look at the returns of the primary held this week to prove that this argument is ridiculous. Already we have 4,000,000 men scattered all over the world and this number will soon reach 13,000,000. It will be a physical impossibility to reach all of the men of New Jersey in service.

Are we, you and I who remain at home, to rob those fighting men of an opportunity to be heard on a matter of such vital importance?

Are we to rob them of their liberties and privileges here at home while these gallant American patriots wage a death struggle to protect and preserve these same liberties for you and me?

We cannot, we must not permit tampering with our Constitution, the fundamental law of our great State, until our boys come home with their hard-earned victory.

MR. DODD: Mr. Chairman, I now present the Americanization Officer of the Albert L. Quinn Post No. 52, Mrs. Ruth McFee.

MRS. MCFEE: Members of the Committee, as a representative of thousands of New Jersey veterans of the First World War, I protest vigorously against the adoption of any revisions or changes in our present State Constitution while millions of our voters are in the service of our country, and are unable to cast their votes.

Those millions of men are fighting now all over the world to preserve our rights under the Constitution. Millions more will be going, including some of your very co-legislators, to protect those rights. Those of us who are left behind on the home front dare not—have no semblance of a right—to change the Constitution without those men being allowed to voice their opinions through their votes. Their opinions are to be considered as well as ours. Give them the opportunity to express their wishes.

I remember well that the rights of our men were taken from them by this very method during the last war. Eventually some of those rights were restored to them after the war, but only after the damage had been done.

We must profit by past experience. There is no need to repeat the mistakes made during the last war. I warn you now that those legislators who persist in making changes in our Constitution, who scrap the sacred right of free Americans to vote by making changes when millions are unable to vote will have to answer to those millions when the war is won.

What are you afraid of? What is the tremendous urgency that makes you rush to revise the Constitution that has served us well? Are you afraid that the men who are fighting for us now

would not believe as you do, would vote against some of the revisions you may plan?

Don't let our fighting men down now. Wait until they return. Wait for them to say, with you, that the changes are the right ones, that they are needed and essential, and we will then be keeping faith with the men who are fighting to keep the faith with us.

MR. DODD: Mr. Chairman, they say gems are the best things for last. I am now going to present to you a great lady of which New Jersey is proud and every veteran in the State is proud. She is old in years, but brilliant in accomplishments. This lady gave two sons who lost their lives in the World War. She is a member of the Gold Star Mothers and has never missed an opportunity to go to a hospital to carry comfort to the boys. She has a son in the present war and a grandson. I present Mrs. Kathryn Connolly.

MRS. CONNOLLY: Mr. Chairman and Members of the Legislative Body: I think perhaps when I get through reading this, it will touch some of the hearts of the people who want Constitutional change. I dread to talk because I am so upset, but I am glad and proud to be here to express my opinion.

I am President of an honored organization, the Gold Star Mothers of America. That organization is composed of all the mothers of America who gave their sons' lives to this country in the last war. I had two boys, both of them young and in the full bloom of youth at the time the last war broke out. They heard the call of our country and they responded to fight for democracy. When I received word that they had sacrificed their lives in the cause of democracy, my grief was easier to bear because I felt that they had died for a great principle, but while they were over there giving up their lives, those who were back here in responsible positions of authority in government put over the prohibition amendment to the Constitution. It was a blow at personal liberty and you know as well as I do that it could not have been put over if all of our soldiers who were in France were able to have their say in the matter, but they were not considered. They were good enough to go over and fight for the country and to die for it, but they were not good enough to be permitted to say whether or not we should have prohibition. I have associated with soldiers in veteran organizations since that time. I know how they feel and I know how deeply hurt they were and have remained because they were not considered in the passage of that amendment. Our returning soldiers felt that they had been betrayed and that something had been put over on them, and as a matter of fact, you men know they were betrayed; and so I come here today, gentlemen, as a representative of the Gold Star Mothers, symbolic of those who lie under the crosses on Flanders Field. I am a reminder of the fact that they gave their lives to preserve their liberty.

Other boys are today doing what my sons did—dying to preserve liberty for our country. You today are being asked to do what was done when my sons died—put over something without considering what the opinion of those who are fighting to protect their country will be. Gentlemen, you can't change this Constitution with all of our boys fighting on the battlefields throughout the world. You can't take advantage of them in that manner. It happened once. It must never happen again. Whatever may be good or bad about this change in the Constitution, the one fact remains, nothing must be done about it until the boys who have a right to be heard come back and speak for themselves and for their fallen comrades who they left behind. If they say, it is all right to change the Constitution, then I say it is all right to change the Constitution; but now I say to you, don't change it. Don't desert and betray these boys who are now fighting for us and dying for us. Give them an opportunity to practice the citizenship which they are fighting to preserve. Give them an opportunity to partake of the liberty which they are dying to preserve. If you don't, I am afraid, gentlemen, that you will pay a terrible penalty because never again will the men who are fighting for us stand for a betrayal by those whom they depend upon to protect them in their absence.

I ask the gentlemen of the legislative body, in the name of the Gold Star Mothers and the boys that are overseas, leave the Constitution in its present form. It has served us for ninety-eight years and I think perhaps the war will be over soon. I thank you.

MR. DODD: Mr. Chairman, on behalf of the great veteran leaders of these great veteran organizations you have heard this afternoon and before adjournment for lunch, we wish to thank you and your Committee for your consideration. In closing let me say today: Consider seriously the morale of the troops that are fighting the most desperate war this nation has ever seen. Don't have it said to those men in the lines, you are good enough to fight, but you are not good enough to have the say in the form of government you are going to have when you come back.

I again thank you and the members of the Committee. If there are any questions, I will gladly answer them.

MRS. COX: Mr. Chairman—

MR. SCHROEDER: Will the gentleman submit to a question?

MR. DODD: I will submit to a question from any member of the Committee, but not from the audience.

MR. SCHROEDER: Did you desire to propound a question?

MRS. COX: Mr. Chairman for the record I should like to remind the spokesman for the veteran organizations that it wasn't the long-haired men and the short-haired women who put over the eighteenth amendment. Women did not have the vote at the

time the eighteenth amendment was passed. That was ratified by thirty-six states of the Union through the work of the thoroughly discredited Anti-Saloon League, which was composed entirely of men. I think many in this audience will know that the repeal of the eighteenth amendment was made possible by the vote of the women, many of whom are represented here. I would also like to ask the gentleman whether he has read the revision.

MR. SCHROEDER: The gentleman said he would not submit to a question from anyone in the audience.

MR. DODD: If the chairman or any member of the Committee wishes to ask me about the short-haired women and long-haired men, I would answer them. I have met many of them in my travels.

MR. SCHROEDER: The next speaker will be Mrs. Stuart L. Henderson of Ridgewood, representing the New Jersey League of Women Voters. Mrs. Henderson—

MRS. HENDERSON: Mr. Chairman and Members of the Legislative Committee: The New Jersey League of Women Voters has been represented at all of the hearings during the summer and has suggested from time to time that the constitutional revision be adopted. It is very good as it stands. We are very grateful, and at this time we would like to take the opportunity of saying, thank you for the long suffering, very patient manner in which you conducted these hearings.

At this time I would like to speak very briefly on the subject. We think it is imperative that steps toward changing this Constitution shall be taken now. I was very much interested indeed in some of the remarks made by some representatives of the veteran organizations. Perhaps I might say in passing that I have two sons in the armed services myself and perhaps for that reason feel that it is very essential that we do play fair with the members of the armed services who are serving us in every form. It is just because we must play fair with them that I think it is our job at this time to proceed with making our Constitution a better Constitution. We certainly must realize that the prosecution of the war is the first job of every one of us. Nothing can stand in its way. It is the essential job.

We will soon have to limit our efforts to things which have to do entirely with the prosecution of the war. But it is because I believe that the successful prosecution of this war will rest fundamentally upon the soundness of our government at all three levels, and the soundness of our governmental institutions, that I feel in all fairness to the armed services we must proceed to improve the Constitution. We cannot ask our men to come back from the war and find the financial chaos that we have had to endure for many years. With the expenses of managing a war almost prohibitive in character, we must save at every point along

the line. We must be more economical in the other levels of government, and that is one of the provisions of this Constitution.

I think it is true that if some of the people who have been talking for the veterans had read and studied the proposed document, they would have felt very much more comfortable about any liberties being removed. We realize, all of us who have worked to understand this new Constitution as suggested, that it provides more and better liberties, more and better government. To show the importance of the soundness of our government as a foundation of prosecuting this war, we need only the reference or the illustration of the situation in France to make us realize what we face. It was not the military thing entirely which made France bog down. Almost all military experts agree that there was an unsoundness in the government which had laid the way for the collapse of France. We cannot in all fairness let that happen here, and it is our duty to keep faith with our armed men by going ahead with the duty that they cannot be doing at this time because they are away from us and away from the practical possibility of carrying it on by being the citizens who are responsible for a government, the framework of which must be kept not only as it is now in its safeties and in its liberties, but improved to the greatest possible measure that it can be made.

MR. SCHROEDER: The next speaker will be Colonel Stevens representing the Montclair Post No. 34, American Legion.

MR. STEVENS: Mr. Chairman and ladies and gentlemen of the Joint Legislative Committee: As a great-great-grandson of one who founded or helped to draft our State Constitution of 1776 when we were engaged in the Revolutionary War, I have always been much interested in constitutional government, so I came here today, not only as an individual, but as a representative of a veteran group.

I have heard statements from various members of the veteran organizations and I am astounded at the way they have insulted the intelligence of your Committee by bringing up the question of prohibition. The adoption of the Prohibition Amendment is not in any way analogous to the present situation. At that time the people of the State had no chance to vote as to whether or not they wished prohibition. Their representatives in the Legislature voted for them without first asking them what they wanted. So I don't think that that situation applies today.

Speaking of membership in veteran organizations, I might say that as soon as I could after I returned from the service in the last war, in 1919, as soon as the commission in the reserve corps was sent to me, I signed it and I have renewed that oath of office ever since then. So every five years I have taken an oath to support the Constitution of the United States. When I was admitted as an Attorney-at-Law, as a Counsellor-at-Law of the State of New

Jersey, when I enlisted in the National Guard as a Buck Private and when I was commissioned on Governor Moore's staff, I took an oath to support the Constitution of the State of New Jersey. And I resent the implication made by one of the speakers this afternoon that those who are working for revision of this Constitution are violating that oath. I joined my local American Legion Post; I joined the military order of the World War; and I joined the Reserve Officers' Association of the United States. I have served as President of the Montclair Chapter of the Reserve Officers' Association. I served as Adjutant, as Junior Vice- and Senior Vice-Commander of the Montclair Post of the American Legion, but I had to resign from the latter position when I finally consented to run for an elective office in what proved to be an unsuccessful campaign for me. Since that time I have been asked several times to accept the post of Commander—I mean the office of Commander of the post—and I have refused to do it because I felt that I could do better work as a Buck Private in the ranks of the post.

Not long ago when the question was first mentioned of whether or not this is an opportune time to amend or to vote upon the subject of whether or not we want a revision of our Constitution, I made it a point to ask as many veterans as I knew, and since the days of Pearl Harbor, as many of the young men as I know who are now in the service, whether or not they were in favor of a revised Constitution. I told them something about our present Constitution, and my son, who is now training to be a bombardier and who, if God is willing, will be a veteran of this war, said, "You don't need to tell me anything about the State Constitution." He said, "I majored in Political Science and American History and I think I know more about it than you do because I have just finished it and you haven't." But those young men, all of them, have stated that they wish the Constitution revised at the earliest possible moment. The veterans of the last war to whom I have spoken have made the same statement. They said, "Let's revise it now so that we will have a more workable Constitution when the young fellows come home after this war." So I don't think there is much merit in that.

The statement was made this morning that the average man on the street doesn't know anything about the Constitution. Well, I commute every day and I don't always take the same train so I have had an opportunity to speak to a number of trainmen on the Lackawanna Railroad, and they, all of them, are very much interested in this subject of Constitutional revision. They say they don't know what the proposed revision is, the proposed draft, but they do think we ought to have our Constitution revised.

The statement was made today, I think, that the State Bar Association went on record against the adoption of the proposed draft or against an amendment of the Constitution. All you who

were here last night and yesterday, if the newspapers were right, remember that Mr. McCarter said that the State Bar favored revision. Now I am only citing that from the newspapers. I wasn't here last night.

Now the question today is not, shall we adopt the draft proposed by the Hendrickson Revision Commission. What we are arguing for and what the American Legion Post of Montclair has gone on record for is that the question be submitted to the voters at the General Election this fall as to whether or not they wish the Legislature of next year to propose a Constitution for their acceptance or rejection.

I would like to read in that connection a copy of the resolution adopted by the Montclair Post last Monday night.

> "WHEREAS the Joint Legislative Committee of the Senate and General Assembly of the State of New Jersey, appointed to ascertain the desire of the people of the State for a revision of the present Constitution, adopted in 1844, will hold its last public hearing on the 18th day of September, and
>
> WHEREAS it is the opinion of the members of Montclair Post No. 34 of the American Legion that the Constitution should be revised at this time in order that our State Government may be prepared to efficiently meet the social and economic problems that undoubtedly will arise after the present war;
>
> BE IT RESOLVED that the Joint Legislative Committee be requested to advise the Legislature, when it meets on September 28th, to enact legislation enabling the people of New Jersey, at the General Election in November, next, to state whether or not they desire the 1943 Legislature to submit a revised Constitution for their approval in November, 1943;
>
> And be it further resolved that copies of this Resolution, signed by the Commander and Adjutant of this Post, be mailed to His Excellency, The Governor of New Jersey, to the Honorable Lloyd L. Schroeder, Chairman of the Joint Legislative Committee, to Mr. Charles DeF. Besore, Secretary of said Committee, to the Montclair Times and to the Newark News."

In the discussion following the adoption of this resolution, the statement was made that the State Department of the American Legion of the State of New Jersey was asked to oppose the revision or oppose this desired referendum because so many of the boys were away.

I would like to know from what mysterious source the veterans who spoke this morning and this afternoon got that figure of 250,000. As a reserve officer subject to call back to military service at

any time, I have tried to find out how many New Jersey men are in the service at the present time and I have been told that that was a military secret. Now the American Legion was asked to hold this desired referendum on revision up because of the number of men in the service and their reply was that that is no argument against the submission of this referendum in November.

There is a lot more I could say, but you gentlemen have been down here all through this hot summer day. This is your last hearing and I noticed by the clock that you are all about ready to go home. I know my friend, Senator Pyne, has a long way to go, and you have also, Mr. Chairman. I won't say anymore, but I do hope that your Committee will recommend to the Legislature that we be permitted to vote this November upon the question of whether or not we wish a proposed Constitution submitted to us a year from now. Thank you very much.

MR. SCHROEDER: The next speaker will be Miss Evelyn Seufert of the very great County of Bergen.

MISS SEUFERT: Mr. Chairman and members of the Committee: First of all, speaking for the Bergen County Unit of the New Jersey Committee for Constitutional Convention, I wish to thank you, Mr. Chairman, for your very courteous conduct of these hearings and that goes for the whole Committee. We all are truly appreciative of the fairness and the interest and the patience which you have exhibited during these hearings, and surely these hearings will go down as one of the finest examples of democracy in action that we have ever had in New Jersey, and we have you to thank for that.

I am very sorry that all of a sudden something has happened here. The people on my right who suddenly came, have as suddenly disappeared. I am sorry of that because there were things I had planned to say to them and questions I would have liked to have asked, but we are a cozy little group anyway. We have survived all the battles this summer and I think perhaps that I shall say them to you, to us, instead of to the rest of the group, knowing that here anyway will be a friendly ear.

I am sorry that Mr. Jack Brennan isn't here right now because he spoke this morning about a resolution adopted by the New Jersey Bar Association at its convention in May. That resolution provided that there should be no consideration this fall of the question of constitutional revision. As has been previously stated, that in no way affected the previous stand of the Bar Association that they are in favor of constitutional revision. But I wanted to ask Mr. Brennan, "Were you there at the State Bar Association Meeting last May?" I don't think he was. He might have been because there was a great crowd of strangers there whom we didn't recognize. I would like to tell you a little story about that Bar Association meeting because this afternoon's performance over here reminds me of something that happened down there, and since the resolution has already been introduced into these hearings, it is in order. That resolution adopted by the Bar Association was brought up at the very end of the two-day session. It was a Saturday morning and some of us were late in getting into the session. As we walked into the meeting hall, we saw a sea of strange faces. I had never seen them before. I have attended every Bar Association Convention for the last four years. We have them twice a year. That means eight; I haven't missed one. So I know pretty well the members who come to the Bar Association meetings, but when I got in at this late hour on Saturday morning, I said to the person next to me, "Where did all these people come from? Are they lawyers?" The people around said, "I don't know; I never saw them before." The resolution was read. This great body of strange people roared, "Yes." It was carried and just as silently and quickly that group of people folded up their tents and disappeared as the group of people have folded up their tents and disappeared right here this afternoon; and strange too that all the people who disappeared so suddenly down at Atlantic City in that group of strangers came from one county. And I wanted to ask Commander Dodd, but he wouldn't stay to be asked, if it wasn't true that all but one of the veteran men who talked came from Jersey City. It was true. Maybe there is no connection. I don't know. It is too bad they didn't stay to answer questions.

I also wanted to ask these people if they had been here yesterday, if they had been at any of the hearings, if they ever read the revision of the Constitution as it is proposed. I think they all would have felt much better if they had ever seen that document; if they had been with us and worked with us, if they had any idea of what we are struggling for, to build something better here, they wouldn't be so concerned and afraid that we are putting something over on the boys who will not be here to vote. I venture to say that not many of them have ever read the document or know what it is about, because if they had, they wouldn't be so upset about it.

Another thing, I wanted to ask if they had been here last night or yesterday and heard the various members of the Bar Association who got up and spoke for revision and spoke for immediate revision. That is a point, ladies and gentlemen, I would like to emphasize. I have told you the little story of how that resolution went through the Bar Association. The men who were here yesterday, leaders of that same Bar Association, Judge Hartshorne, Mr. Hardin, Judge Lloyd, Mr. Ralph Wescott, Mr. LeDuc, Mr. Arthur Edwards, Mr. McCarter and a whole list of them, all had year in and year out regularly attended the meetings of the State Bar Association. They have, with the rest of us in the State Bar, studied this subject for a year and a half, and each one of

them you heard yesterday favor revision and favor immediate consideration of the subject. So when we see that the outstanding men of the Bar Association who have the confidence and admiration and respect of the people of the State come out individually in support of this, perhaps you can get a better picture of just how the State Bar Association feels about constitutional revision, and these men yesterday, themselves, were veterans. They didn't question whether or not it should be submitted when the boys were away. Judge Hartshorne, wanting immediate revision, is a Past Commander of the New Jersey American Legion, himself a veteran; Mr. McCarter is a veteran; and Judge Lloyd is a veteran. Ladies and gentlemen there probably isn't one of us here, there probably isn't one of the proponents who has not some immediate member of his family now in the armed services or who is immediately going into the armed services. But we don't get up and wave the flag and get emotional out loud. We feel that there is something better that can be done. We are not unmindful of the flag. We feel that there is a practical way to see that that flag keeps waving and that is to so build up this government of ours that when the economic chaos and social upheaval comes, which we know is coming after this war,—it comes after every war—we have got to so reconstitute this New Jersey government that that flag will have been placed deeply enough in our soil by our efforts today, so that when the storm comes, it will keep waving. Yes, we are mindful of the flag, but we don't go around and get emotional about it. We are working instead, trying to keep it safe for the men after they do get back.

MR. SCHROEDER: The next speaker will be Mrs. J. C. Merrill representing the Committee on Constitutional Convention. Mrs. Merrill—

MRS. MERRILL: Mr. Chairman and Members of the Committee: As a member of the New Jersey Committee on Constitution Convention, I have been asked to read this statement and resolution by the New Jersey League of Women Shoppers.

We are of the opinion that the citizens of New Jersey should be given the democratic right of voting on a revised Constitution in November, 1943; therefore, we have adopted the following resolution:

> "The New Jersey League of Women Shoppers has gone on record, asking the Joint Legislative Committee to place the question as to whether the 1943 Legislature be directed to submit a revised Constitution for adoption or rejection by the people in November, 1943, on the ballot at the general election."

MR. SCHROEDER: The next speaker will be Mr. R. C. MacFall of Ridgewood.

MR. MACFALL: Mr. Chairman and Members of the Joint Legislative Committee: I came down from Northwest Bergen to speak to this Committee as a private citizen, representing no organizations, having no private interests to serve, but being one of the vast number of citizens of Northwest Bergen who do nothing but vote when it is their turn to vote, and pay an increasing amount of taxes each year. As a private citizen I read the Report of the Commission on Revision of the Constitution and I must say that the Governor and the Legislature is to be congratulated on the splendid job that was performed by that Commission. It is inspirational; it is monumental; and the work will be fruitful whether it bears fruit next year or the year thereafter or the year after that. But, I concluded, after listening to the representatives of veteran organizations here today, that I could not have read the same report that was read by them, because nowhere in the Proposed Revision do I see a single right of an individual taken away. On the contrary, the private rights are added to. There is an extension of civil service provided for, and under the present civil service rules, veterans are entitled to preferential treatment, so they could be nothing but benefited.

When the Commission on Revision says that the present Constitution, as a result of their study, promotes and fosters wasteful and inefficient government, I believe it. When the Commission says that our present court system, which is a hangover from the pre-Revolutionary War system in England and which England found necessary to change, is wasteful and inefficient, I believe it. I feel that the Legislature should also believe it and should submit to the people of the State of New Jersey an opportunity to change these things. I do not feel that those who are representing the present soldiers or claim to represent them here want a continuance of this wastefulness and inefficiency when men are fighting to win a war.

There is only one suggestion that I would like to offer and that is that the new Proposed Constitution contain a method for easier future revision or amendment, so that when the boys come back and find it is not quite to their liking, we won't have to go through a twelve-year period to get it changed.

MR. SCHROEDER: Are there any other individuals who desire to express their opinion?

MR. MCMANUS: I share Miss Seufert's regret that Mr. Dodd didn't remain after presenting the expert testimony of his constitutional lawyers on the question before this Committee, because I don't like to talk about people behind their backs, but I think the record should show certain things.

As a reporter, I have heard Mr. Dodd speak before in Jersey City budget hearings, and in hearings before the United States Senate Committee. Miss Seufert raised the question which I think I can answer with this statement, that Mr. Dodd coming here to represent, speaking, as he said, on behalf of the veterans, and

bringing with him people who brought with them the usual tirade of Hudson County insults and rowdyism, I think I can say without any question at all that Mr. Dodd did not come here to speak for the veterans; he came here as the messenger of Frank Hague who was recently described on the floor of the United States Senate as the mayor who was the head of the most disreputable political machine on earth. Mr. Dodd was his representative. He spoke here. He has obviously no knowledge of the Constitution and he ran away. Thank you.

MR. SCHROEDER: Are there any other individuals who desire to express their opinion?

MR. CHANCE: I just wish to say, Mr. Chairman, that I have not run away.

MR. SCHROEDER: Mr. Chance, we are very grateful to you for remaining.

I want to thank each and every one of you for your interest in this matter. We appreciate the cooperation of the citizens of this State. We will close this hearing. Thank you very, very kindly for your interest.

(Adjournment)

BRIEFS AND COMMUNICATIONS SUBMITTED AT THIS SESSION

BRIEF PRESENTED BY NEW JERSEY FARM BUREAU AND NEW JERSEY STATE GRANGE TO THE JOINT LEGISLATIVE COMMITTEE to study the Report of the Commission on Revision of the New Jersey Constitution

To the Members of the Joint Legislative Committee:

First, regarding the "merit" system:

The employment of such systems as distinguished from "spoils" systems hardly can be commended too highly. The particular one now employed seems to be a step in the right direction. But it is only a "step," and not a very long one. Something much better should be found. Some day we think it will be found. To that end some suggestions will be made here. Also, to that end, any constitutional provision relating thereto, for the present at least, should be in general, not specific, language. The language employed in the Commission's Report on page 25 (p. 926), seems to cover the case very well. It reads,

> "The merit system of appointment and promotion in the Civil Service with uniform salaries for similar work, shall be compulsory."

When on page 50 (p. 949), however, an attempt was made formally to incorporate the idea into a Proposed Constitution the language employed was specific—dangerously specific. Its effect would be to retard development of a more perfect merit system. It is there provided that

> " . . . all officers and positions *shall be* classified according to duties and responsibilities, salary ranges shall be established for the various classes, and all appointments and promotions shall be made according to merit and fitness to to be *ascertained*, so far as is practicable, by *examinations* . . . "

This, in substance, is our present policy. But as already implied, it has been only partly successful—successful to the extent that it tends to defeat the spoils system, unsuccessful in developing efficiency. It tends to promote stagnation, to retard improvement. That which is needed is a system which, at the same time, prevents abuses of spoilsmen, and promotes progressive efficiency of the personnel. So far as we know, no such system, at present, is being publicly considered. But one should be. At the risk of digressing

from the specific subject before us, and to indicate some reasons why the present system is ineffective, we shall make the following observations:

The system is faulty because the art of classification of human endeavor is still far too primitive, and ideas of adequate classification still far too embryonic, and too conflicting to justify specific direction by legislators, by administrators, or by jurists. It is one thing to say whether *similar* work *is* being uniformly compensated. It is quite another to say that all offices *shall be* classified. Informed persons may determine with some justification, whether work already performed *is* similar to certain other work, though anything remotely approaching scientific accuracy still is far away. But the assertion that potential human endeavor,—work not yet performed,—is capable of classification is an emanation of ignorance.

In our present system, however, though *classification* is the thing alleged, *standardization* is the thing actually undertaken. This becomes apparent when the effect of the word *examination* is considered. "Standardization" and "classification" are quite different. Standardization relates to *making* things according to a "predetermined human rule." Classification relates to man's ability to distinguish between existing things, whether of divine or of human origin, and his ability to arrange them according to the extent of their likeness. That which man makes may be standardized. That which God makes is not capable of standardization by man. And God made man. Until we have acquired much more comprehensive knowledge and much more accurate reason, we only can poorly classify human endeavor and, as we see it, it is not capable of standardization.

Standardization of commodities often is of inestimable value. Among the lower forms of life, also, some degree of standardization may be practicable. But to the extent that life is endowed with will, and with morality, standardization cannot be effected. What then should be done? An ideal civil service has not yet been visualized. Until it has been, let our Constitution express our aim only in general terms, as above indicated. This will enable society and the State to develop its ideal through scientific processes—through experimentation and through reason, free from hampering restraint, constitutional or otherwise.

Second, regarding pensions and retirement funds:

A provision making pensions and retirement payments contractual obligations of the State, also, of course must be commended. But here again, in our opinion, the benefits provided are too limited, both in scope and in provision, for attainment of the desired end. There not only should be a provision creating contract obligations, but also provisions for *enforcement* of the contract. If the State is able to deny contractual relationship under the present arrangement—a morally binding obligation as it undoubtedly is—by what reasoning may one assume that it might not avoid payment of a specific contract based upon similar moral obligations? It must not be forgotten that it has been held that there now is no power to sue the State. The State is at perfect liberty to avoid its own contracts at will, and not infrequently does so. There is no express constitutional provision to this effect. It comes by way of the "common law," and rests upon the false assumption of State sovereignty. It is only another of the several survivals of despotism which a theoretically sovereign people did not free themselves of when they created their limited State.

But it is said that the State never repudiates its contracts. Few greater popular errors exist. States everywhere have been poor paymasters. Our Federal State is a notorious offender. Our own New Jersey is much freer from fault in this respect than are States generally. But even here moral obligations are frequently set at nought. Indeed, we will be compelled to deal with a flagrant case when we discuss the proposed abolishment of allocated funds. Furthermore, all liabilities of the State are created by the executive, and provision for their cancellation is made by the Legislature. Creditors, then, first are at the mercy of some administrative officer, and if he approves they still await the will of legislators. If either refrains from making the proper provision the creditor has no recourse.

Not so many years ago, there was a deficit in our own State treasury. Both the Legislature and the executive officers knew of its approach, yet they failed to make proper provisions. Creditors, in many cases insolently, were told that they could wait the State's own sweet will. And they did wait. There were many, many months before common honesty again asserted itself in the State Government. There are many cases where States arbitrarily fixed the terms of its own payments, and then violated their own arrangement. If the State can keep its lawful creditors waiting in such cases, there is no doubt of its ability to keep its lawful pensioners waiting when it suits its convenience, and in the end repudiate its obligation.

The law holds citizens to strict accountability for their debts. It has no moral right to excuse the corporate State,—the creation of, and the servant of, sovereign citizens. But since through false reasoning, as we think, it does do so, we are of the opinion that there should be in our Constitution provision authorizing suit against the State and against its subordinate corporations, upon all cases of contract or of tort, in the same manner that common justice authorizes such procedure against any citizen, or against any other corporation. Let us do all within our power to indicate

that the people are the sovereigns and the masters, that the State is their creature and servant, and above all, let us do our part in insisting that the State behave itself as such.

Third, regarding legislative investigations:

We now approach the matter of legislative investigations. If prevailing custom is to be continued it would seem that the proposed provisions are good. But must they be continued? They also are survivals of despotism—of State sovereignty. We provide in Bills of Rights for trial by jury, and in cases of infamous crimes, for grand jury indictment, also, that one is not required to testify against himself. Besides, we provide for a legislative department to direct the State's government, for an executive department to administer the State's government, and for a judicial department to protect rights of individuals against aggressions of other individuals, and of the corporate State. Yet we continue to allow not only legislatures, but either house alone, to establish itself into a court which in specific cases violates all these constitutional rights. We allow it to break all barriers between itself and our agencies of justice, within the scope of the will of the Legislature—the very essence of totalitarianism. Of course their motive generally is good, but so are the motives of paternal despots generally. But the same rules which enable such despots to render beneficent service enables tyrannical despots to oppress mankind.

And legislative motives not always have been good. At least in recent years, we have seen many such so-called investigations turned into persecutions. In all cases of legislative investigation men's reputations are placed in jeopardy, sometimes also their property, and at times also their liberty. There is an admitted evil. But it is altogether foreign to our conception of justice either to allow men to be tried by a partial tribunal or by a legislative court. To our mind a far better way of handling this entire subject is through the organization of an additional branch of the judiciary. Throughout all our comments upon constitutional revision we have urged the more complete separation of the three departments of the State. Here we submit, there is much ground for reflection —and much need of a more perfect system than any yet proposed.

In behalf of the Commission's Report it should be noted that it seems to relate only to executive officers. If so, there seems still to be a fault. It is, that additional power over the executive is being delegated to the Legislature. This in itself we think should not be. But is the legislative power of investigation limited to executive matters? By its language it is limited "to all phases of State and of local government." But what are "all phases"—especially if the powers of the Legislature are found to be those contained in the proposition embodied in Paragraph 2, of Article II of the Proposed Constitution? Some of our views upon this paragraph were expressed in our first memorandum. If those near-

despots who believe that all powers of sovereign States not specifically limited by constitutional provision still vest in our legislatures, much constitutional language will be necessary to preserve the integrity of our personal liberties. Totalitarianism may be nearer than we realize. Clearly we are handling dangerous weapons.

Fourth, regarding re-election of sheriffs:

Of course we heartily concur in the Commission's Proposal to make sheriffs eligible for re-election. The reason for limitation to one term has long since been removed.

Respectfully submitted,

NEW JERSEY FARM BUREAU
H. Earl Probst, Secretary.

NEW JERSEY STATE GRANGE
D. H. Agans, Master

BRIEF SUBMITTED IN BEHALF OF THE NEW JERSEY STATE MOTOR VEHICLE AGENTS' ASSOCIATION TO THE JOINT LEGISLATIVE COMMITTEE ON THE PROPOSED REVISION OF THE NEW JERSEY CONSTITUTION

The Senate and General Assembly of the State of New Jersey, by Joint Resolution No. 2, approved November 18, 1941, duly constituted a Commission, which among other things, was charged with a duty as set forth in Section 4 of the Resolution: To wit

> "The Commission shall be charged with the duty of inquiring into the subject of constitutional revision and of suggesting in what respects the Constitution of New Jersey should be changed, and make recommendations to provide for the more effective working of present-day representative processes."

In accordance therewith, a Commission was duly appointed and the said Commission, by Joint Resolution No. 1, approved January 24, 1942, was continued and reconstituted, with its original membership. This Commission presented its Report to the Legislature of this State on May 18, 1942.

By Senate Concurrent Resolution No. 19, adopted June 15, 1942, a Joint Legislative Committee was constituted to:

> "hold public hearings, *to ascertain the sentiment of the people of the State* as to the various proposals and recommendations for change in the New Jersey Constitution made by the Commission on Revision of the New Jersey Constitution, and to report thereon to the Legislature."

It is noteworthy that the Constitutional Revision Committee recognized its duty as two-fold; namely, to the Governor, and to the people of this State in whom reside "the sovereign power in State affairs, and the political right of self-government."

It is also noteworthy that the Legislature assumed the same attitude by its appointment of a Joint Committee for the purpose of "obtaining the sentiment of the people."

The New Jersey State Motor Vehicle Agents' Association, duly represented by its recognized and appointed delegates, at a meeting held June 15, 1942, in Trenton, New Jersey, realized the importance of such a change. With the feeling that constructive, rather than destructive, criticism is of prime importance, the Association's president, George E. Jamison, was authorized to appoint a Committee, to be selected from Motor Vehicle Agents throughout the State; to make a report on this vital problem pertaining to the Revision of the Constitution of New Jersey. The president forthwith appointed such a Committee composed of Wilma B. Owens, Salem; Alan B. Conor, Ridgefield; Joseph Mirandon, Paterson; William C. Gonch, New Brunswick; Howard S. Hewston, Collingswood; and Thomas L. Glenn, Atlantic City, with Mr. Joseph Solimine of Newark, acting as its chairman.

This Committee, having in mind the primary purposes of Senate Concurrent Resolution No. 19, resolved to submit a report representing the crystallization of sentiment, both rural and cosmopolitan, gleaned from the reports of approximately 145 Motor Vehicle Agents throughout the State.

These Motor Vehicle Agents are all representative men in their respective communities. Since the presentation of the Report on the Proposed Revision of the New Jersey Constitution, these men have made it their business to talk to the people of their communities; and through individual reports received from the Agents by this Committee, the following thoughts and ideas seem very relevant to the Articles and Sections of the Proposed Revision to be hereinafter discussed.

These opinions and suggestions have been secured, not by biased influence being exerted, but have been willingly offered by a most intelligent cross-section of our citizenry. These opinions and suggestions are offered to help the Legislative Committee to arrive at a logical, sensible, and practical conclusion to their deliberations on the most important and vital subject any Legislature has had to consider since the adoption of our present State Constitution ninety-eight years ago.

This report is, therefore, submitted for the purpose of assisting the Legislative Committee in arriving at its decision, and represents a cross-road of opinions of the people of this State.

While it is understandable that a Constitution in effect since 1844, probably could be revised in some sections with wholesome

results; has there been any sudden situation which has arisen that would make such revision absolutely mandatory in 1942? This Legislative Committee should bear in mind that age alone is no indictment of a Constitution, and if it meets the needs of a Twentieth Century Industrial State, as well as those of the earlier and predominantly agricultural community, greater glory to the framer's statesmanship.

On the 13th day of August, 1844, the existing Constitution of the State of New Jersey was ratified by the people of this State. Since its ratification, the economic, social and civic life of the people of the State of New Jersey has been guarded by this document.

During these ninety-eight years, there have been perplexing problems affecting the entire citizenry. In this period, New Jersey has gone through the Civil War, the Spanish-American War, World War I, and now several months in the present World War II. There have been periods of economic chaos and civil calamities; and yet, despite all these hazardous occurrences, New Jersey still stands unexcelled in her record of honoring and preserving the rights and privileges of the individual.

Only four times in these ninety-eight years has the Constitution of this State been amended; September 1875; September 1897; September 1927 and June 1939; and in none of these amendments was the original instrument vitally altered.

Today, the people of the State of New Jersey find themselves perplexed by an effort to revise the Constitution of 1844. The people can rightfully wonder just what the Commission making the Report on the Revision of the Constitution of the State of New Jersey has prepared, and of what value it is going to be to them.

Considerable significance can be attached to the following quotation, which comprises the first two sentences of the Report of the Commission on the Revision of the New Jersey Constitution, under the heading "Statement of Transmittal:"

> "The document submitted in this report for your consideration is not a model Constitution. It does not purport to embody the most advanced thinking of political scientists."

Today we find the world at war. This proposal is made at a time when the Allied nations are locked in deadly combat for freedom, and at a most critical time in the history of civilization; when civilized man is trying to determine whether he shall be ruled by dictatorship or by democracy wherein the voice of the people is the factor in Government.

Today, in the State of New Jersey, thousands of our finest youth are actively engaged in this great conflict, and are scattered to the far corners of the earth on thirty-one battle-fronts. They have left behind them their home, parents, wives, children and

loved ones, whose only interest, at present, is the preservation of those ideals for which the American boy is fighting. The people of New Jersey understand that the winning of the war is their first concern. They understand, too, the magnitude of the task and that all their effort must be given to make sure the victory. We are certain that this is in the hearts and minds of all true-blooded Americans.

Realizing that the Government is the people, and that the Constitution is a compact between the individual citizen and the citizens as a whole; IS IT, therefore, fitting and proper at this time to submit a complete revision of the Constitution of the State of New Jersey to the people for their approval or rejection?

Thousands of our men are not in a position to express their desires or wills because they are scattered throughout the World, giving their all for the cause of democracy and our protection. Additional thousands are so involved and concerned over the welfare and safety of these boys in the United States Armed Forces, that they themselves are thinking in terms of world menace, rather than legislative adjustment within the State.

Can a people so wholly engaged, mentally, physically and even spiritually, give to so great and important a matter as the Revision of the Constitution—that great document which guarantees and protects their rights and privileges—the consideration necessary to an intelligent vote?

It is elementary that this is impossible and that any vote taken on the Proposed Revision this year, could not represent the calm judgment and true vision of the people of New Jersey.

After this world catastrophe is over, and people get back to normal living, there is definitely no assurance that anything that may be a fact today will still be a fact when the present emergency is ended, and the readjustment period has reached its conclusion.

Consideration should also be given to the fact that there are being established today, agencies and bureaucracies in our Government at Washington, wherein the voice of the people's representatives is being consulted less in the operation of government. Realizing that this procedure is affecting the lives of all people, it is, therefore, mandatory that thoughtful and sound judgment be used; and above all, that no changes be adopted at this critical period, in view of the ever changing procedures in the administration of Federal Government.

Legislators of the State of New Jersey are elected by the people in their respective counties, to properly represent them in the Legislative Halls at Trenton.

The legislators should be, and we feel are, cognizant of the fact that, under our present Constitution, many of the so-called necessary changes could be made by authority now vested in the powers of the Senate and General Assembly. Some of these so-called necessary changes could be made by just an affirmative vote of the

Senate and Assembly; others by constitutional amendment, which give the people of the State the right to analyze and vote on one question at a time.

May we add, that when a vote is to be taken on so important a matter, the right of every citizen to cast a ballot should be protected scrupulously.

What about the soldier vote? These men, who are giving everything as their contribution to victory, should be our first concern. There should be no revision unless every last one of these heroes is recorded on the question.

It may be said that arrangements have been made for the soldier vote, but again it is common knowledge that that vote would not be complete. And assuming that it were complete, where is the machinery that would place full information concerning the Proposal in the possession of these men, scattered as they are in all parts of the World, so that they might be able to cast an intelligent vote? No! 1942 is not the year in which to revise or amend our Constitution, nor any other year, until the victory has been won, and our men and women, now in service, are back home and settled once again in peaceful occupations.

Legislators, as representatives of their constituents in their respective counties, should give careful consideration to the foregoing mentioned facts and, as conscientious representatives, ask themselves this question:

> "Am I fair to my people when I put this additional burden on those at home at this time, and am I fair to the boys who are away and who have no opportunity to voice their objections or approval?"

The Commission on Revision, in their Report on the Revised Constitution, under the heading of "Statement of Transmittal" have, in part, said:

> "The citizens of this State look to their Constitution for the embodiment of principles designed to produce a well-ordered commonwealth. These principles are interpreted to the individual in terms of his liberty, his security, his protection, and in guarantees of unprejudiced administration of all public affairs." . . . "As an instrument of government, the Constitution allocates authority, defines powers and sets up procedures."

Are the results, which the Commission on Revision is desirous of obtaining as expressed in its Report, in conformity with the quotations as expressed above; and will the document, as proposed, meet the demands of sound government?

This Agents' Committee feels that the desired results and sound government will not be obtained.

The Agents' Committee has reached this conclusion after hav-

ing analyzed the numerous reports from the Motor Vehicle Agents throughout the State, and feel justified in setting forth the following criticisms and suggestions on certain sections of Article III and IV, as set forth below, which we trust will be constructive.

ARTICLE III—SECTION I—PARAGRAPH 3

"The Legislature shall meet in a ninety day session once every other year."

It is important, at this point, that the Committee take cognizance of the fact that the Legislature, meeting biennially in accordance with this provision, will, of necessity, have to consider or have before them, matters requiring legislation which have accumulated over a period of approximately two years. It has been suggested and the theory advanced, that the present Legislature is meeting too often and considering too many bills. If the present Legislature has found it necessary to stay in session a good portion of the year to consider all important legislation; how can the new Legislature, meeting under the new proposal, consider intelligently and pass upon all the legislation which has accumulated over such a long period of time?

Furthermore, the Constitutional Revision Commission frankly admit, in their summary and explanation on page 18 (p. 917) that:

> "a major cause of legislative confusion has been the lack of opportunity for full and careful consideration of legislative matters. Each member of the Legislature is expected to be familiar with criminal laws, state departmental needs, the tax structure, and a host of other intricate and involved questions."

If this be a fact, will the future legislators, under the Proposed Revision, limited to only a ninety-day session, have a greater opportunity to familiarize themselves with the necessary legislative matters?

If the reasoning of the Commission on Revision is correct, then we can come to only one conclusion; *that experiment is everything and experience is nothing.*

It may be argued that the Legislative Council, functioning properly, would be a cure-all for this evil. Assuming this to be true, are the legislators of this State willing to be relegated to the role of a "Charlie McCarthy," and willing to have some other person or persons legislate for him and incidentally do his thinking?

It is the individual legislator who is directly responsible to the voters of his community, and not the Legislative Council. Therefore, just thought and consideration should be given to the legislator's position. If the Legislature should accept and pass proposed legislation as advanced by the Legislative Council, and it should so develop that any piece of legislation passed would not

be to the best interest of the people in any one county or several counties; IS IT the legislator or the Legislative Council that is going to have to answer the several questions that will be asked?

In what position is any legislator going to find himself when he again goes before the people for reelection, if he has accepted the advice of the Legislative Council, and not followed the present practice of first analyzing any particular piece of legislation, and consulting with the groups affected in his particular county?

There can only be one answer and one conclusion to this question, and that is, that the people of any particular county or group of counties will have lost faith in their legislators, feeling that their interests have not been best represented.

Due consideration should also be given to the fact that the office of a legislator is not a full time office. It is, therefore, necessary that a legislator must, of necessity, be engaged in some other profession or business. This fact is clearly brought out in the case of our present legislators. A legislator engaged in some profession or business in his home community, which profession or business must necessarily be of a productive type, and demanding a great amount of time, thought and consideration on his part; it is, therefore, only reasonable to assume that it would be impossible for him to be away from his profession or business five days of every week for a period of three months.

The Legislative Committee, without any reference on our part, is quite familiar with the proceedings of the Legislature, and the amount of time required for the organization of both houses, the naming of the respective committees, the introduction and consideration of bills, and the time which is necessary before any bill can be brought before the House for open discussion.

The time element is one of the most important factors for a successful legislative career. Considerable thought should be given to the way that a legislator approaches the passage of any particular piece of legislation. He first must give careful consideration as to just how a particular bill may affect the constituents from his county. The most satisfactory and certain way for a legislator to arrive at this conclusion is by consulting with the different interests or groups of his county, that may be affected by any particular bill that would be introduced. This is a job that takes time, and for a satisfactory conclusion, cannot be hurried.

A legislator, at the time that he is elected to represent his county, must necessarily be a man whose reputation in that county be of the highest type, if the particular political party presenting him hoped to be successful in his election. This man, being willing to give his time, should certainly also be given the opportunity to carefully consider any type of legislation, and be given the opportunity to consult the people in his county, who have expressed their faith and confidence in him, so that he may justly

conclude that the interests of the people of his county are not going to be jeopardized by any piece of legislation. This is very important, as the man, upon entering into the Legislature, was a man of reputation and integrity in his county, and therefore, his position in the minds of the people should be safe-guarded.

There have been several bills in the past several years presented to the Legislature, whereby the interests of different county and state groups have been involved. It has been necessary, on several occasions, for the committee having charge of a particular bill, to hold hearings whereby different groups throughout the State have had an opportunity, as proponents or opponents, to present their views. Over a period of time, this type of procedure has proven to be very helpful to the legislators, but under the proposal of Article III, Section I, Paragraph 3, there is some question as to whether the legislators would find themselves with ample time to follow the foregoing procedure. The consensus of opinion among the citizenry, who have been interrogated, seems to be that the idea of free discussion before these committees will be curtailed because of the time limit.

Considerable thought should be given to the fact, that under this particular section, at the expiration of ninety days, the Legislature shall adjourn sine die; which procedure would allow the Governor to make all ad interim appointments. Such an appointment, wherein the legislator has no voice, may develop a situation by which the best interest of the people in the county so affected, would not be best served.

Would not this situation tend to deprive the Senator, of any county, the right to exercise his prerogative in refusing to confirm an individual for a particular office, because of some particular disqualification?

Therefore, the limiting to a ninety day session of the Legislature would undoubtedly deprive the people of the State of New Jersey of some of the rights and privileges, that they now enjoy under our present Constitution.

ARTICLE III—SECTION I—PARAGRAPH 4

"Special Sessions shall meet on call for a single, specific purpose and shall last no longer than fifteen days."

Considerable thought should be given to this section, as again the time element is very important.

If, under the proposed Revised Constitution, the Governor should deem it necessary to call a special session of the Legislature, it is safe to assume that it will be legislation of a very important and particular nature. Again, is not the legislator being deprived of the privilege to carefully study the bill, and contact the groups in his county that may be vitally affected?

ARTICLE III—SECTION II—PARAGRAPHS 1 & 3

"The terms of Senators shall be four years and Assemblymen two years, with elections in odd-numbered years, in order to remove the influence of presidential and congressional elections."

Our survey indicates that the citizenry of this State are not opposed to modification as proposed.

ARTICLE III—SECTION III—PARAGRAPH 1

"The salaries of members of the Legislature shall be $1,500 a year."

Our survey indicates that the citizenry of this State are not opposed to modification as proposed.

ARTICLE III—SECTION III—PARAGRAPH 3

"No member of the Legislature shall be eligible for appointment to a state office during the term for which he was elected and for one year thereafter."

Experience has definitely and conclusively established the fact, that men serving in the Legislature, and during their term of office been appointed to some State position, have served ably and efficiently with credit to themselves and honor to the State of New Jersey.

Therefore, why should a legislator, who has served ably and efficiently, be deprived of an honor that may be conferred upon him by his colleagues in the Legislature, where during his term of office, he has gained the respect and esteem of his fellow members?

It is the sincere belief of this Agents' Committee that a legislator, because of his intimate knowledge of State affairs, is well qualified for an appointment of trust in State government, and should not be discriminated against because of his service to the State.

ARTICLE III—SECTION VII—PARAGRAPH 1

"Neither the Legislature nor either house thereof shall elect or appoint any executive, administrative or judicial officer except the State Treasurer and the State Comptroller."

It has been ably said that a democracy is a government of the people and by the people.

The Legislature of the State of New Jersey democratically represents the people of this State at large, because geographically all sections and parts of the State are represented in that body. The Legislature, by virtue of its organization, voices the opinion of peoples from all seetions of the State of New Jersey, both urban and surburban, and are, therefore, in a much better position to

advance the thoughts and ideas of the people of the State as a whole in a more constructive manner. The legislators are vitally concerned with the type of executive that shall head the various administrative departments which affect their constituents and, therefore, should have the opportunity to say whether a certain individual is qualified to be in charge of a particular department.

It has been said that the selection by 81 individuals, representing 21 counties, is conducive of better judgment, than that of a Governor elected by the vote of three or four counties. The election of the various department heads, as set forth under our present procedure, is along the lines of truer representative government. We urge, in the interest of decent, honest government, that the Legislature retain the power of appointing the various department heads in joint session. This recommendation is based on the fact that, as legislators, this body is in a better position to compile the sentiment as expressed throughout the State, and are, therefore, in a better position to determine who shall administer the affairs of the various State departments, which affects the people as a whole, rather than any one individual who does not have at his finger-tips this wealth of information.

Furthermore, an administrative head, elected under joint session, must take into consideration that the activities of his office, which affect the people in the State as a whole, are subject to closer scrutiny due to the fact that any irregularity in the administration of his affairs, detrimental to the rights of the people, would soon be brought to the attention of the respective legislators from the county or counties so affected. So, with that administrative head, having been elected by joint session of the Legislature, and responsible to them for the actions of his office, will be under closer supervision in the performance of his duties. It should also be taken into consideration that any administrative head, appointed by the joint session of the Legislature, will give careful consideration to any request submitted to him by any member of the Legislature. If there should be some particular problem affecting a county, whether it be a county as a whole, a municipality or an individual; a legislator will receive more prompt and courteous consideration, as compared to the procedure whereby the administrative head shall be appointed directly by the Governor.

A legislator should give this particular section the most careful consideration, as he is the one who has the problems to dispose of from his own respective county, and he is the one who the people know and appeal to directly. His success will be determined on his ability to properly provide for the constituents of his county, wherein administrative heads are in a position to either grant or reject a request that may be very vital. It may be said in passing, that a great majority of our people are pres-

ently of the opinion, that the present world conditions are the result of too much power in one man.

Would not this proposed section place too much power in one man and tend towards executive domination?

In view of the legislator's direct interest to all problems of a civic and social nature, affecting the citizens of the State as a whole—which fact cannot be denied—they should certainly be better versed to determine the wills and wants of the people of New Jersey; and thus choose a man with qualifications to meet the existing need. Therefore, instead of the appointive power of legislators being curtailed, this power should be extended.

The Legislature of this State, because of its inherent power, can always legislate to give the Governor the power of making certain appointments. We cannot understand, however, why a Legislature would endeavor to "shackle" itself by a constitutional limitation in this regard.

The Legislature, in making any appointment, would certainly give due consideration to the ideas and wishes of an honest and efficient Governor. However, should the Legislature give away this right, they might find themselves at some future time, because of the constitutional limitation, in a position of remaining silent in the face of poor appointments by an unscrupulous Governor; who would have foremost in his mind the thought of developing, in the State of New Jersey, a bureaucracy and political machine, which could not be broken down by the people's own representatives.

ARTICLE III—SECTION IV—PARAGRAPH 6

"The Senate shall act upon all nominations within thirty days and vote in public on all nominations."

This Committee is opposed to this proposed section and will discuss it under Article IV, Section II, Paragraph 2.

ARTICLE III—SECTION IV—PARAGRAPH 7

"Lobbying shall be prohibited in legislative chambers and shall be regulated through a system of compulsory registration."

This Committee feels that this section has no place in the Constitution of this State. We feel that the Legislature has the power to cope with this situation under Article III, Section IV, Paragraph 3.

It is the consensus of opinion that the insertion of this limitation in the Revised Constitution would tend to limit discussion of proposed legislation, by persons interested, in the legislative halls or chambers with the legislative members from their particular county.

Any member of the Legislature is always glad to meet people from his own county at the State House in Trenton, while the Legislature is in session, and on many occasions has invited and encouraged various civic groups from his county to attend a session of the Legislature.

Without exception, whereby a group from any particular county may attend a session of the Legislature, the Senator or Assemblyman, at his first opportunity, will meet with this group, whether it be in the legislative chambers or in the corridors of the State House. It is natural to assume that such a group, being interested in civic and social matters in their county, would also be interested in any particular piece of legislation that may have any bearing on the activities in their community. These groups, during a session of the Legislature, are numerous and are honest in their intent and purpose in discussing legislation with their local representatives.

As defined under this particular section, are such groups to be branded as lobbyists, and shall they be required to register in the Secretary of State's Office, before they can discuss any matter of legislation with their local Senator or Assemblyman?

It is absurd to assume that people of this type would be able to understand such a rule and regulation, and such a procedure may have a tendency to develop a misunderstanding between members of the Legislature and civic groups, which would be very embarrassing and prove detrimental to the activities of a legislator in his community.

ARTICLE IV

Before entering into the discussion of this article, the attention of the Legislative Committee is respectfully called to the statement made by the Commission on Revision on page 19, (p. 919):

> "Our greatest need, to which the Revision is directed, is to strengthen the Executive authority."

In what manner does the Commission propose to strengthen the Executive authority?

Do they not propose to effect this result by divesting the Legislature of certain of its inherent rights?

Will this not tend towards *Executive domination and Legislative insignificance?*

Under the guise of having prepared a great document, in the form of a Report on the Revised Constitution; some thought and consideration should be given as to whether or not a few certain men in the State of New Jersey have in mind the development of a plan, whereby they will find themselves in a position to administer State affairs, without being hindered in their activity by the representatives of the people from the State as a whole—the legislators. They have in mind to develop this position through political manipulation, instead of having that position certified by the voters of the State; inasmuch as they will not have presented themselves before the electorates for the electorates' endorsement. Such an attempt to enter by the back door to effect an alleged front door policy should not be tolerated by the people of New Jersey.

ARTICLE IV—SECTION I—PARAGRAPH 3

> "The Governor shall serve for four years, starting the fifteenth of December after his election."

The sentiment as gathered on this point is in accord with this provision except that the beginning of the Governor's term should coincide with that of the Legislature, which is the second Tuesday in January. The Commission on Revision gives us no explanation for this purported change, and we know of no other reason why the Governor's term should begin on the fifteenth day of December after his election. Suffice to say that so many ramifications could present themselves in this situation that the best policy would be to follow the procedure of our present Constitution.

> "The Governor shall be eligible to hold office for only one term."

Although the Commission on Revision gives no explanation for this desired change, it is common knowledge that the underlying theory advanced is to prevent a Governor from seeking two or more terms, and thereby build up a political machine.

This Committee does not subscribe to the theory advanced under this section.

Our present Constitution does not make such a provision, and during its years of existence, the record reveals that no man acting in the capacity of Governor, has disgraced the State of New Jersey during his tenure of office. Let us not forget the importance of the assignment, that has been delegated to this Commission on Revision of the Constitution of the State of New Jersey.

It must be clearly kept in mind, that any change made today will affect the lives of generations to come. Therefore, any ulterior present-day motive that this Commission may have in mind, should be eliminated in view of the importance of the type of a document that they have presented.

Any man, who has served faithfully and well as Governor of the State of New Jersey, has, by necessity, gained considerable experience and knowledge during his tenure of office. Therefore, if a man has served to the complete satisfaction of the people of the State of New Jersey, and has done so without disgrace, it should be left to the people of the State of New Jersey to decide whether or not this man shall be entitled to a second term of Governor, as provided under our present and existing Constitution —that all political power is inherent in the people.

Furthermore, the prohibition under this section removes the Governor from accounting to the people, and makes him accountable only to the political party which backed him for election.

ARTICLE IV—SECTION III—PARAGRAPH 4

"The heads of all administrative departments, except the Treasurer and the Comptroller, shall be appointed by the Governor with the advice and consent of the Senate."

This Committee is opposed to the proposed section and feel that the reasons are amply expressed in our discussion of Article III, Section VII, Paragraph 1.

ARTICLE IV—SECTION II—PARAGRAPH 2

"Unless the Senate confirms or rejects an appointment by the Governor within thirty days, the appointment shall be deemed confirmed."

It has already been stressed that this Revision is directed to strengthen the Executive authority, by divesting the Legislature of certain of its inherent rights.

This proposed section provides the first step to accomplish this purpose.

In the Report of the Commission on Revision of the Constitution on page 20 (p. 920), we find that they say in part:

"The first remedy for this situation is supplied by providing for the nomination and appointment of the heads of all administrative departments by the Governor with the advice and consent of the Senate. The hand of the Governor is strengthened in this respect by a provision requiring senatorial action within thirty days on such nominations as the Governor may make."

This should leave no doubt in the minds of the Legislative Committee as to what the Revision Commission is attempting to accomplish by the inclusion of this section.

In complying with the demands as set forth in this section, certainly a greater and graver amount of responsibility is placed upon the shoulders of a Senator.

History will reveal that in several instances, whereby the Governor has presented a name for confirmation by the Senate, that the Senator, in checking with different groups from his particular county, has found that the man nominated for a particular office has not met with the approval of the people from his county.

History also reveals, that the objections raised by the various groups opposed to a particular nomination have been justified, and in turn the Senator has refused to allow the name to come out of committee, knowing that the best interest of his constituents would not be served.

To gain such information by making contact and meeting with various groups in a particular county, in all instances has taken considerable time. Therefore, with only thirty days being allowed for a Senator to make such investigations and contacts, the thought is that ample time would not be allowed to a Senator to make the most proper and intelligent type of investigation; and as a result, he would not be able to gain the true sentiment and expression of his constituents to guide his voting on any nomination that may be submitted by the Governor.

Thought should also be given to the fact that when a nomination is presented by the Governor to the Senate for confirmation, a particular individual may be a nominee for a State administrative office. Such a nomination would naturally affect every county in the State, and in order that all members of the Senate could intelligently vote, they in turn must, of necessity, make investigations before they would be in a position to conscientiously vote; and most certainly, a thirty-day period for such an investigation is not sufficient time.

Political expediency, under our form of government, is a very important attribute to good government; and therefore, to deprive any Senator of his right to best protect the interests of his political party, is certainly not conducive to good government. Our theory of government is based on a two party system and ought to be preserved.

There are several instances of record, where the nomination made by the Governor has been an individual in the minority party of a particular county. In turn, the Senator from that county has refused to allow such a name to come out of committee; the reasons being, that he has felt that the particular nominee would use his office for the furtherance of prestige of his particular minority political group, and would thus jeopardize the best interests of good government in that county.

Our present Constitution allows the Senate unlimited time and discretionary powers in the confirmation of such a nomination by the Governor; but as provided under the Report of the Revision Commission, a Senator's discretionary powers and time for consideration are extremely limited, and would certainly prevent him from serving for the best interest of his own county, and the State as a whole.

We wish, at this time, to voice our objections to that part of Article III, Section IV, Paragraph 6, which necessitates the Senate to vote in public on all nominations.

We stress this objection, because any Senator in obtaining information on the qualifications and integrity of a nominee by the Governor, would gather information in most cases that would have to do with a nominee's private and personal life. Certainly nothing is to be gained by broadcasting such information throughout

the State of New Jersey, which may so involve a man that his entire future would be ruined.

The Senators in executive session, as now provided, can discuss these facts and vote intelligently; but if it were necessary to vote on all nominations in public, the thought is that a Senator would not, out of common decency for his fellow man, reveal these personal matters, well knowing that the nominee is not qualified for confirmation. Thus, the possibility of a man of questionable integrity may be confirmed by the Senate, and the advocates of good government would learn too late of the particular nominee's short-comings, and the Senate as a whole would be justly and severely criticized.

Would not this section give the opportunity to an unscrupulous Senator, because of petty jealousies, or political motives, under the guise of senatorial courtesy, the right to besmirch a person's character and not be subjected to any civil consequences by virtue of the senatorial prerogative of privileged communications?

We believe, at this point, that there is a definite inconsistency in different sections of the Report of the Commission on Revision of the Constitution, and proper thought has not been given as to the coordination of the different parts, one to the other.

For instance, under this particular section it provides that the Legislature shall have thirty days to act on any nominations submitted by the Governor. Article III, Section I, Paragraph 4, provides that a special session can be called for a single, specific purpose, but shall be for only a duration of fifteen days.

QUAERE:

> In the event that a special session is called, for the purpose of acting on a nomination by the Governor, does the Legislature have thirty days on which to act, or do they only have fifteen days?

ARTICLE IV—SECTION III—PARAGRAPH 5

> "The heads of all administrative departments shall serve at the pleasure of the Governor."

The intelligence of the citizenry of the State of New Jersey is on a high plane. The people of this State have exemplified this intelligence by constructive thoughts, ideas, and criticisms, which have been most helpful over a period of time in guiding the affairs of the State of New Jersey.

The Government is the people, and the greatest asset of the people of this State, is the right to choose what kind of government they wish to be governed by.

The Agents' Committee, in analyzing the various reports from members of its Association, has determined that the most practical way to gain the sentiment of the people in the respective counties, is through their representatives in the Legislature.

After the Legislature has, on first-hand information, received these expressions, the Legislature is therefore best qualified to determine the type of a man who shall administer the affairs of the State.

This type of action would definitely carry out the ideas and wishes of the citizenry of the State, and thus make all administrative heads directly responsible to the people through their representatives; and, in the event that an administrative head should not function properly, it shall be the voice of the people through their legislators—and not the voice of one individual in the person of the Chief Executive or the political party which he represents—who shall say whether or not this administrative head shall be removed from office.

This is true democracy! Any plan that may be developed contrary to such a procedure, would be the first step toward executive domination.

The proposed provision very clearly is contrary to the American theory of democratic government, which fundamentally is a system of checks and balances. It leans too far toward the centralization of power, which has already nationally gone beyond all expectations and desires of the people, and definitely is a drift in the wrong direction. We are confident that the people of New Jersey, in the guidance of their Ship of State, wish to steer clear of this course.

This provision offers no protection to either the public nor to any qualified administrative official, and leaves both at the complete mercy of the patronage system. The Governor would be given a blank check which he could fill in at his pleasure.

Frequent changing of administrative heads would naturally follow without any legislative interference, and there would be no end to the juggling around by the Governor of various departmental heads.

The Commission on Revision, in their explanation of this proposed change on page 20 of their Report (p. 920), say in part as follows:

> "By fixing the term of all such department heads to coincide with that of the Governor, and by authorizing their removal at his pleasure, the Governor is appropriately granted the power essential to secure smooth-running State government."

We do not concur in this view but contend that the opposite is true.

As it now exists, the administrative heads in the various departments of our State are career men, who are experts in their respective fields. These men, over a period of years, by reason of their study and experience, have built up very efficient organi-

zations. Their careers and departments have been built on a continuing policy.

Should these men be subject to dismissal when a Governor so chooses?

Would not the natural result be a material increase in cost, and a decrease in the efficiency of these various departments?

Furthermore, we do not subscribe to the theory that the removal of an officer is an Executive function; nor do we subscribe to the policy that the removal of an administrative head shall be an Executive prerogative.

ARTICLE IV—SECTION III—PARAGRAPH 1

> "All administrative and executive offices, boards, bureaus, commissions and departments of the State government shall be placed by the Governor within nine administrative departments as follows: Agriculture, Commerce, Education and Civil Service, Labor, Law, Public Works, Social Welfare, State, and Taxation and Finance."

This Agents' Committee takes the stand, not to pat the Commission on the back for the efforts exerted under this section, but that "the mountain labored and brought forth a mouse." It is clearly evident that the draftsmen of the proposed new Constitution have planned to centralize the control of all administrative departments of the State, under the absolute control of the Governor and his appointees.

Of course, such centralization of power can be good or evil, according to the character, integrity and ability of the Governor; and whether the officials under him shall administer their office without political bias.

Do the proponents of the Revision guarantee to the people of New Jersey that the good will always prevail?

A bad Governor, for example, may through his appointive power as proposed under this section, give to the citizens of New Jersey difficulties that could not be removed for years.

This proposed section requires the Governor to allocate all existing agencies within nine enumerated major departments; and the Governor may, fom time to time, reallocate the functions, powers and duties among and within these nine departments. This permissive privilege to a Governor to reallocate powers and duties from one department to another, is a privilege which has been granted under the "Walsh Act," in the Commission form of government, which has been very much abused. It is a privilege that should not be permitted.

Modern times require efficiency, but we must not get too far from the old land marks no matter what the profit. In a democracy, we must keep power, as nearly as possible, where it belongs

—in the people—and the people must not make the mistake of creating too powerful an executive.

We take cognizance of the fact, that there are ninety agencies at present performing administrative functions within our State government, with the probability that there is an over-lapping in their functions. However, much consideration and thought should be given to the importance and responsibility of each department, before it will be safe to say that any department shall lose its identity, and shall be placed in a category of functioning with some other department.

The operation of the government in the State of New Jersey has to deal with over four million of its own citizens, in addition to the millions that annually enter into the State which, by necessity, come under the control and function of some department of State government.

Until an extensive and complete analysis of the workings of all departments of State government has been made by the Legislature, and a report submitted after considerable thought and careful study, then shall be the time for the Legislature to determine how many agencies are necessary to properly administer State functions. The Commission in their Report on the Revision of the Constitution, arbitrarily say nine administrative departments, but in reading the Report, we do not find anywhere where a presentation of facts has been set forth to sustain such a conclusion. It is most asinine at this time to say that all of the existing ninety agencies or departments of State government shall be placed within nine administrative departments, as designated by the Commission on Revision.

Is there a need of a constitutional revision to effect these changes?

Does not the Legislature, at the present time, have the power to accomplish this purpose?

A study reveals that only three states in the United States have amended their Constitutions to effect administrative changes.

The consolidation of the present departments would necessarily relegate certain present independent governmental agencies to subordinate clerical divisions. This again, is a departure from the American principle of the personal relationship of the people and their government. No matter how much efficiency is required, it would be at the cost of added separation between the people and their government.

Administrative heads appointed by the Legislature have been honest, efficient and capable men in the past. Why change now?

Does the Commission on the Revised Constitution feel that the Legislature has been negligent in appointing proper qualified administrators?

Does the Commission on the Revised Constitution feel that the

wisdom of one man, in the person of a Governor, will be supreme by virtue of his title?

Does the Commission on the Revised Constitution feel that the Legislature has not made appointments of administrative heads that have met with the favor of the people?

The Commission, in submitting their Report of the Proposed Revised Constitution, certainly have not had much consideration for the integrity and ability of our legislators over a period of years, and have most definitely indicted them for not having properly administered the affairs of the State. We feel that this indictment is not justified.

The Legislature, over a period of years, has constantly had to deal with all branches of our existing government, and undoubtedly during that period of time, have observed whereby from an idealist's standpoint such a combining of the departments could be effected; but as honest and conscientious legislators, they have felt that the best interest of the citizens of the State of New Jersey is being properly cared for.

The Legislature of this State, in 1926, after considerable thought and careful study, determined that the whole subject of motor vehicle administration, highway safety, and safety education, was so distinct from other administrative activities in the State—as it affected every owner and driver of motor vehicles and pedestrians as well—that a status of an individual department was considered, and the Department of Motor Vehicles created.

As a Committee representing the Motor Vehicle Agents of the State of New Jersey, we feel that we are well qualified to talk about the Motor Vehicle Department.

Since 1926, the activities of the department have doubled in the issuance of registrations and drivers licenses and the collection of monies from that source. This one instance is indicative of the manner in which the Motor Vehicle Department has grown.

In view of the fact that registration of motor vehicles and the licensing of drivers has more than doubled in the last sixteen years, the responsibilities of the Department have increased in proportion.

The Revision Commission has made no attempt to allocate the various departments, but much has been said that the proper place for the Department of Motor Vehicles would be under the Department of Taxation and Finance.

Assuming for the purpose of argument, that the Motor Vehicle Department is to be placed with the Department of Taxation and Finance, by what reasoning did the Commission arrive at this conclusion?

Information gathered definitely proves that in States where this plan has been put into effect, it has worked out more costly; and that where the Motor Vehicle Department is not having an

entity of its own has proven detrimental to the best interest of the public. Furthermore, statistics have proven beyond all contradiction, that the Motor Vehicle Department is primarily a department for motor vehicle administration, highway safety, and safety education, and that the control of the issuing of registrations and licenses and the collection of fees is a component part of a complete program.

With all these facts presented and opinions expressed, certainly the duties of an administrator of such an important department shall, of necessity, be a man who has the answer to the numerous problems that are daily presented.

A man, to be in a position to make decisions and formulate policies daily, shall, of necessity, be a man who has acquired his knowledge through years of experience by having grown with the motor vehicle problems, and naturally kept abreast with its growth. What assurance have the people of this State that the man selected to head the Department of Taxation and Finance will meet with these requirements? A man may be well versed on matters pertaining to taxation and finance, and yet have no comprehension of the workings of the Motor Vehicle Department.

If, in the event that the Motor Vehicle Department should be placed in the Department of Taxation and Finance, and the head of that Department is a man of the Governor's choice and familiar with the problems relating to taxation and finance, would a man with these qualifications be capable of determining plans and policies of such an important department as the Motor Vehicle Department?

And, would not a man at the head of the Motor Vehicle Department, as a subordinate to the head of the Taxation and Finance Department, develop into a "rubber stamp" executive?

A subordinate in charge of a particular department may be a career man, as compared to the man at the head of a department who would be a political appointee serving at the pleasure of the Governor, who under this Revision, has only a four year term with no chance of succeeding himself, and thus will think only in political terms for the purpose of developing his party. Furthermore, no good man would want to take an important job to be knocked down, if he did not concur in the opinions of the Governor.

After reviewing the above probabilities, we are wondering just what the Commission on Revision had in mind when they set up such a program, after having conveyed the thought that the type of person operating government machinery is more important than the Constitution itself. This Committee has gained this thought and idea after reading a quotation on page 10 of the Report (p. 911), which in part says:

> "The constitutional machinery, however, can be no better than those who operate it."

Recognizing the importance and truth of the foregoing quotation, certainly a great amount of stress should be placed on determining the calibre and quality of a man, who shall administer the affairs of the Motor Vehicle Department.

It can be safely said, that no department of State government so vitally affects the activities of the people of the State of New Jersey in their daily life, as does the Motor Vehicle Department, in regulating traffic on our highways which applies to all types of motor vehicles and pedestrians.

Its every function, of the smallest nature, is coupled with a public interest.

With the activities of the people of the State of New Jersey being so vitally affected, by rules and regulations as may be established by the Motor Vehicle Department, certainly it is most important that the people of this State should have some voice in saying what type of man shall be the administrator of such an important State office. The people of the State of New Jersey can best voice that opinion through the legislators from their respective counties.

As is now provided, the legislators do have the say in determining who the administrator of the Motor Vehicle Department shall be, and in so doing, are expressing the desires of the people of the State of New Jersey. Time has proven that the legislators of this State have been most accurate in their choice of the man to hold this responsible position, and most certainly, over a period of years in which they have not erred, this responsibility should remain in the Legislature.

It is most relevant at this point to stress the fact, that the plan of appointing the Motor Vehicle Commissioner has proven to be very satisfactory, so therefore, why jeopardize the interest of the people of the State by experimenting with an unknown quantity when they have, at the present time, a certainty.

We say again that if "experiment is everything and experience is nothing," then this section ought to be adopted.

Since 1926, the State Highway Department has developed a plan of road building, such that was never experienced in the history of this State, to the end that today we find the State of New Jersey literally honey-combed with hard surface roads. A situation of this kind naturally induces the traveling public to use these highways, not only the motorists from our own State, but the motorists from adjoining States.

In the year 1941, there were registered in the State of New Jersey, 1,196,209 motor vehicles. This, in conjunction with the millions of other cars that traversed our State, has naturally placed an additional burden and responsibility on the Commissioner of Motor Vehicles.

With just these few facts enumerated, certainly there should

be no doubt in any legislator's mind, but that the Department of Motor Vehicles should retain its present status, and be administered by a man versed with the numerous problems of the Motor Vehicle Department as it exists today.

In the last eight years, the Department of Motor Vehicles has achieved prominent position in the National Safety Movement, and has been duly honored by the National Safety Council as follows:

1934	First Place	Eastern Group of States
1935	Honorable Mention	
1936	Honorable Mention	
1938	Grand Award	
1939	Third Place	Eastern Group of States
1941	First Place	Eastern Group or States

These positions of honor were won by virtue of a continuous departmental program, which program, during these various years, has been acknowledged as outstanding throughout the United States. If, as outlined, under this particular section, whereby the Motor Vehicle Department is to be merged with some other department, which other department is to be headed by some executive who shall be the choice of the Governor, and which head shall serve at the pleasure of the Governor, it is most fitting and proper at this point to ask this question:

> Would it have been possible for such a program, which program was put into motion prior to the winning of the first award in 1934, and with the winning of the award in 1941, to have been carried to completion?

National defense has injected a new element of responsibility on the part of a motor vehicle administrator. Already the step-up in industrial activity has been reflected in increased highway use, for the transportation of men to and from their jobs, for the conveyance of goods and commodities and for other essential transportation services which the motor vehicle now performs day by day in every community.

The Automotive Safety Foundation of Washington, D. C., realizing the necessity of a Nation-wide traffic safety program, in order to circulate national interests into effective State and local action through universal adoption, have developed a seven point program as follows:

1. Legislation
2. Motor Vehicle Administration
3. Enforcement
4. Engineering
5. Education

6. Personal training
7. Research

This nationally known organization has definitely placed the responsibility first in the hands of the Legislature, and second in the hands of a motor vehicle administrator. Such a recommendation, which has been arrived at after an analysis of conditions throughout the Nation, must be given much consideration and great importance should be stressed on their conclusion.

It will be observed, therefore, that upon the Legislature, and not the Governor, rests the responsibility of providing the necessary authority to public officials to deal with particular problems. As a necessary corollary, it is elementary that the best legislation is of little value unless well administered. Therefore, with this grave responsibility resting on the shoulders of a legislator, he should have much to say as to who and what type of an administrator is to be appointed, as a poor administrator will only develop a condition, in which the legislator will find himself in a very embarrassing position with his constituents back home, due to his inability to answer some of the questions that would be asked of him by virtue of the short-comings of a poor administrator.

In the interest of the people of New Jersey, and the legislative body as a whole, we strongly recommend that this appointive power be retained by our Legislature.

Conclusion

This Committee has spent considerable time in preparing this report, and have had the advantage of having had presented to it, an expression of opinion from a cross section of the citizenry throughout the State.

We trust that this report will have been of some benefit to this Legislative Committee, in ascertaining the sentiment of the people as to their thoughts on the Proposed Revision.

As we gather it, the sentiment of the people seems to be that:

1. The Constitution is a sacred document, and should not be tampered with especially at this time.

2. In the event that the Legislature should determine that certain sections of our Constitution should be changed, such changes should be made in accordance with the existing authority, as prescribed under our present Constitution.

3. The proposed new Constitution, if adopted, would create a centralization of power, which would ultimately bring the State of New Jersey to a position in which our National government at Washington now finds itself; namely, too much authority in one man.

Respectfully submitted,

N. J. Motor Vehicle Agents' Association

By Joseph Solimine, Chairman of Committee

Wilma B. Owens, Salem, N. J.
Alan B. Conor, Ridgefield, N. J.
Joseph Mirandon, Paterson, N. J.
William C. Gonch, New Brunswick, N. J.
Howard S. Hewston, Collingswood, N. J.
Thomas L. Glenn, Atlantic City, N. J.

Suggestions From Robert Carey, of Jersey City, Anent the Proposed New State Constitution

There are a number of people who think we need a new State Constitution. About 99% of our people, however, don't seem to be even thinking about it. They haven't given it any real thought yet. One percent of our State population would be between 40,000 and 50,000; 1/10 of 1% would be between 4,000 and 5,000. The probabilities are that not more than 1/10 of 1% of our population are worrying or thinking these days about our State Constitution.

Very few people, as a matter of fact, have even been bothered with any of the phases of our State Constitution. The Governor has been bothered, he thinks, because he would like to have a little more power than the Constitution provides. He would really like to have the Legislature have less power than the present Constitution permits. A few of the Governor's appointees are singing the chorus for the Governor. They wouldn't be in the chorus unless they were appointees or expectant appointees. A few semi-political organizations have adopted vigorous resolutions on the subject, most of these resolutions being prepared in the offing by appointees or expectant appointees. The average citizen doesn't know yet what is wrong, if anything, with our Constitution.

Some lawyers have complained about the judicial setup in the State. If this judicial set-up had been divinely inspired, these objections would be ventilated just the same.

Labor would like to get some provisions in the Constitution, but up to date they have not been able to determine just what they want. One distinguished labor leader in Newark has announced that the real change required in the Constitution is a provision for the election of judges instead of having them appointed. Some gentlemen from Harvard have prepared a com-

plete reconstruction of our court system which, with a few modifications, has been accepted by the committee which has given us the new Constitution proposed.

Whence the Present Program

Let's look at the history of the present program just a few moments. Our present Constitution is already 100 years old, about 50 years younger than the United States Constitution. Its legislative system is practically a duplicate of the federal legislative system which no one has seriously thought of changing up to date. Changes have been suggested frequently. They have always been presented to the public through the amendment process laid down in the Constitution. It isn't as difficult to amend the Constitution under the present Constitutional provisions as some would urge. Certainly the race track folks didn't have any difficulty in amending it to get legislation favorable to their views adopted.

It is urged that the lawyers are not pleased with the court system and would like it changed wherein an amendment of the Constitution would be required in order to bring about the desired changes, but up to date the Bar has never been united as to what it has wanted in this direction. An amendment to the present Constitution can be readily secured if the lawyers can only agree on what is needed.

Of course, there are some amendments that might be proposed that would have tough sledding in the Legislature. The one which was vigorously urged, namely, the election of Senators by population instead of by counties, but this idea has apparently been abandoned by most of those who were its vigorous proponents only a year ago.

The whole matter did not begin to receive any serious attention in this State until the present Governor began to argue for a constitutional convention. The basis of his argument and his contentions were:

1. That a Governor's term should be extended from three to four years.
2. That Senatorial districts should be established on the population basis.
3. That the Legislature should not be permitted to override a veto of the Governor except by a 2/3rds vote in each house.
4. That the power of the Senate to in any way control executive appointments by the Governor should be eliminated.
5. He argued that a new Constitution was necessary in order to reorganize the official boards and departments of the State and for the establishment of a cabinet for the Governor and a few other incidental things.

Those who grab up every new thought suggested in the direction of political agitation and change began to show their hands. A year elapsed, and nobody got excited about the matter. Then they began to be practical in a measure. In order to avoid any concerted opposition to a constitutional convention, the Governor and his friends guaranteed that such a convention would not change Senatorial representation in this State. Of course, they had no power to make such a guarantee, as a constitutional convention would clearly determine itself what its program should be, but this guarantee was made in order to clear the way for action in other directions. A promise was also made by the advocate crowd that no constitutional convention action would be permitted that would interfere in any way with the rights and privileges and status of the school teachers and civil service employees. As a sop to labor, it was proposed that the Court of Chancery in this State should be abolished and that labor's rights in some directions should be specifically recognized in the fundamental law.

Still no real progress was made and nobody suffered much. Most of the Governor's appointments were regularly approved by the Senate. A few of them have been left open. There is nothing really new about this program. The Governor, as Governors always do, continues to veto some acts of the Legislature and some of these acts were subsequently repassed over his veto, but no one has suffered much in this direction.

Finally, the advocates of a state convention, losing all hope of stampeding the Legislature, determined on the advice of somebody that they could hold a constitutional convention on the call of the Governor without any legislative action. Newspapers were full of this for a few days, but the impracticability and illegality of any such process soon made itself manifest, and this plan was dropped.

Then what happened? The small coteries who were arguing amongst themselves to give the State a new Constitution regardless finally became a little more practical. They asked the Legislature to appoint a committee to consider what was wrong with the Constitution and to report back to the Legislature changes in it that would be advisable after consideration. Such a committee was appointed.

This committee began its work and conducted its work in absolute secrecy as far as the public was concerned until finally one day it was announced that the committee had determined that New Jersey needed a complete new Constitution. They had some expert advice on the subject, some of it from outside the State, and finally submitted not a recommendation of changes or amendments that might be essential, but a complete new Constitution. True, they did not change the Bill of Rights as set forth in the original Constitution. They knew if they had there would

have been war in the State. They did not even eliminate or attempt to change the provisions of the Constitution which makes race track gambling legal and all other gambling illegal in the State from bingo up and down.

One Sop for Labor

They had one sop for labor, and that was all, namely, a provision asserting that collective bargaining is recognized as a lawful right and practice. As collective bargaining is practically completely controlled under the federal laws, this provision had rather an ineffectual meaning, unless it was intended to permit in the future legislation which would permit all public employees to have the right to strike at their convenience or pleasure, without their being subject to legal criticism and treatment.

Something for the Radicals

They did reject one provision in relation to the Governor's office which might in the future provoke a very serious situation. It provided that any twenty citizens in the State can at any time petition the Governor for any kind of an investigation relating to any kind of public affairs they could think up, and by the mere filing of a petition require the Governor to consider an investigation of the subject matter of the petition. I don't know who thought up this proposition, but it probably emanated originally from the fertile mind of some such individual as Norman Thomas. A Governor of the future would have to have about six heads and a dozen pairs of hands and the extension of the day from twenty-four hours to forty-eight hours at least in order to handle all the matters that twenty citizens here, there, and yonder could find time and would find time to submit. One committee of twenty citizens could file one thousand different petitions, if they should want to. Where would the end be?

In the new Constitution, they did extend the terms of the members of the Legislature and the Governor, and do prevent any Governor, except the Governor who might be in office at the time of the adoption of the new Constitution, from serving more than one term as Governor, even though an interval of time might elapse between his terms.

From time immemorial, sheriffs have been elected for three year terms without power to succeed themselves. This hasn't worked any injury to anybody except to the sheriffs who would like to stay in forever. But for some reason or other, the proposed new Constitution changes all this. Sheriffs may be elected eternally. As sheriffs are generally pretty strong politically in their respective counties, this was probably adopted in order to secure their approbation of the proposed program.

The Court Changes Proposed

The new Constitution does provide radical changes in the court system. Some of these changes may be desirable. Such changes could readily be obtained by amendment. Some of these changes may not be desirable. The setting up of a superior court in each county of the State, each of said superior courts to have concurrent jurisdiction with all the powers of the supreme court and common pleas court judges plus the power of the Court of Chancery. Instead of having one Court of Chancery with injunctive powers, etc., we would have twenty-one of them. This can be remedied by a few carefully studied changes in the proposed set-up, of course. Some of the judicial changes may be highly desirable, but they call for a most comprehensive study and check up and probably considerable modifications, if the program is to achieve the desired results.

I note that the veto power of the Governor has not been changed except as it affects some items in the financial budget. The executive powers of the Governor in the matter of appointments has been extended so as to cover all appointments to be made excepting the State Treasurer and the State Comptroller.

The legislative representation system has not been altered. The scheme of electing Assemblymen by districts instead of counties has not been attempted.

Court Questions Suggested

Some queries are suggested. Will the cost of our courts be reduced under the proposed new Constitution? The answer is plainly no. Will judges get a life tenure of office under the new Constitution? After the first terms, they all will. I am referring now to the constitutional judges created. Will the reduction of judicial salaries be permitted under the new Constitution? Not after once fixed; increases will be permitted, with the probability that gradually all the smaller county superior court judges to be appointed would be reaching out for the salary bracket, the same as in the populous counties. In other words, the chances are that the cost of judicial administration under the new plan will become heavier for the taxpayers instead of less.

The conundrum presented to the people of the State is—do they want all their judges elected for life? This is a conundrum that will have to be solved. I am not opposed to it. I imagine there are some who are.

Is it desirable to have legislative biennial session instead of an annual session, and is it desirable to limit by a constitutional provision the number of days in which a Legislature must sit and act? It is a lucky thing for us that no such limitation is found in the federal Constitution, particularly in these days when it is essential to have our national legislative body in constant session.

Court Review of Administrative Boards Findings

The framers of the new Constitution did forget to put in a provision providing for appeals on both law and facts from the

judgment of administrative boards. There is nothing in the new Constitution to limit the number of such boards, or to restrict them or restrain them in their powers. Perhaps this was an oversight.

The provision in the new Constitution that all State funds should be placed in the State treasury is good sound sense, but this can be accomplished now at any time by a single legislative act.

Outside of the provisions in the new Constitution extending the Governor's appointment power and the change in the structure of the courts, I find practically nothing which could not be accomplished through the simplest kinds of amendments to the present Constitution *or by legislative action without touching the Constitution at all.*

Of course, a new Constitution will open a large avenue of legal controversy which the lawyers in these sad legal days probably would welcome. This will result from the fact that all its new phraseology would have to be construed from time to time by legal actions in the courts. Practically every phase of the present Constitution has been treated in this direction, and has already been interpreted by our courts in fairly satisfactory manner.

Whence Again, the New Constitution

The new Constitution, as drawn, is simply the voice of the committee which drew it. The public were not given any consideration in its development. The committee simply constituted itself a constitutional convention. It went even further than this. It practically told the Legislature what to do and to do it as quickly as possible. The plan laid out would have brought about its possible adoption before 95% of the people of the State had even had a chance to read it. The program presented was widely divergent from the thoughts of those who were arguing for a State convention for the adoption of a Constitution. A State convention would be composed of delegates from every section of the State, and the voice of every section of the State would be thus heard, and publicly, before a final program was fixed. The election proposed by the present program would simply be a yes and no vote upon the completed Constitution as *offered.*

If we are to have a constitutional convention, let's have one that will be a constitutional convention. This may defer the matter for a year or so in its final working out, but who will suffer in the meantime? Not a living soul worth thinking about or talking about. The public won't suffer. I venture to assert without any serious question that at this very moment 2% of the people of the State have read the proposed new Constitution, and 2% would mean about 90,000 people.

We Are At War Now: Let the New Constitution Wait

Another serious problem presents itself. We all realize the adoption of a new Constitution is the most important action the people of a State can perform. Should this be done at a time such as this, when the minds of the people are only on one subject, war and its incidents? The people are worrying about rubber and gas and taxes and all kinds of rationing and they are worrying about the war and all which that means. Almost every family in the State has someone in the army and before any election could be held upon the adoption of the proposed new Constitution, it is likely that every family will be involved as a part of the army itself. Practically all of the young men of the State are being enrolled very rapidly, and not only the young men. New Jersey has already contributed thousands of its older men to the service—men like Judge Clark and ex-Governor Hoffman, and scores of others whom I might mention, members of the Congress of our State and others. These men are today in army life. They are not going to be permitted while they are in this army life to participate in the solution of their State's problems. It is suggested that some of them will be in Ireland, some in Egypt, some in Africa, some in Australia, some in China, and perhaps before long a lot of them will be in Japan; certainly many of them in Russia and all parts of Europe. Are we going to change the whole organic law of our State in wholesale fashion by a vote in which they will not be permitted to take any part simply because a few distinguished citizens urge it? Prohibition came very largely when a lot of our men who were entitled to vote were far from voting opportunity. The tragedy of that is too recent to discuss. While our men are battling for us on battlefields, this program is going to disfranchise them. Even if some of them get the opportunity to vote, they will not be able to participate in a discussion of the program. In my opinion, if ever there was a time when such a program should not even be attempted to be put through, this is the time.

Our Present Constitution Will Suffice the War

Let's win this war. Let's leave our people free to think upon the things of war and the working out of its problems. With the breaking of the war, may come a lot of new problems. If we are to have a completely new Constitution, let's lay the matter of its adoption on the table until the war is over. I don't believe there is another State in the Union even thinking of doing any such thing now. The Constitution we have took us through the last four wars we had without any difficulty, so certainly it cannot be contended or urged that the adoption of this pending program would in any wise help the war situation, or help the lads who are on the battlefields or getting ready to go there. Let's discuss all programs presented, if that is desired, while the war

is running. This legislative committee is a splendid aid in this direction. If we keep this program up, when the war is over we will probably largely be in a better understanding mind to handle the problem than we are right now. I have no objection to a new Constitution or a new setup of the courts or any of these things, but I do believe that these things should all be done in orderly fashion, with due and proper regard to all of the people who are going to be affected by the action that may come. Just picture—if this proposed Constitution now on the table should be presented to the voters of this State at an election next year (of course, no one contemplates it being presented at an election to be held this year), suppose the vote at that election should be very close, and suppose a small majority should be in favor of the Constitution as presented—what a howl there will be in the days ahead from the mouths of the men who have been fighting our battles while the rest of us have been staying home enjoying the luxury of political programs. I can't see it. The finest thing in my judgment the State Legislature can do would be to say—lay this thing on the table. The United States waited almost seven years after Cornwallis surrendered his sword to Washington at Yorktown before the adoption of the Constitution for the new land.

There is a war going on now, and everybody's heart is full of it. I have personally witnessed hundreds and hundreds of lads going into the army. I don't believe there is a single one of them who will take the trouble or the time to study the fifty page document that has been printed for our consideration until they are ready to shed their uniforms. If we have any respect or regard for the rights and privileges of those who will be battling in the armed forces for us, let's demonstrate it now. The way to demonstrate it is the way I suggested—to determine right now that the definite presentation of any new Constitution to the voters of our State should be deferred until they come home.

The commission which submitted the fifty page Report referred to undoubtedly should be commended for their apparent thorough treatment and study of the subject, but the wishes of the Governor and the commission constitute a very small item for consideration when it must be agreed by all of us that the voice of the entire State is the voice which must be served by us in official capacity.

Respectfully,

ROBERT CAREY

BRIEF SUBMITTED BY HON. ARTHUR PIERSON

In reviewing the proposed Revision of our Constitution, it can be said that it provides for a distinct and all-out centralization of administrative powers in the Governor and judicial powers in the Chief Justice of the Supreme Court. While not endorsing so great a centralization of power or the policy of biennial sessions of the Legislature, this article will address itself to the features in the several Articles with the assumption that these constitutional policies are generally acceptable to the people of our State.

A Better and More Workable Constitution Would Result—IF

The annual sessions of the legislature should be retained;

The limit to the sessions of the Legislature, if biennial sessions are retained, would be 120 days rather than 90 days;

The regular legislative sessions be held in odd-number years rather than even-number years, as the election of the members of both houses is in odd-number years.

The holding of a session so shortly after their election for a two-year term would not give new members time to get acquainted with their duties and plan the session's work as well as by having the legislative session at the latter end of their term rather than so close to its beginning.

The odd-year plan would also give the Legislative Council sufficient time to develope a legislative program and make their work effective, otherwise the Legislative Council would only have a few weeks in which to prepare their legislative program, which it is directed to present to the Legislature.

Better results would be obtained by having 11 administrative departments instead of 9 as provided by the Revision; dividing the Taxation and Finance Department into three departments; adding a department of Banking and Insurance and a Department of Taxation to perform these distinct and important functions; the Banking, Insurance, Building & Loan and Credit Union's activities to be put under the control of a separate head to administer one of the suggested additional departments; the Tax Department for the administration and collection of Railroad taxes, Inheritance taxes, Utility taxes, Beverage taxes, Gasoline taxes, Insurance Company taxes and Corporation taxes and numerous minor taxes to be placed under an added administrative department, leaving the Department of Finance to administer its present function, purchasing, the care of administering the State buildings at Trenton and engaging quarters for departments that cannot be accommodated in the present State buildings.,

It can be questioned whether having the term of the heads of the several departments, excepting the head of the Law Department, expire with the Governor's term is advisable. Such a plan would thrust the entire administrative machinery of State Government into political consideration, jeopardizing the State's best interest by turning out an efficient department administration because of politics. Experience has proven that regardless of the personal inclinations of a Governor, the pressure of his party leaders would be such as to make it probable that he would be obliged to name a party man to replace the administrative heads

of the several departments whenever there was a change in the political affiliations of the Governor.

Undoubtedly the plan of segregating State activities into department heads as provided would entail a substantial additional cost in the administration of State affairs, as has proven in the States that have adopted this policy. Possibly additional cost would be justified if politics were eliminated and greater efficiency were accomplished. This, of course, is problematical and one that should receive careful analysis and consideration.

The revision calls for the election to fill the vacancy of a Governor who may die or resign during his term in odd-number years only, and places the responsibility of Acting Governor during the interim with the Commissioner appointed as the head of the Department of Taxation and Finance. Under such a provision it could well be that the State Government would be in the hands of an official that had never been before the people as a candidate for any office for almost the one-half of a gubernatorial term if the vacancy occurred in the beginning of an even-number year. It would seem most advisable that vacancy in the Governor's office should be filled at the first succeeding general election and that during the vacancy that the President of the Senate should be the Acting Governor the same as provided by the present Constitution, as at least such a member would have been before the people of one county for election and had been endorsed by the Senators of the prevailing party as their choice to preside over the Senate.

The practice of the Governor nominating the successor to elected county officials, such as County Clerk, Register of Deeds, Sheriff and Surrogate, who may die or resign during the term for which they were elected should be changed and leave this responsibility to the elected Board of Chosen Freeholders, as at least some members of the board would be elected at the same election that the people of their county elected their county officials. It has proven the universal practice for a Governor to appoint one of his own party to fill such vacancy, regardless of the political complexion of the county; whereas, if the choice were left with the chosen representatives of the people to administer county affairs, the choice would be made from among the members of the prevailing party in the county where the vacancy occurs.

The provision that a Sheriff could succeed himself is good, but it woud seem that the Sheriff should have a five-year term rather than a three-year term as provided by the Revision, which would make the term of the Sheriff the same as other elected county officials.

An exception in the Article regarding lobbying should be made for public officials to have access to their representatives in connection with such legislation as effects their distinctive field of activity without being classed as lobbyists.

Much question has arisen in connection with Article VII—Finances—and whether many taxes, in whole or in part, which are presently dedicated to municipal and county use, would not hereafter be classified as general treasury funds and be subject to annual appropriation. It would seem most unjust to disturb the present dedication of a portion of the motor vehicle license fees and the gasoline tax, which runs to municipalities and counties, as so large a portion of both of these revenues are for the use of local municipal streets and county roads. A like uncertainty would be present as to the five percent inheritance taxes that revert to the county where the decedents resided. A qustion likewise arises as to the certainty of continuing the dedication of the Second Class R. R. taxes, the Railroad Franchise taxes, the Utility Franchise taxes, the Utility Gross Receipts taxes and the Local Bus tax, all of which are dedicated by law to the municipalities. There are likewise numerous subventions to Pension Funds from Insurance taxes that suffer an uncertain status under the provisions of this Article, while under the present Constitution the prededication of these tax revenues are assured, but under the Proposed Revision these dedications all would be called in serious question which would disturb the economic stability of county and municipal governments throughout the State.

While the provisions of this Article were evidently directed to controlling the income of some of the small professional boards, such as Dentists, Doctors, Land Surveyors, Realtors, Beauticians, Chiropractors, etc., and placing the funds under more direct State control, it certainly would never do to disturb the many substantial and needed funds that have for years been dedicated to the counties and municipalities and place them in the uncertainty of annual appropriation.

No change should be made in the present budget period for which the State highway budget is at present provided. The whole highway program of the State, as well as the counties and municipalities, is executed between March and November. To provide a budget period that breaks into the middle of the active season for these important functions would prove to be uneconomical and greatly hinder the best administration for providing highway facilities. When the present budget period for highway administration was fixed as the calendar year, it was done to facilitate the operations of the State Highway Department and the administration of county and municipal highway affairs, which the Proposed Revision would divide and makes the State fiscal year the Highway Budget year. Under the proposed July to June budget year, it would be most difficult to provide an intelligent county or municipal budget for road work, as these budgets are required to be adopted not later than February, which have proven most advantageous in connection with the State grants for county or municipal road work.

The revision of the administration of justice would seem to have undergone the greatest change. While it might be well to follow the Proposed Revision as it affects the Court of Errors and Appeals, the Supreme Court, the Court of Chancery and the Circuit Court, it would seem quite undesirable to disturb the present provisions for appointments for our County Courts—the Courts of Common Pleas. By the revision, the Chief Justice of the Supreme Court could assign judges from any part of the State to serve in the individual counties, which would be a possibility most unacceptable to the people of any county. While the present Constitution does not require that an appointee to the County Court bench shall be a resident of the county, the practice nevertheless has been for all time that such Judges have been selected from residents of the County and, while we are revising the Constitution, it would seem most advisable that the County Court system be retained, and the appointment of the Judges be restricted to residents of the County.

ARTHUR PIERSON

THE AMENDING PROCESS OF THE NEW JERSEY CONSTITUTION

By ELY CHINOY

The amending process of the present New Jersey Constitution has come under close scrutiny since the report of the Commission on Revision of the New Jersey Constitution was published in May 1942.[1] Although the amending article, Article IX, has been frequently and severely criticized, the proposed changes brought forth no unanimous approval. A study of the history of past attempts to amend the Constitution throws some light upon the workings of the present amending procedure and the possible effects of the proposed changes.

The amending process must stand or fall as a whole. Each of its provisions affects and is affected by the other provisions, just as the whole process conditions and is conditioned by the rest of the document. The effects and operation of each clause of the amending article becomes clear only in the context of the entire amending procedure and the whole Constitution.

The test for an effective amending process will be the extent to which it has permitted modification of the constitutional framework to meet changing conditions and circumstances. Formal amendment is not the only method of constitutional change, but other and less formal methods have also not provided satisfactory continuous adaptation. By any pragmatic test, the State Constitution has remained pretty generally resistant to change, and many

[1] *Report of the Commission on Revision of the New Jersey Constitution* on May 1942. Appointed pursuant to Laws of 1941. Joint Resolution No. 2, Trenton, New Jersey.

of the difficulties and evils in the State Government can be traced directly to the Constitution.[2]

On only four occasions have changes been made in the New Jersey Constitution of 1844. In 1875, twenty-eight separate proposals were submitted to and approved by the people; but they were mainly restrictive in nature, designed to correct legislative abuses rather than to modernize the governmental structure. The passage of certain private, local and special laws was forbidden; general incorporation acts were prescribed; property was to be assessed for taxation under general laws and by uniform rules; and no donation could be made by the State or any municipal corporation to any society, association, or other private group. Minor changes which affected the framework of government included the establishment of the item veto, the shifting of appointment of the Keeper of the State Prison and Common Pleas Judges from the Legislature in joint meeting to the Governor, the inclusion of the Comptroller as a constitutional officer appointed in joint meeting, the change from a *per diem* to a $500 annual salary for legislators, and extension of the terms of Sheriffs and Coroners from one to three years. A number of changes were simply matters of style or arrangement.

The fact that the Legislature saw fit to submit these changes as twenty-eight separate amendments is a significant legislative interpretation of the constitutional mandate that "if more than one amendment be submitted, they shall be submitted in such form that the people may vote for or against each amendment separately and distinctly." This provision is considered to be one of the barriers against use of the amendment method for the purpose of general revision.[3] The passage of all twenty-eight separate items on the ballot was to a large extent the result of a public reaction to an attempt by an organized religious group to defeat the amendments "prohibiting the use of public moneys for certain purposes, guaranteeing free schools and forbidding special legislation."[4]

The 1897 amendments limited the Governor's power in making recess appointments and inserted an anti-gambling provision which was partly repealed by the 1939 "horse-racing" amendment. In 1927 an amendment permitting zoning was adopted, while four other proposals were defeated.

Nineteen proposals have been submitted to the people and re-

[2] Ibid. See also C. R. Erdman, *The New Jersey Constitution: A Barrier to Governmental efficiency and Economy*, Princeton University Press. 1934

[3] W. F. Dodd *The Revision and Amendment of State Constitutions*, Johns Hopkins Press. Baltimore, 1910, P. 260, n.

[4] Erdman, op. cit., PP. 17-19. See also W. E. Sackett, *Modern Battles of Trenton*, Vol. I, Chap. 10, Murphy, Trenton, New Jersey. 1895. The 1875 amendments were prepared in 1873 by one of five constitutional commissions which have been created from time to time for the purpose of proposing changes in the constitution. For the complete proposal of the Commission, see the Senate Journal for 1874. For reports of the discussions of the Commission, see the files of the *Newark Daily Advertiser* between July 9 and Nov. 19, 1873. These discussions covered very important proposals never submitted to the people.

jected. An amendment sponsored by certain special interest groups to repeal the prohibition against special legislation, was defeated in 1890, together with a minor proposal regarding the judiciary.[5] Woman's suffrage in school district elections and a general woman's suffrage amendment were voted down in 1897 and 1915. Attempts to change the judicial system were defeated in 1903 and 1909. In 1909 and 1927 proposals for biennial legislative sessions and longer legislative terms were also turned down by the voters. The 1909 proposal also provided for single member assembly districts. An excess condemnation amendment was also defeated in 1915 and a proposal regarding the establishment of water supply and sewage districts was rejected by the voters in 1927.

THE PRESENT VERSUS THE PROPOSED AMENDMENT METHODS

The present Article IX calls for passage of an amendment by two successive legislatures by a majority vote, to be followed by its submission to the people at a special election. The Commission proposed passage by a two thirds majority of each house of one Legislature and submission to the people at the next general election. The Commission also proposed to remove the ambiguity of the "time-lock" clause which provides that "no amendment or amendments shall be submitted to the people . . . oftener than once in five years" by restricting the limitation to amendments "dealing with the same subject matter."

The number of amendments rejected at the polls would seem to indicate that the people are more to be blamed for the failure to keep the Constitution abreast of changing conditions than any obstacles created by the various parts of the amending process. While this charge can not be wholly refuted, it can be pointed out that the present procedure does present unnecessary obstacles to change. The political lethargy of the people is almost always present, and certain clauses aggravate that condition. Each of these obstacles will be considered, as well as the proposed two-thirds vote requirement which, its opponents claim, would also serve as an unnecessarily severe handicap to amendment.

1. THE SPECIAL ELECTION REQUIREMENT

The need for a special constitutional referendum for proposed amendments has made popular ratification difficult to procure. A comparison of votes cast in constitutional referenda and general elections adequately demonstrates this fact. In those years in which all the proposals acted upon were adopted, 1875 and 1939, the ratio between the total number of votes cast in the special election and the total votes in the general election of the same year was only .62 and .66. (Most figures taken from New Jersey Legislative Manual for the appopriate years. 1875 popular votes taken from Trenton *Gazette*.) In 1897, when two of three proposals were

[5]See Sackett, op. cit., Vol. I, P. 119.

approved and 1927, when one of five was approved, the ratio was .52. In 1890, 1903, 1909, and 1915 when all amendments were rejected, the ratios were respectively .46, .21, and .87. While the 1915 elections did see a larger than usual vote on amendments, compared to the general election it also saw a smaller than usual vote in the general election. The totals given for the general elections were in the contests for the State Assembly, except for 1875. The comparison for that year involves the total vote cast in the elections for coroner, which was probably smaller than the vote for assemblymen. The difference between the referenda and votes cast in national elections would be even more striking.

"Experience in this State has shown that a majority of the people have never participated in a special election, however vital the issue may have been," says the 1942 Commission Report, page 28 (p. 929). Whatever the cause for this condition, its consequences are hardly desirable. A small vote gives extra power to organized minorities. In the light of this "historical fact" the submission of amendments at the general rather than a special election would "assure consideration by the largest possible proportion of voters." In addition, it "would save the people $700,000 each time amendments are submitted," claims the Commission's Report, a fact that economy-minded opponents of constitutional change might well remember.

2. THE DOUBLE PASSAGE REQUIREMENT

The special election provision, however, is the least controversial of the amending provisions. Most of the fire and fury has been raised over the suggestion that a two-thirds majority in each house replace the required passage by a majority of two successive Legislatures. The Commission attacks the double passage of amendments and its charge seems to be borne out by the evidence available.

Says the Commission Report, page 28 (p. 929):

"The difficulty of sustaining interest in a proposal through two Legislatures has caused many needed amendments to fail in the past. The old practice apparently was based upon the notion that the people could commit their representatives on pending constitutional amendments at the time that the second Legislature was being elected. This is completely contradictory to modern theories of a constituent assembly, as well as obviously impractical in the light of the election of only one-third of the Senators each year and of the complex issues upon which legislators would have to commit themselves without reference to any given piece of legislation.

The requirement for passage by two Legislatures has prevented 23 amendments which were passed by one Legislature from ever being submitted to the people. Two of these were passed a second time by the Senate but could not gain the second Assembly ap-

proval. As many proposals got no further than one year's passage as were submitted to the people.

These figures, however, do not tell the whole story. The very existence of such an obstacle to amendment tends to bring forth only the most strongly supported amendments or those whose efficacy has been destroyed by changes made in order to secure legislative approval. And, as the Commission puts it, "since the people are the ultimate sanction for any change in the fundamental law, the procedure which precedes their action should, in the democratic process, be made as simple as possible."

In several cases it took three years instead of the two nominally required for amendments to get through the Legislature and to the people. The anti-gambling amendment of 1897 was first introduced in 1895 and passed unanimously in both houses. It was passed again unanimously in 1896 and then again in 1897 before being submitted to the people. This kind of delay occurred four times with amendments subsequently defeated at the polls.

3. THE "TIME-LOCK" CLAUSE

The most obvious explanation for this triple passage is connected with the so-called five year "Time-Lock" which the Commission proposes to simplify. In three of the four cases in which concurrent resolutions containing amendments were passed three times, other proposals which appeared first in the second year, were also submitted in the referendum. The "Time-Lock" clause, although never definitively interpreted, has been held by some to prohibit more than one referendum every five years. If an amendment were submitted to the people, it might have held up any further submission for five years. In order to include additional amendments the special election was postponed for a year to permit the second passage of the new proposals. This explanation indicated the wisdom of the Commission's "Time-Lock" modification. Double passage becomes even more of an obstacle to amendment when combined with the existing "Time-Lock" clause.

This excessively limiting interpretation has been challenged by an opinion by Attorney-General Wilentz, submitted upon request to the Legislature in March 1941, which held the clause to mean what the Commission has explicitly revised it to mean. Even if the courts were to agree upon this interpretation, "the clause still remains as a limitation of more or less uncertain severity on the right of the people to 'alter or reform' the Constitution."[6]

4. THE POSSIBLE EFFECT OF THE TWO-THIRDS VOTE REQUIREMENT

The substitution of the two-thirds majority for the two years passage has been supported as simplifying amending procedure; it has been attacked as setting up one almost unsurmountable difficulty for another. The Commission proposed the two-thirds requirement "in order to guard against thoughtless submission of an execessive number of amendments."

[6] J. Bebout and J. Kass, "Status of Constitutional Conventions in New Jersey," *University of Newark Law Review*, III:2:146 at 164 (Summer, 1938).

The possible effects of the two-thirds rule is closely tied up with the makeup of the Legislature, particularly the Senate. Even in the Constitutional Convention of 1844, the two were linked in the debates when one of the members "said that he would not object to a two-thirds vote of the Legislature on amendments if he were sure that the upper house would be established on the basis of population."[7] Proposals for a Constitutional Convention to revise the document have been constantly defeated because of the strangle-hold exercised by Senators from the smaller, less densely populated counties who control the upper house. Such a condition throws the burden of change upon an amending process which has not proved equal to the task.

The proposed two-thirds provision requires passage by "two-thirds of the members elected to each of the two houses." This would require approval by 40 members of the Assembly and 14 of the 21 Senators, if the present size of the Legislature were maintained.

If there had been a two-thirds rule, to what extent might past amendments have been further prevented? The 1875 proposals all received a two-thirds vote in both houses on first passage in 1874. Second passage was achieved by the necessary two-thirds of the total membership of the Senate on all votes taken, but on only six of twenty-nine ballots in the Assembly. In all cases, however, there were enough non-votes to make a two-thirds majority still a possibility. Presumably, these amendments would have been submitted if the proposed single passage by two-thirds vote had been in effect. But it must not be forgotten that action in either the first or the second Legislature which passes on an amendment is conditioned by the past or prospective action of the other. Consequently, dogmatic conclusions cannot be drawn from these figures.

The successful 1897 amendments were passed in all cases by at least two-thirds of each house. The zoning amendment of 1927 might have been defeated both on first and second passage. In 1926 it was one vote short of the necessary forty votes in the Assembly and in 1927 it secured only eleven votes, three short of the required 14, in the Senate. In both cases, no votes were cast in opposition and if necessary the extra votes might have been secured from those not voting. It might be, however, that not voting simply represented silent disapproval and that a two-thirds affirmative vote could not have been mustered.

The 1939 "horse racing" amendment would probably not have been submitted to the people if a two-thirds majority had been

[7] J. Bebout and J. Kass, "How Can New Jersey Get a New Constitution," *University of Newark Law Review*, VI:1:11 (March 1941).

necessary, rather than double passage. The possible effect of the two-thirds requirement in this case is somewhat obscured by the workings of the double passage clause. The strong opposition to the proposal did not appear until it came up for second passage, when it was passed by only 33-25 in the Assembly and 11-6 in the Senate, in both cases less than two-thirds. It did not receive a two-thirds majority in the Senate on first passage either. In both years however, it might have received a majority of fourteen votes in the Senate if all members had voted.

Of all the amendments rejected by the people, eight might never have been submitted to them if a two-thirds vote had been required. However, in all cases, the number of votes not cast still left open the possibility of submission. Five of the eight amendments did not get two-thirds approval from one house on first passage, two did not get two-thirds approval from either house on first passage, but these seven did receive a two-thirds majority in both houses the second year. One of these eight received a two-thirds vote from neither house on first passage and a two-thirds approval from only one branch of the Legislature the following year.

Fourteen of the twenty-three amendments which were passed only once and then forgotten by the following Legislature did not receive a two-thirds majority in either one or both houses. Again however, if all legislators had voted, there still existed a possibility that a two-thirds majority might have been gained by all of these proposals.

It is difficult to draw any accurate conclusion regarding the two-thirds proposal from this material. On the face of the record, a high proportion of those amendments which had any success at all in the Legislature might not have been approved if forty Assembly and fourteen Senate votes had been necessary. The explanation for the number of uncast votes would probably throw some light upon the possible effects of this provision. The very number of amendments passed with very little open opposition suggests that most of the determination regarding passage of any particular proposal is a "cloak room" process. This is known to be the case with ordinary legislation in New Jersey.

CONCLUSION

Certain conclusions may then be drawn about the amending process as a whole. Special elections are clearly undesirable. The "Time-Lock" clarification removes an unnecessary constitutional ambiguity and a possible check upon amendments. The requirement of passage by two consecutive Legislatures hamstrings the amending process.

The proposed two-thirds requirement seems to have little justification other than the Commission's desire to prevent "thoughtless submission" of amendments. The evidence would seem to indicate that the number of votes cast has little to do with the earnestness and thoroughness with which amendments are considered by the Legislature. If an opposition vote indicates "thoughtful" consideration of a proposal, then comparatively few amendments received it. If the number of legislators not voting indicates the lack of "thoughtful" consideration, then a good many amendments lacked it.

It seems unfortunate that the Commission committed itself to a proposal with such an insubstantial basis in fact. Surrounding the amending process with certain procedural safeguards,[8] such as compulsory public hearings, could probably achieve the desired thoughtful consideration without sacrificing constitutional flexibility.

The two-thirds requirement is the only procedural safeguard, against thoughtless submission of amendments, suggested by the Commission. Its operation might cripple formal constitutional change; but eliminating it without providing a substitute would leave that part of the amending process antecedent to publication of proposals prior to the referendum even less protected than ordinary legislation, which is at least subject to delay by the suspensive veto of the Governor. Two-thirds approval however provides no guarantee that "thoughtless submission" will be prevented. The establishment of more effective procedural safeguards would not only prevent possible *rigor mortis* of the amending process but would more successfully achieve the goals aimed at with the two-thirds requirement.

September 8, 1942.

My dear Senator Schroeder:

Forty years ago it was my privilege to be the Attorney-General of New Jersey. It so happens that I am the only living person who has occupied that office except the present incumbent. My activities in the intervening period have been along other lines, but have been of such a character that I have kept in touch with the machinery of the State government generally speaking, and its judiciary system in particular. Throughout all this period of time I have been strongly of the opinion that the judiciary system of this State is archaic, cumbersome and unsound in principle. It certainly has not kept pace with modern systems, such as the federal system or that of other states, as for example New York.

I do not propose to go into the matter in detail but to state my views thus generally. I have made a very careful examination of the proposed constitution recommended by the State Constitutional Commission and now before your committee for hearings. While here and there there may be certain details in it that are

[8] See in this connection the statement made by Spencer Miller Jr., on August 26, 1942 before the Joint Legislative Committee which held hearings on the proposed new constitution.

not thoroughly satisfactory, upon the whole I consider it a well-reasoned and highly satisfactory plan and one that will prove to be a great benefit to the state, not only so far as changes in the judiciary system are therein recommended but also as to other matters such as the change in term and time of election of the Governor and the members of the Senate and House of Assembly, and the adoption of the principle of biennial sessions.

I hope your committee will see its way clear to recommend it favorably to the Legislature and that the Legislature will enact such legislation as will bring the matter before the voters of the state for ultimate decision. One important matter is omitted from the draft and that is the question of some change in the method of taxation so as to relieve the unjust burden now cast upon real estate, but that important question can I think with propriety await a more convenient day and later on be covered by a specific amendment in the practical and more convenient way provided by the proposed new constitution for the considerations of amendments.

Very truly yours,
THOMAS N. McCARTER.

Honorable Lloyd L. Schroeder,
Chairman, Joint Legislature Committee
On Proposed Constitutional Changes,
210 Main St., Hackensack, N. J.

To the Chairman and Members of the Joint Legislative Committee appointed pursuant to Senate Concurrent Resolution No. 19:

The New Jersey Veterans' Legislative Committee, consisting of representatives of the Veterans of Foreign Wars of the United States, Department of New Jersey, the Spanish War Veterans, Department of New Jersey, the Disabled American Veterans, Department of New Jersey, and the Civil Service Employees Association of the State of New Jersey, hereby make the following proposals to your Committee; namely, that in any amendment or revision of the New Jersey Constitution there be included appropriate provisions

1. To establish a separate Department of Civil Service;

2. To specify and protect preferences in appointments and promotions in the public service for veterans including all soldiers, sailors and marines and all members of the Women's Army Auxiliary Corps, the Women's Reserve of the Naval Reserve and any similar organization, including nurses, authorized by the United States to serve with the Army or Navy; and

3. To protect all pension and retirement funds for persons in the public service.

Respectfully submitted,
JOHN W. BILL
Chairman of the above named Committee.

Merchantville, N. J., September 17

Joint Legislative Committee on Hearing of the Revision of the Constitution
State House, Trenton, N. J.

The State Board of the New Jersey Division of the American Association of University Women wishes to go on record as favoring the revision of the Constitution of New Jersey. Our Association is an education organization with over 3500 college graduates in its membership.

WILLA CARLANDER (MRS. OSWALD R. CARLANDER,)
President.

I am in favor of and hope for a Revision of the State Constitution being submitted for ratification.

DOROTHY C. MILLS.

I believe that a Revision of the State Constitution be submitted for ratification, in order that the people may be given an opportunity to be heard.

Sincerely,
MARIAN PECK.

To the Committee of the Legislature on proposals for revising New Jersey's Constitution.

I wish to make a suggestion and a plea, that the State of New Jersey stops taxing the poor on non-income property, and from which the owner derives no personal benefit.

MRS. O. H. HUBBARD,
19 Van Deventer Ave.,
Princeton, N. J.

Joint Legislative Committee·

As a regular voter in the Fourth District of Ridgewood I urge that the referendum "Shall a revision of the State Constitution be submitted for ratification" be placed on the November ballot.

Sincerely,

Oct. 4, 1942. EMMA G. FOYE (MRS. A.B.)

Joint Legislative Committee
State House, Trenton, N. J.

The Roseland Womans Club concur that a revision of the State Constitution be submitted for ratification, be placed on the November ballot.

(MRS. A. L.) EMMA F. AXTELL,
Oct. 4, 1942. Legislative Ch.

Joint Legislative Committee:

The members of the Livingston Womens' Club urge that the referendum "Shall a revision of the State Constitution be submitted for ratification?" be placed on the November ballot, in order that the people may be given an opportunity to be heard.

Very truly yours,

MRS. J. KENNETH FELTER,
Chairman, Legislation and Citizenship,
Livingston Womens' Club.

July 6, 1942

Honorable Lloyd Schroeder
Chairman, Legislative Hearing
Committee on Constitutional Revision
New Jersey Senate
Trenton, New Jersey

Dear Senator Schroeder:

I should like to file with your committee the enclosed two-sentence statement which bears the signature of approximately two hundred New Jersey lawyers.

The declaration was formulated and circulated for only four days at a time prior to June 15th, 1942, when it was thought that the Legislature might not act upon, or might even reject the proposals by the Commission on Revision of the New Jersey Constitution.

However, when it was announced that the Legislature had

wisely agreed upon the holding of hearings, the circulation was halted. It was felt, the point of the declaration had been accomplished without the necessity of its presentation.

While the gist of the statement may now be academic in some respects, the fact still stands that lawyers and bar association members are not arrayed as a class against wholesome change.

It was felt your committee should be aware of this, and make use of the sentiment expressed in answer to any who would have you believe otherwise.

Sincerely yours,

HERZEL H. E. PLAINE

The undersigned, lawyers of New Jersey, publicly decry the action of the State Bar Association May 23, 1942 in rejecting, without deliberation or temperate consideration of the merits, the proposal to the Legislature by the Commission on Revision of the New Jersey Constitution. In the light of the pressing need for constitutional revision, we submit that the report of the commission requires full and immediate consideration by the Legsilature and the people of New Jersey.

Name	*Address*
Eugene C. Gerhart	605 Broad St., Newark
C. W. Fairlie	605 Broad St., Newark
F. E. Ehlers	605 Broad St., Newark
Ernest C. Lum	605 Broad St., Newark
Charles B. Niebling	605 Broad St., Newark
Vincent P. Biunno	605 Broad St., Newark
Joseph J. Biunno	605 Broad St., Newark
Ralph E. Lum	605 Broad St., Newark
Eleanor L. Zoob	605 Broad St., Newark
John S. Foster	605 Broad St., Newark
Richard Lum	605 Broad St., Newark
Ralph E. Lum, Jr.	605 Broad St., Newark
Alan W. Carrick	763 Broad St., Newark
Charles LaC. Hoff	346 Franklin Place, Plainfield
Richard E. Britton	113 Lincoln Ave., Cranford
William H. Jobes	99 Harthorne Ave., Nutley
Robert L. Perkins	Essex Fells
J. Alfred Guest	Bernardsville
Charles H. Evans	763 Broad St., Newark
Walter S. Lindsley	763 Broad St., Newark
Kenneth B. Hixson	24 Carlton Terr., Rutherford
Harry H. Edel	20 Fairfax Terr., Chatham
James M. Joyce	403 Stegman Pkwy, Jersey City
Job H. Lippincott, Jr.	29 Greenwood Ave., Chatham
Frank A. Weidknecht	701 High St., Cranford

Name	*Address*
Howard K. Stokes	Allenhurst
Arthur E. Schmauder	Short Hills
James C. Maloney	27 Craig Place, Cranford
Lester Pach	25 Yale St., Maplewood
F. P. Showalter	25 Garthwaite Ter., Maplewood
George Mark	763 Broad St., Newark
	Res. 38 Overbrook Ave., Belleville
Gobin Stair	119 Green Village Rd., Madison
Arthur C. Roller	10 Fernwood Rd., Maplewood
Harry G. Walters	37 Milburn Ave., Maplewood
Herberf R. Angen	763 Broad St., Newark
Daniel Crecca, Jr.	38 Berkley Ave., Newark
Jacob Hagenbuch	50 Bellair Place, Newark
Phillips M. Goodwin	209 Forest Ave., Glen Ridge
William J. Kenny	140 Rosewell Ave., Newark
Daniel Zimany	136 So. 21st St., Irvington
I. B. Wenger, Jr.	708 High St., Newark
John H. Matthews	184 S. Ridgewood Rd., S. Orange
B. F. Gillespie	1 Madison St., Glen Ridge
Warren F. Conrad	763 Broad St., Newark
J. A. Amerman	201 Essex Ave., Bloomfield
D. W. Hughes	77 Claremont Ave., Maplewood
John D. Fischbeck	40 Morse Ave., Bloomfield
Herbert G. Rohn	81 Woodbine Ave., Newark
Glenn K. Carver	28 So. Crescent, Maplewood
Donald B. Munsick	42 Oakview Ave., Maplewood
David E. Marshall	155 Carteret St., Glen Ridge
William C. Maloid	763 Broad St., Newark
Everett T. Findley	233 No. 7th St., Newark
Ernest Eagles	415 Fairview Ave., Orange
Alfred C. Clapp	744 Broad St., Newark
Clarence E. Kremer	744 Broad St., Newark
Howard Isherwood	744 Broad St., Newark
Leslie L. Vanderbilt	744 Broad St., Newark
Joseph Volpe, Jr.	744 Broad St., Newark
William A. Consodine	744 Broad St., Newark
Vincent P. Torppey	744 Broad St., Newark
Alexander Waugh	744 Broad St., Newark
Eugene F. Hoffmann	744 Broad St., Newark
Nicholas Conover English	13 Commerce St., Newark
Herzel H. E. Plaine	9 Clinton St., Newark
Joseph Harrison	9 Clinton St., Newark
Jerome C. Eisenberg	744 Broad St., Newark
Israel Spicer	744 Broad St., Newark
Frank Van Arsdale, Jr.	744 Broad St., Newark
Frank Benjamin	744 Broad St., Newark

Name	*Address*
Milton Stern	744 Broad St., Newark
Ellis A. Hahn	17 Academy St., Newark
Victor H. Milstein	Fort Jackson, S. C.
Joseph M. Jacobs	744 Broad St., Newark
Franklin W. Kielb	744 Broad St., Newark
Jacob Greenman	671 Broad St., Newark
Arthur E. Dienst	850 Broad St., Newark
Samuel I. Kahn	1060 Broad St., Newark
Harry Fiele	972 Broad St., Newark
Milton R. Konvitz	744 Broad St., Newark
Edward Gaulkin	60 Park Place, Newark
Milton Bruck	60 Park Place, Newark
Carl Bruck	60 Park Place, Newark
John H. Pursel	Phillipsburg, N. J.
James N. Butler	1421 Atlantic Ave., Atlantic City
Lee F. Washington	1516 Atlantic Ave., Atlantic City
Walter E. Beyer	1421 Atlantic Ave., Atlantic City
Charles Sumner Moore	1421 Atlantic Ave., Atlantic City
David C. Salmon	Morristown
Dudley M. Day	Morristown
Louis S. Freeman	Wharton, N. J.
Eugene F. Hillery	Boonton, N. J.
Louis B. LeDuc	Camden
Mary Jane Carter	Camden
Herbert G. Dubois	Camden
Ralph W. Westcott	Camden
James A. Curtis	381 New St., Newark
Louis Kaul	361 Madison Ave., Newark
Sol L. Kesselman	60 Park Place, Newark
William S. Gurkin	301 Clinton Ave., Newark
William Jantausch	45 Lehigh Ave., Newark
Philip Insabella	37 Oakland Terr., Newark
Joseph W. Jantausch	24 Commerce St., Newark
Ruth Johnson	29 So. Munn Ave., East Orange
Julius Bruchner	790 Broad St., Newark
William F. Murphy	228 Washington Ave., Belleville
E. Manuel Fox	175 Mapes Ave., Newark
Philip Weinstein	24 Branford Place, Newark
Howard S. Dodd	Montclair
Ernest F. Keer	Montclair
John A. Booth	Montclair
Lester E. Mahr	744 Broad St., Newark
Charles J. Molloy	744 Broad St., Newark
C. Russell Kramer	744 Broad St., Newark
A. Warren Littman	744 Broad St., Newark
Joseph G. Lyons	744 Broad St., Newark

Name	*Address*
George B. Bailey	744 Broad St., Newark
A. L. Padula	744 Broad St., Newark
Alfred J. Peer	744 Broad St., Newark
William E. Holmwood	9 Clinton St., Newark
Joseph M. Degnan	11 Clinton St., Newark
Victor R. King	18 Hamilton St., Bound Brook
Alfred J. McDowell	12 Maple St., Somerville
George W. Allgair	23 Maple St., Somerville
Arthur B. Smith	12 Maple St., Somerville
Francis L. Bergen	50 W. Main St., Somerville
Ben F. Schwartz	18 Hamilton St., Bound Brook
Julius B. Cohen	16 Hamilton St., Bound Brook
Arthur I. Robinson	30 Maiden Lane, Bound Brook
Patrick J. Malone	9 Clinton St., Newark
Michael N. Chanalis	9 Clinton St., Newark
George H. Haines	9 Clinton St., Newark
Joseph D. Lintott	9 Clinton St., Newark
Leo Rosenblum	880 Bergen Ave., Jersey City
Harry Perkel	880 Bergen Ave., Jersey City
Murray Greiman	880 Bergen Ave., Jersey City
Frank J. Bello	1 Montgomery St., Jersey City
Raymond Chasan	26 Journal Square, Jersey City
Maurice Brigadier	26 Journal Square, Jersey City
Jacob J. Levey	591 Summit Ave., JerseyCity
Samuel L. Ackerman	880 Bergen Ave., Jersey City
Abraham Lightdale	921 Bergen Ave., Jersey City
Irving Eisenberg	921 Bergen Ave., Jersey City
Maurice J. Frager	880 Bergen Ave., Jersey City
A. S. Freedman	2920 Boulevard, Jersey City
Abe A. Schultz	880 Bergen Ave., Jersey City
Frank J. Reppucci, Jr.	591 Summit Ave., Jersey City
James F. Murray	880 Bergen Ave., Jersey City
Max A. Boxer	6119 Bergenline Ave., W. N. Y.
Jesse Moskowitz	200 Newark Ave., Jersey City
Joseph Fitzpatrick	921 Bergen Ave., Jersey City
Abraham Levine	905 Bergen Ave., Jersey City
John Tumulty	921 Bergen Ave., Jersey City
Paul T. Huckin	1 Engle St., Englewood
Walter C. Seufert	1 Engle St., Englewood
LeRoy B. Huckin	1 Engle St., Englewood
Worrall F. Mountain, Jr.	Morristown
David Goldstein	Electric Bldg., Asbury Park
William Novogrod	Electric Bldg., Asbury Park
Edward F. Slott	Electric Bldg., Asbury Park
Earle Ogden Bennett	Electric Bldg., Asbury Park
Abraham R. Klitzman	Electric Bldg., Asbury Park

Name	*Address*
Walter Fox	Asbury Pk Natl Bk, Asbury Pk.
Philip Newman	Professional Bldg., Asbury Pk.
Peter Cooper	Asbury Park
Loren C. Lewis	Asbury Park
Charles Frankel	Kinmonth Bldg., Asbury Park
Leonard Widman	407 Emory St., Asbury Park
Louis I. Tumen	Electric Bldg., Asbury Park
David H. Davis	Electric Bldg., Asbury Park
Jonas Tumen	Electric Bldg., Asbury Park

REPORT

of the

JOINT LEGISLATIVE COMMITTEE constituted under Senate Concurrent Resolution No. 19, entitled "A Concurrent Resolution creating a joint legislative committee to ascertain the sentiment of the people of the State as to the various proposals and recommendations for change in the New Jersey Constitution made by the Commission on Revision of the New Jersey Constitution and to report thereon to the Legislature," adopted June fifteenth, one thousand nine hundred and forty-two.

To the Senate and General Assembly of the State of New Jersey:

The Joint Legislative Committee constituted under Senate Concurrent Resolution No. 19, adopted June fifteenth, one thousand nine hundred and forty-two, submits the following report:

Under Senate Concurrent Resolution No. 19, the Report of the Commission on Revision of the New Jersey Constitution, constituted under Joint Resolution No. 2, approved November eighteenth, one thousand nine hundred and forty-one, was referred to this committee and it was made the duty of this committee "to hold public hearings to ascertain the sentiment of the people of the State as to the various proposals and recommendations made by said commission in its report and to ascertain also the sentiment of the people of the State as to whether or not they desire the fundamental law of the State to be changed."

Public hearings have been held by the committee throughout the summer in the Assembly Chamber at Trenton, New Jersey, and much valuable testimony has been received in favor of, in opposition to, and suggesting modifications of, the various proposals made in the Report of the Commission on Revision of the New Jersey Constitution.

In the course of the public hearings it has been suggested to the committee that the committee recommend to the Legislature that, by the enactment of appropriate legislation, a question should be framed and placed upon the ballot to be used at the 1942 general election to ascertain whether or not the people desire the 1943 Legislature to formulate a Revised Constitution and to submit the same to the people at the general election to be held in the year 1943.

At the public hearings it became evident that the questions as to what changes should be made in the present Constitution and the question as to whether or not these changes should be determined

upon and submitted to the people during the present crisis are of highly controversial character.

In determining whether or not the sentiment of the people is in favor of making changes in the present Constitution at the present time or in the near future, it is necessary for the committee to take into consideration the fact that we are now a nation at war; that many thousands of our citizens and voters are now serving in the armed forces of the United States; and that the State as a whole is engaged in an "all out" war effort.

It is estimated that upwards of two hundred and fifty thousand citizens of the State will be serving in the armed forces of the United States on the date of the 1942 general election and it is apparent that a large number of these will be unable to express their opinions upon any questions then submitted and to participate in the election and vote upon them.

It is estimated further, that if the war continues, perhaps one-third of the voters of the State will be so engaged, at the time of the 1943 general election, many of whom likewise will be denied opportunity for expression of opinion and voting upon a revised Constitution, if it should be submitted at that time.

Because of the absence of voters serving in the armed forces of the United States and the lack of interest in elections in wartimes, as shown by the small vote cast in the last primary election, the submission of the question suggested, at the 1942 general election, and the submission of a proposed revised Constitution at the 1943 general election, might well result in the adoption by a minority of the voters of the State of a Constitution which would not be agreeable to the majority of the voters.

The committee is of the opinion also that the submission to the people, during wartimes, of such controversial questions as are involved in changing the State Constitution will detract from the "all out" war effort of the State and cause disunity among its citizens at a time when unity of thought and purpose is essential.

The committee therefore recommends that no further action for change in the New Jersey State Constitution be taken until after the termination of the present war.

September 28, 1942.

LLOYD L. SCHROEDER, *Chairman*,
EDWARD J. O'MARA,
JOHN M. SUMMERILL JR.,
H. RIVINGTON PYNE,
VINCENT S. HANEMAN,
MILDRED A. PREEN.

MINORITY REPORT
of
MANFIELD G. AMLICKE

One of the members of the Joint Legislative Committee constituted under Senate Concurrent Resolution No. 19, adopted June 15, 1942.

To the Senate and General Assembly of the State of New Jersey:

The following minority report is submitted by Manfield G. Amlicke, one of the members of the Joint Legislative Committee constituted under Senate Concurrent Resolution No. 19, adopted June fifteenth, one thousand nine hundred and forty-two, entitled "A Concurrent Resolution creating a joint legislative committee to ascertain the sentiment of the people of the State as to the various proposals and recommendations for change in the New Jersey Constitution made by the Commission on Revision of the New Jersey Constitution and to report thereon to the Legislature."

Under Senate Concurrent Resolution No. 19, the Report of the Commission on Revision of the New Jersey Constitution, constituted under Joint Resolution No. 2, approved November eighteenth, one thousand nine hundred and forty-one, was referred to this committee and it was made the duty of this committee "to hold public hearings to ascertain the sentiment of the people of the State as to the various proposals and recommendations made by said commission in its report and to ascertain also the sentiment of the people of the State as to whether or not they desire the fundamental law of the State to be changed."

Public hearings have been held by the committee throughout the summer in the Assembly Chamber at Trenton, New Jersey. It was there strongly urged upon the committee that a question should be framed and placed upon the ballot at the ensuing general election to ascertain whether or not the people desire the 1943 Legislature to formulate a revised Constitution and to submit the same to the people at the general election to be held in the year 1943.

These hearings disclosed that there was a strong sentiment among the people for certain changes in our basic law. There was opposition to some of the specific proposals and recommendations made by the commission. These objections can be considered and met by the 1943 Legislature if the people should ask them to act.

During the hearings there were many speakers who felt that some changes should be made but that such changes should not

be effected during the present war emergency. They argued that those men and women who are in our armed services should not be precluded from voting on such changes. In view of the fact that those who remain to vote are the mothers and fathers, brothers and sisters, relatives and friends, of those men and women who are now and will later be in the armed services of this country, it is my considered thought that it is only fitting for them to say, at the next general election, whether or not the 1943 Legislature should submit a revised Constitution. They certainly have the welfare of those men and women at heart. If they feel that such action should not be taken at the present time and that we should wait until those men and women return, they will vote emphatically "No!" If, on the other hand, they should feel that our fundamental law should be changed to make it more efficient and to provide for the future well-being of the returning veterans, so that these returning veterans can get the help and assistance which they will most certainly require, they will vote "YES."

The commission has given much of its talents and time to prepare a proposed revision. The legislative committee patiently heard arguments for and against a change. I feel that their efforts should not be dissipated. The people of this State are the Government and can make changes in the fundamental law of the State through the orderly processes of the ballot. It is for them to say how they wish to be governed.

It is my conviction, therefore, that the question proposed should be submitted, and that such submission will clearly indicate to the members of the present Legislature whether the 1943 Legislature should prepare a revised Constitution or whether it should wait until the war emergency is over.

September 28, 1942.

MANFIELD G. AMLICKE.

MINORITY REPORT

of

DOMINIC A. CAVICCHIA

Member of the Joint Legislative Committee constituted under Senate Concurrent Resolution No. 19, adopted June 15, 1942.

Submitted to the Senate and General Assembly Sept. 28, 1942.

To the Senate and General Assembly of the State of New Jersey:

Pursuant to Senate Concurrent Resolution No. 19, adopted June 15, 1942, a joint legislative committee consisting of four members of the Senate and four members of the General Assembly was appointed by the President and Speaker of the respective Houses. I was among the four appointed by the Speaker.

The joint committee was charged with the duty of holding public hearings "to ascertain the sentiment of the people of the State as to the various proposals and recommendations" of the Commission on Revision of the New Jersey Constitution, made in its report submitted to the Governor, the Legislature, and the People of New Jersey in May, 1942; and "to ascertain, also, the sentiment of the people of the State as to whether or not they desire the fundamental law of the State to be changed."

The joint committee was directed, in the resolution under which it was created, "to keep a record of its hearings and proceedings" and to "report to the Legislature the result thereof to the end that the Legislature may be informed of the public sentiment of the State as to the various proposals for changes in the fundamental law of the State made in said report of said Commission and in the course of said hearings."

The time spent by the joint committee in holding hearings, and in giving consideration to the testimony and to the briefs and memoranda additionally submitted, covered a period of three months.

The record of the proceedings is unusual and impressive. It is worthy of official preservation as a State archive that will invite ready reference by all citizens in their consideration of the solemn and momentous purpose towards which the proceedings were directed.

The suggestion has been made that because the hearings were held only in the State Capitol, they were not illustrative of widespread public opinon. To this I reply, however, that the hearings were conducted according to traditional legislative practice, that they were well publicized in advance of each date upon which

they were held, that all citizens were given an opportunity either to be heard or to submit written statements at any time, and that in most instances those who testified orally or in writing represented large groups of people throughout the State.

The record clearly shows that there was considerable favorable comment on the Revision Commission's proposals generally, and on the Commission's draft of a revised Constitution particularly. In all fairness, however, it must also be said that there was much sentiment for modification of several of the articles in the Commission's document. But it is also true that in many instances those who spoke for modification expressed themselves as satisfied that, at all events, the Commission's revised instrument of government was preferable to our present Constitution.

It is difficult to escape the conclusion that the joint committee's proceedings were productive of a fair cross-section of public opinion in this State on the question of constitutional revision. The record clearly shows a preponderance of public feeling for a revised Constitution framed according to twentieth century standards of State government.

In the course of the hearings, attacks were made upon the "legality" of the procedure recommended by the Revision Commission for effecting constitutional revision, and upon the timeliness of any revision while the country is at war.

These are the two features before the committee which are presently important in a consideration of this question. It is to a treatment of these points that I shall confine the details of this report.

I. ON PROCEDURE

In principle, the procedure recommended by the Revision Commission is: That the people be given the opportunity to direct the Legislature to draft a revised Constitution, and that following such a popular mandate, the Legislature's document be submitted for adoption or rejection by the people.

What is really a simple fundamental problem treating with the making of a State Constitution—whether original or revised—has been made complicated and involved over the years by the ingenious arguments of lawyers, scholars and statesmen. There is more than a suspicion that many who have sought by legalistic and complex reasoning to show a distinction between the power underlying the original formation of a State constitution, on the one hand, and that controlling subsequent revision, on the other hand, have suited their contentions to preconceived notions or conclusions. That these complexities have in turn served to confuse those who were innocent of ulterior motives in their presentations, but who were guilty of further intricacies of argument in order to overcome the weight of authorities cited for the opposite view, may account for the labyrinth of involved technicalities

which has led only to public bewilderment rather than to general enlightenment.

This fact alone should make all men of sound judgment ponder. When the sovereignty of a free people must be extricated from a maze of conflicting legalisms in order to give it expression, something must be wrong. The sooner this simple truth is recognized, the sooner will this controversy be resolved upon the same simple philosophy of free government that inspired the statesmen of 1776.

It is absurd to believe that there should apply to subsequent revision a philosophy different from that applicable to the formation of a State Constitution in the first instance. The Declaration of Independence is still the Bible for the people's inherent political power in the United States, and the United States Constitution is still the supreme law of the land.

It may be recalled that as a member of the Committee on Resolutions of the 1941 New Jersey Republican State Convention, I filed a minority report dealing with the subject of constitutional revision. In that report I said in part:

> "Our own 1844 Constitution enunciates not only the cardinal rule that 'all political power is inherent in the people,' but also its corollary that 'government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.' This was not an original declaration; it was a restatement of what was contained in the Declaration of Independence proclaimed at Philadelphia nearly seventy years earlier.
>
> If the people of New Jersey have lost the power to change their basic government in the interest of the common good, then it can no longer be true that, as Jefferson wrote in 1776, 'governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.'"

The Federal Constitution itself, adopted in 1789, was framed upon the same colonial concepts of free government. The Bill of Rights, added in 1791 and comprising the first ten amendments, was the constitutional embodiment of the inalienable rights of the people in relation to the Federal Government.

Now, Section IV of Article IV of the United States Constitution provides:

> *"The United States shall guarantee to every State in this Union a republican form of government,* and shall protect each of them against invasion; and, on application of the legislature or of the executive (when the legislature cannot be convened), against domestic violence." (Italics added.)

And the Tenth Amendment (Article X of the Bill of Rights) reads as follows:

> "The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, *or to the people.*" (Italics added.)

Thus, the scope within which the people of the respective States have the right to adopt for themselves, at any time, fundamental structures of government is to be drawn from the principles of popular government as expressed in the Declaration of Independence, from the powers explicitly reserved to the people by the Tenth Amendment, and from the limitations contained in Section IV of Article IV, and in Article VI of the Federal Constitution.

I have long maintained—and I repeat here—that the political power which inheres in a people is a continuing authority which can never be exhausted or curtailed by those who by force of circumstances happen to comprise the body politic in any generation or era. It is unfortunate that learned men should belabor constitutional revision and surround it with legal precedents which are actually foreign to the real problem.

In the first place, sovereignty requires no precedent for self-expression; nor does the people's natural political power subserve the government which the people at any time see fit to shape for the governance of themselves and, hopefully, of posterity. W. W. Willoughby, former professor of political science at Johns Hopkins University, has said that "a State and its government is but an instrument humanly devised for a people's good. It, therefore, has to be justified by its works." In other words, the people—not governments—are supreme in the United States.

In the second place, constitutional or basic governmental revision by direct political action of the people is not a legal matter. It is purely a question of political science, and one in which the courts have no authority to intervene.

Elements of legality can surround only that form of revision which is based on provisions contained in the fundamental law of a State, although no provision in any State Constitution could be so framed, I submit, as to deny to the people of any later period the same political rights which underlay the framing of the document and its adoption in the first instance. And this will continue to be so in the United States unless, by prescribed processes or otherwise, the Federal Constitution should ever be changed to

incorporate other restraints upon the people of the respective States.

For instance, legality can surround a clause in a State constitution which sets forth procedures for amendment. Interpretation of such a clause would be proper subject matter for the courts. But I know of no rule or logic that invests a State judiciary with the power to interfere with the people's exercise of their inherent political rights. State courts themselves derive their authority from the people, by whose consent the judiciary is itself one of the three coordinate branches of the State government.

Having criticized the resort to legalisms in this connection, I do not propose to be guilty of the same error. Yet it is imperative to show by what reasoning the courts have eliminated themselves as the arbiters of political controversies involving the formation and ordination of State constitutions.

In the case of *Brickhouse* v. *Brooks*, 165 Fed. 534, it was definitely determined that the ordainment of a State Constitution which has been promulgated and recognized by the legislative and executive departments cannot be made the subject of judicial inquiry. In that case the validity of the Virginia Constitution was attacked. But the United States Circuit Court for the Eastern District of Virginia said:

> "This court will not decree concerning the policy of public measures, nor will it pass on the expediency of the action of the legislative and executive departments of the government, but will construe and apply the enactments of the one and the acts of the other after those departments have discharged the duties assigned them. It will not hesitate to decide all judicial questions properly before it, but it will decline to enter the political domain, and will refuse to attempt by its decree to dispose of matters confided to the official action of others.
>
> That the Constitution of the United States and the laws of the Congress passed in conformity thereto are supreme throughout the nation, and that it is the duty of all judges to so decree, anything in the Constitution or laws of any of the states to the contrary notwithstanding, is conceded by all whose opinions are worthy of consideration. Will it not also be universally conceded that, before it can be decided by the courts whether or not the Constitution of any state has incorporated therein anything contrary to the Constitution of the United States, in cases where unfortunately there is a controversy as to which of two instruments is the valid Constitution of a state, it must first be determined which is the Constitution of that state, to which the people thereof owe their allegiance? It is concerning this ascertainment—whose duty it is to decide it—that I find myself compelled to differ with the insistence of the plaintiff * * *.
>
> Whether or not the people of the State of Virginia have duly adopted the Constitution in controversy in this case is a political question, not to be disposed of by this court, but by the legislative and executive departments of the government of that state. Those departments having recognized and promulgated that Constitution, having declared it valid and in force, it consequently is the fundamental law of Virginia, so to remain until it is changed by the people of that state, or overthrown, not by the courts, but by revolution. * * *
>
> Whether or not this Constitution of Virginia is consistent with the requirements of the Federal Constitution, relating to a republican form of government, is a question to be determined by the legislative and executive departments of the government of the United States. In regard to such matters the courts will not take the initiative, but will await the action of the departments mentioned, and when they have acted will be bound by the conclusion they have reached. If such action has not been taken by those departments of the government, the presumption is that the necessity for it did not exist, and the courts will not infer that they have either refused or neglected to promptly and efficiently discharge the duties imposed upon them."

Suffice it to say that this principle is fully substantiated by the decisions in the United States Supreme Court cases of *Luther* v. *Borden*, 7 How. 1, 12 L. Ed. 581; and *Pacific States Tel. and Tel. Co.* v. *Oregon*, 223 U. S. 118, 56 L. Ed. 377.

Having thus identified the real nature of the problem of adopting a revised constitution, we are faced with two simple questions: If the people are inherently sovereign, is it possible for those of one period to be more sovereign than their posterity? If all political power is inherent in the people, were the people who chanced to live within the geographical boundaries of New Jersey in 1844 more politically powerful than we who are its citizens in 1942?

The colonial conception was, as we have seen, that sovereignty resides in the people—in the social community of which government is the convenient and orderly instrument. I am not aware that between 1776 and the present day this concept has ever lacked in fundamental importance.

There has been an evident lack, however, in the ability of later generations to conceive of this doctrine in contradistinction to the limited aspects of constitutional amendment which finds sanction only in the established constitution of the State. Beyond that sanction is the consent of the people and their inalienable

right to frame or reform their organic law according to the standards of the times.

One need only to refer to the reports of the Constitutional Convention of 1844 to learn the opinion of Chief Justice Hornblower, who was a delegate from Essex County, and who was reported in the Newark Daily Advertiser of that period to have substantially contended:

> "That if the rule • • • that the adoption of one mode of amendments, excludes all others, it is entirely at war with the article in our bill of rights, that we have made so much parade about, that the people are sovereign, and may change their form of government when they choose."

Indeed, there has been a common failure among men of learning, contemporaneous and past, to distinguish between the purport of government and the import of the people's basic power—between the significance of the outward expression of government and the substance of the people's inherent rights which are reiterated in our own New Jersey Constitution. The one deals generally with the various powers of government and their distribution among the three independent but coordinate branches; the other deals with political foundations and asserts human rights as distinguished from the machinery of government.

I believe this discrimination to be fundamental to a clear conception of the whole problem of constitutional revision. With such an understanding, then, two other questions follow in logical sequence:

First, in revising our Constitution shall we employ the mode prescribed in our fundamental law for the government itself—the Legislature—to initiate specific amendments? Or, second, shall we exercise the power which inheres in us as a sovereign people to alter or reform the whole structure of government as we think the public good may require?

So far as I know, this pointed distinction has yet to be fully developed in our public thinking. But it becomes logical and understandable in the light of American constitutional history generally, and of what is historically interpreted to have been the intent of the people of 1844 in New Jersey.

It has been pointed out by students of political science that in America there have been four periods in the development of State Constitutions. At this point, however, reference need be made only to the first two, in order to show how a shift in public attitude towards State Legislatures, from one of complete confidence to one of distrust, dominated the drafting of the New Jersey Constitution in 1844.

During the first period—between the Revolution and the War of 1812—the people of the Union still had uppermost in their

minds the harassing experiences they, as colonists, had suffered at the hands of Royal Governors. Naturally, then, they had come to regard the office of Governor with suspicion. Thus, when drafting their own State Constitutions, they clothed the Executive with the least possible constitutional authority; and they made supreme the Legislature, which they had come to regard as the protector of popular rights and as the safest and best agency of government in which to repose the people's power.

But between 1812 and the Civil War—the second period—Legislatures had fallen into disrepute because of their tendency toward public neglect, and because of their bestowal of favors upon private interests at public expense and against the common welfare. This was the day of legislative lavishness and improvidence. Thus, in the making of State Constitutions during this period, there was reflected the people's determination to curb legislative significance and power.

It was during this second period—in 1844—that the present New Jersey Constitution was framed and adopted. And this general public distrust of the Legislature was even more pronounced in this State.

By 1844 the people had become weary of long years of controversy which had disturbed the then rural peace of New Jersey, and which had centered on whether the Legislature, because of the 1776 Constitution contained no provision for revising the basic law, possessed absolute power to amend it without the people's ratification. It was only natural that at the earliest opportunity the people should obviate any possibility that the Legislature might succeed in its attempted usurpation of their inherent political power.

This, then, was the purpose behind the difficult amending process in the Constitution of 1844. Passage of a proposed amendment by only one Legislature would not, the framers thought, give the people ample protection against that body's attempt to change the organic law. They thus surrounded amendment proposals with additional safeguards, providing for publication, after passage by one Legislature, sufficiently in advance of the next general election, so that the people could have the opportunity of knowing where candidates for the Senate and General Assembly stood with respect to constitutional amendments initiated by the current Legislature and which must pass the ensuing Legislature before reaching the people for a vote. Thus, the amending process was kept within the interim—as well as within the final—control of the people.

Can there, then, be any honest doubt that the people of 1844 were satisfied that, while providing a mode of amendment by legislative initiative, they nonetheless were retaining for themselves their inherent power to alter or reform the Constitution?

I submit that this discrimination I have traced between constitutional restraint upon the power of government to originate revision through piece-meal amendment, on the one hand, and the sovereign right of the people to effectuate complete reformation or alteration, on the other hand, is a logical demarcation which defies successful contradiction; and that a clear understanding of the issue under consideration rests upon this distinction.

I must, therefore, disagree with those who question what they erroneously call the "legality" of the procedure for revision proposed by the Commission in its report. When the political power of the people is invoked, it is limited only by the United States Constitution, by the rules of human behavior and order characteristic of our American civilization, and by the will to perform a task so high in purpose that no considerations other than those affecting the common welfare will sway any of us.

II. On Timeliness.

From the standpoint of timeliness, the issue specifically resolves itself into whether the present Legislature shall submit to the people at the 1942 general election in November the following question: Shall the 167th (1943) Legislature be directed to submit, for adoption or rejection by the people at the 1943 general election, a revised Constitution altered and reformed as the Legislature deems the public good requires?

Now, I have already discussed two periods of constitutional development in America. The third and fourth of the four traced by students of political science were marked by readjustments in the fundamental structures of State Governments to bring them into consonance with increasing involvements of public affairs induced by increasingly complex industrial, economic and social problems in this country. The third period covered the years between the Civil War and the late 1890's; the fourth, from the 1890's to the present day.

So far as New Jersey is concerned the transition from the second period, during which our present Constitution was ordained, is best illustrated by the startling difference in the cost of State Government in 1844 and in 1942. In 1844 the yearly cost was less than $100,000; today the annual cost approaches 125 million dollars.

I suggest that today we are entering a fifth period of constitutional development in the United States—a period replete with modern complexities and with multiple and difficult problems of modern governmental activity and finance.

Now the exigencies of war have been offered as the legitimate reason for delaying action on constitutional revision in New Jersey. Specifically, it has been charged that to take steps to revise the organic law of this State while so many of our citizens are

away on the scattered battlefronts of the world will unjustly deprive them of a vote upon the question.

I submit that, on the contrary, it is unfair to the men in the service, and to their families at home, not to effectuate constitutional changes now. With Federal taxation pyramiding every day because of the demands of war, there is every need to eliminate inefficiency and extravagance in New Jersey's State Government which now proportionately affects the families of the men in service, and which will affect the men themselves when, upon their return from the war, they resume their status as taxpayers.

Shall New Jersey, then, preserve the same outmoded, extravagant, inefficient and irresponsible form of government for the men serving in this world war to support when they return to civilian life? Or shall the people reform and alter that government —without disturbing the substance of the Bill of Rights—along lines that will conduce to economy, efficiency and responsibility in public affairs, so that the veterans of this war will not be forced to bear the burdens imposed upon them by inadequate and deficient government?

Aside from the exigencies of war, for the last half-century there has been increasing assumption in Washington of responsibility for a multiplicity of governmental services which the State Governments have been unwilling or unable to render, or have been prevented from rendering by forces of federalization.

From a practical standpoint, these Federal encroachments upon the domain of State Governments have actually relieved the States of many services they should have been performing for the people. Whether or not this has been a cause or an effect of partisan policies, it nonetheless remains that the respective State Governments, thus unburdened of the responsibilities attending the powers so usurped, have never been pressed to their maximum administrative capacities.

The Federal Government, however, itself burdened beyond capacity, may find it necessary after the war to hand back to the States the powers taken away from them. In those States having more modern structures of government, the increased responsibilities accompanying these powers may possibly be assumed without too much difficulty. But in New Jersey, since there is general agreement that some measure of revision is needed even on the basis of our present governmental activities, we shall find ourselves unprepared unless we shall have thoroughly modernized our structure by the time that day arrives.

We can prepare at once to equip ourselves by adequate constitutional revision to that end; or we can postpone the day of reckoning until the enormity of these increased problems actually overwhelms us and adds to the burdens of postwar readjustment upon demobilization of our armed forces. In short, shall the

people at home, entrusted with the powers of sovereignty, shirk their duty to those who are offering their lives to preserve the very fundamentals of American democracy?

Conclusion.

In the United States, the people have come to take government too much for granted. Unfortunately, there has been a tendency to lose track of the philosophy which underlies free government and which caused the American colonists so much anxiety and bloodshed. It is no exaggeration to say, generally, that the American people have come to regard government as a static organism rather than as one which may be altered by themselves for their common good.

It is nowadays not too difficult to arouse public interest in legislation which is viewed with favor or disfavor, as the case may be. Current legislation, because of the widespread publicity given it in the newspapers, is closer to the daily lives of the people. They are thus more conversant with the making of statutory law than they are with the making of fundamental law or constitutions.

Readily, but without consciousness of the origin and import of their power, the people have become accustomed to the elective process for voting upon important public questions and for ousting from public office those representatives who have served them inefficiently, extravagantly or irresponsibly. But they have not found it necessary to concern themselves with basic concepts of popular government, as did the American colonists in those long years of struggle against tyranny.

It is understandable that grievances which do not spring from invaded personal or property rights are slow in forming.

In New Jersey, however, the people are gradually becoming aware of the righteousness of many grievances which public-spirited and civic-minded citizens and groups have advanced against a Constitution which has countless times been criticized as a barrier to efficient, economical and responsible government.

And when the people are made to realize that such grievances necessarily strike at the very roots of State Government, they take cognizance of fundamentals. They demand to know about their sovereignty and all the political power which accompanies it. It is then that they give heed to the basic import of the philosophy of government as proclaimed in the Declaration of Independence, as defined by implication or specification in the Constitution of the United States, and as restated in the present New Jersey Constitution. Indeed, they take warning from the "Virginian Declaration of Rights, 12 June 1776," which, in part, states:

> "(XV) That no free government, or the blessings of liberty can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality and virtue, and by a frequent recurrence to fundamental principles."

Today, we have come to the point in New Jersey where public interest is wakened to the crying need for constitutional revision more extensive in scope than is possible of accomplishment through the restricted, tedious and costly medium of the amendment clause.

Today, State Legislatures are no longer suspect by the public. Their historical frailties have long since given way to stability and sound conduct of the public business. The record of legislative achievements—especially during the last ten years—affords much to commend the Legislature to the public trust.

Hence, the people of New Jersey do not today shy away from their Legislature as did the people of 1844. The people of 1942 may be willing to entrust to the members of the 1943 session the solemn and momentous task of drafting a new Constitution.

The sole test, I maintain, of any procedure which gives expression and effect to sovereignty on the issue before us is whether the people themselves have the opportunity to adopt or reject whatever Constitution is proposed. I believe it advisable to seek public direction in the matter without delay. Only in this manner can we resolve any doubts about sentiment among the people for the Legislature to undertake the task.

Dominic A. Cavicchia,

Member of the Joint Legislative Committee Constituted Under Senate Concurrent Resolution No. 19, Adopted June 15, 1942.

September 28, 1942.

APPENDIX I

Constitution of the State of New Jersey

A Constitution *agreed upon by the delegates of the people of New Jersey, in Convention, begun at Trenton on the fourteenth day of May, and continued to the twenty-ninth day of June in the year of our Lord one thousand eight hundred and forty-four, ratified by the people at an election held on the thirteenth day of August, A. D. 1844; and amended at special elections held on the seventh day of September, A. D. 1875; the twenty-eighth day of September, A. D. 1897; the twentieth day of September, A. D. 1927; and June 20, 1939.*

Preamble—We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavours to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this constitution.

Article I

Rights and Privileges

1. All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

3. No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretence whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform.

4. There shall be no establishment of one religious sect in

preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right merely on account of his religious principles.

5. Every person may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

6. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.

7. The right of trial by jury shall remain inviolate: but the Legislature may authorize the trial of civil suits, when the matter in dispute does not exceed fifty dollars, by a jury of six men.

8. In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of Counsel in his defence.

9. No person shall be held to answer for a Criminal offence, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by Justices of the peace, or arising in the army or navy; or in the militia, when in actual service in time of war or public danger.

10. No person shall after acquittal, be tried for the same offence. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offences, when the proof is evident or presumption great.

11. The privilege of the writ of Habeas Corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it.

12. The Military shall be in strict subordination to the Civil power.

13. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war except in a manner prescribed by law.

14. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

15. Excessive bail shall not be required, excessive fines shall not be imposed, and cruel and unusual punishments shall not be inflicted.

16. Private property shall not be taken for public use without just compensation; but land may be taken for public highways as heretofore until the legislature shall direct compensation to be made.

17. No person shall be imprisoned for debt in any action, or on any judgment founded upon contract, unless in cases of fraud; nor shall any person be imprisoned for a militia fine in time of peace.

18. The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances.

19. No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual association or corporation, or become security for or be directly or indirectly the owner of any stock or bonds of any association or corporation.

20. No donation of land or appropriation of money shall be made by the state or any municipal corporation to or for the use of any society, association or corporation whatever.

21. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

Article II

Right of Suffrage

1. Every *male* citizen of the United States, of the age of twenty-one years, who shall have been a resident of this State one year, and of the County in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are, or hereafter may be elective by the people; provided, that no person in the military, naval, or marine service of the United States shall be considered a resident in this State, by being stationed in any garrison, barrack, or military or naval place or station within this State; and no pauper, idiot, insane person, or person convicted of a crime which now excludes him from being a witness unless pardoned or restored by law to the right of suffrage, shall enjoy the right of an elector. And provided further, that in time of war no elector in the actual military service of the state, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his ab-

sence from such election district; and the legislature shall have power to provide the manner in which, and the time and place at which, such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.

2. The legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of bribery.

Article III

Distribution of the Powers of Government

1. The powers of the government shall be divided into three distinct departments—the Legislative, Executive and Judicial; and no person or persons belonging to, or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except as herein expressly provided.

Article IV

Legislative

Section 1

1. The legislative power shall be vested in a Senate and General Assembly.

2. No person shall be a member of the Senate who shall not have attained the age of thirty years, and have been a citizen and inhabitant of the State for four years, and of the county for which he shall be chosen one year, next before his election; and no person shall be a member of the General Assembly who shall not have attained the age of twenty-one years, and have been a citizen and inhabitant of the state for two years, and of the county for which he shall be chosen one year next before his election; provided, that no person shall be eligible as a member of either house of the legislature, who shall not be entitled to the right of suffrage.

3. Members of the Senate and General Assembly shall be elected yearly and every year, on the first Tuesday after the first Monday in November; and the two houses shall meet separately on the second Tuesday in January next after the said day of election, at which time of meeting, the legislative year shall commence; but the time of holding such election may be altered by the legislature.

Section II

1. The Senate shall be composed of one Senator from each County in the State, elected by the legal voters of the Counties, respectively, for three years.

2. As soon as the Senate shall meet after the first election to be held in pursuance of this Constitution, they shall be divided

as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the first year; Of the second class at the expiration of the second year; and of the third class at the expiration of the third year; so that one class may be elected every year: And if vacancies happen, by resignation or otherwise, the persons elected to supply such vacancies shall be elected for the unexpired terms only.

Section III

1. The General Assembly shall be composed of members annually elected by the legal voters of the Counties, respectively, who shall be apportioned among the said Counties as nearly as may be according to the number of their inhabitants. The present apportionment shall continue until the next census of the United States shall have been taken, and an apportionment of members of the General Assembly shall be made by the legislature at its first session after the next and every subsequent enumeration or census, and when made shall remain unaltered until another enumeration shall have been taken; provided, that each county shall at all times be entitled to one member; and the whole number of members shall never exceed Sixty.

Section IV

1. Each house shall direct writs of election for supplying vacancies, occasioned by death, resignation, or otherwise; but if vacancies occur during the recess of the legislature, the writs may be issued by the Governor, under such regulations as may be prescribed by law.

2. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

3. Each house shall choose its own officers, determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, may expel a member.

4. Each house shall keep a journal of its proceedings, and from time to time publish the same; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

5. Neither house, during the session of the legislature, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

6. All bills and joint resolutions shall be read three times in

each house, before the final passage thereof; and no bill or joint resolution shall pass, unless there be a majority of all the members of each body personally present and agreeing thereto; and the yeas and nays of the members voting on such final passage shall be entered on the journal.

7. Members of the Senate and General Assembly shall receive annually the sum of five hundred dollars during the time for which they shall have been elected, and while they shall hold their office, and no other allowance or emolument, directly or indirectly, for any purpose whatever. The President of the Senate and the Speaker of the house of Assembly shall, in virtue of their offices, receive an additional compensation, equal to one-third of their allowance as members.

8. Members of the Senate and General Assembly shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same: And for any Speech or debate, in either house, they shall not be questioned in any other place.

Section V

1. No member of the Senate or General Assembly shall, during the time for which he was elected, be nominated or appointed by the Governor or by the legislature in joint meeting, to any civil office under the authority of this State, which shall have been created, or the emoluments whereof shall have been increased, during such time.

2. If any member of the Senate or General Assembly shall be elected to represent this State in the Senate or House of Representatives of the United States, and shall accept thereof, or shall accept of any office or appointment under the Government of the United States, his seat in the legislature of this State shall hereby be vacated.

3. No Justice of the Supreme Court, nor Judge of any other court, Sheriff, Justice of the Peace, nor any person or persons possessed of any office of profit under the government of this State shall be entitled to a seat either in the Senate or in the General Assembly; but on being elected and taking his seat his office shall be considered vacant: and no person holding any office of profit under the Government of the United States shall be entitled to a seat in either house.

Section VI

1. All bills for raising revenue shall originate in the House of Assembly; but the Senate may propose or concur with amendments, as on other bills.

2. No money shall be drawn from the treasury but for appropriations made by law.

3. The credit of the State shall not be directly or indirectly loaned in any case.

4. The legislature shall not, in any manner, create any debt or debts, liability or liabilities, of the State, which shall singly or in the aggregate with any previous debts or liabilities at any time exceed one hundred thousand dollars, except for purposes of war, or to repel invasion, or to suppress insurrection, unless the same shall be authorized by a law for some single object or work, to be distinctly specified therein; which law shall provide the ways and means, exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within thirty-five years from the time of the contracting thereof, and shall be irrepealable until such debt or liability, and the interest thereon, are fully paid and discharged: And no such law shall take effect until it shall, at a general election, have been submitted to the people, and have received the sanction of a majority of all the votes cast for and against it at such election: And all money to be raised by the authority of such law shall be applied only to the specific object stated therein, and to the payment of the debt thereby created. This section shall not be construed to refer to any money that has been, or may be, deposited with this State by the Government of the United States.

5. The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the exercise of such authority shall be deemed to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature.

Section VII

1. No divorce shall be granted by the legislature.

2. It shall be lawful to hold, carry on, and operate in this State race meetings whereat the trotting, running or steeplechase racing of horses only may be conducted between the hours of sunrise and sunset on week days only and in duly legalized race tracks, at which the pari-mutuel system of betting shall be permitted. No lottery, roulette, or game of chance of any form shall be authorized by the Legislature in this State, and no ticket in any lottery shall be bought or sold within this State, or offered for sale; nor shall pool-selling, book-making, or gambling of any kind be authorized or allowed within this State, except pari-mutuel betting on the results of the racing of horses only, from which the State shall derive a reasonable revenue for the

support of government; nor shall any gambling device, practice, or game of chance, or pari-mutuel betting thereon now prohibited by law, except as herein stated and otherwise provided, be legalized, or the remedy, penalty or punishment now provided therefor be in any way diminished.

3. The legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

4. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title. No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length. No general law shall embrace any provision of a private, special or local character. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act.

5. The laws of this State shall begin in the following Style, "Be it enacted by the Senate and General Assembly of the State of New Jersey."

6. The fund for the support of free schools, and all money, stock, and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public free schools, for the equal benefit of all the people of the State; and it shall not be competent for the legislature to borrow, appropriate, or use the said fund or any part thereof, for any other purpose, under any pretence whatever. The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this state between the ages of five and eighteen years.

7. No private or special law shall be passed authorizing the sale of any lands belonging in whole or in part to a minor or minors or other persons who may at the time be under any legal disability to act for themselves.

8. Individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners.

9. No private, special or local bill shall be passed, unless public notice of the intention to apply therefore, and of the general object thereof, shall have been previously given. The legislature, at the next session after the adoption thereof, and from time to time thereafter, shall prescribe the time and mode of giving such notice, the evidence thereof, and how such evidence shall be preserved.

10. The legislature may vest in the Circuit Courts, or Courts of Common Pleas within the several Counties of this State Chancery powers, so far as relates to the foreclosure of mortgages, and sale of mortgaged premises.

11. The legislature shall not pass private, local or special laws in any of the following enumerated cases, that is to say:

Laying out, opening, altering and working roads or highways.

Vacating any road, town plot, street, alley or public grounds.

Regulating the internal affairs of towns and counties; appointing local offices or commissions to regulate municipal affairs.

Selecting, drawing, summoning or impaneling grand or petit jurors.

Creating, increasing or decreasing the percentage or allowance of public officers during the term for which said officers were elected or appointed.

Changing the law of descent.

Granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever.

Granting to any corporation, association or individual, the right to lay down railroad tracks.

Providing for changes of venue in civil or criminal cases.

Providing for the management and support of free public schools.

The Legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The legislature shall pass no special act conferring corporate powers, but they shall pass general laws under which corporations may be organized, and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the legislature.

12. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value.

Section VIII

1. Members of the legislature, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of New Jersey, and that I will faithfully discharge the duties of Senator (or member of the Gen-

eral Assembly, as the case may be) according to the best of my ability." And members elect of the Senate or General Assembly are hereby empowered to administer to each other the said oath or affirmation.

2. Every officer of the legislature shall, before he enters upon his duties, take and subscribe the following oath or affirmation: "I do solemnly promise and swear (or affirm) that I will faithfully, impartially and justly perform all the duties of the office of ....., to the best of my ability and understanding; that I will carefully preserve all records, papers, writings, or property entrusted to me for safe keeping by virtue of my office, and make such disposition of the same as may be required by law."

Article V

Executive

1. The Executive power shall be vested in a Governor.

2. The Governor shall be elected by the legal voters of this state. The person having the highest number of votes shall be the Governor; but if two or more shall be equal and highest in votes, one of them shall be chosen Governor by the vote of a majority of the members of both houses in joint meeting. Contested elections for the office of Governor shall be determined in such manner as the legislature shall direct by law. When a Governor is to be elected by the people, such election shall be held at the time when and at the places where the people shall respectively vote for members of the legislature.

3. The Governor shall hold his office for three years, to commence on the third Tuesday of January next ensuing the election for Governor by the people, and to end on the Monday preceding the third Tuesday of January, three years thereafter: And he shall be incapable of holding that office for three years next after his term of service shall have expired: And no appointment or nomination to office shall be made by the Governor during the last week of his said term.

4. The Governor shall be not less than thirty years of age, and shall have been for twenty years, at least, a citizen of the United States, and a resident of this State Seven years next before his election, unless he shall have been absent during that time on the public business of the United States or of this State.

5. The Governor shall, at stated times, receive for his services a compensation which shall be neither increased nor diminished during the period for which he shall have been elected.

6. He shall be the Commander in Chief of all the military and naval forces of the State; he shall have power to convene the Legislature or the senate alone, whenever in his opinion public

necessity requires it; he shall communicate by message to the legislature at the opening of each session, and at such other times as he may deem necessary, the condition of the State, and recommend such measures as he may deem expedient; he shall take care that the laws be faithfully executed, and grant, under the great seal of the State, commissions to all such officers as shall be required to be commissioned.

7. Every bill which shall have passed both houses shall be presented to the Governor: If he approve he shall sign it, but if not he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it; if, after such reconsideration, a majority of the whole number of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved of by a majority of the whole number of that house, it shall become a law; but, in neither house shall the vote be taken on the same day on which the bill shall be returned to it: and in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor, within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature by their adjournment, prevent its return in which case it shall not be a law. If any bill presented to the Governor contain several items of appropriations of money, he may object to one or more of such items while approving of the other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the appropriations so objected to shall not take effect. If the legislature be in session he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If, on reconsideration, one or more of such items be approved by a majority of the members elected to each house, the same shall be a part of the law, notwithstanding the objections of the governor. All the provisions of this section in relation to bills not approved by the governor shall apply to cases in which he shall withhold his approval from any item or items contained in a bill appropriating money.

8. No member of Congress, or person holding an office under the United States, or this State, shall exercise the office of Governor; and in case the Governor, or person administering the Government shall accept any office under the United States or this State, his office of Governor shall thereupon be vacant. Nor shall he be elected by the legislature to any office under the Govern-

ment of this State or of the United States, during the term for which he shall have been elected Governor.

9. The Governor or person administering the government, shall have power to suspend the collection of fines and forfeitures, and to grant reprieves, to extend until the expiration of a time not exceeding ninety days after conviction; but this power shall not extend to cases of impeachment.

10. The Governor, or person administering the government, the Chancellor, and the six Judges of the Court of Errors and Appeals, or a major part of them, of whom the Governor, or person administering the government, shall be one, may remit fines and forfeitures, and grant pardons, after conviction, in all cases except impeachment.

11. The Governor and all other civil officers under this State shall be liable to impeachment for misdemeanor in office during their continuance in office and for two years thereafter.

12. In case of the death, resignation, or removal from office of the Governor, the powers, duties, and emoluments of the office, shall devolve upon the President of the Senate, and in case of his death, resignation or removal, then upon the Speaker of the House of Assembly, for the time being, until another Governor shall be elected and qualified; but in such case another Governor shall be chosen at the next election for members of the Legislature unless such death, resignation, or removal, shall occur within thirty days immediately preceding such next election, in which case a Governor shall be chosen at the second succeeding election for members of the legislature. When a vacancy happens, during the recess of the legislature in any office which is to be filled by the Governor and Senate, or by the Legislature in joint meeting, the Governor shall fill such vacancy, and the commission shall expire at the end of the next session of the Legislature, unless a successor shall be sooner appointed: When a vacancy happens in the office of the Clerk or Surrogate of any County, the Governor shall fill such vacancy, and the Commission shall expire when a successor is elected and qualified.

No person who shall have been nominated to the senate by the governor for any office of trust or profit under the government of this state, and shall not have been confirmed before the recess of the legislature, shall be eligible for appointment to such office during the continuance of such recess.

13. In case of the impeachment of the Governor, his absence from the State, or inability to discharge the duties of his office, the powers, duties and emoluments of the office shall devolve upon the President of the Senate; and in case of his death, resignation or removal, then upon the Speaker of the house of Assembly for the time being, until the Governor absent, or impeached shall return or be acquitted, or until the disqualification or inability shall cease, or until a new Governor be elected and qualified.

14. In case of a vacancy in the office of Governor from any other cause than those herein enumerated, or in case of the death of the Governor elect before he is qualified into office, the powers, duties and emoluments of the office shall devolve upon the President of the Senate or Speaker of the House of Assembly, as above provided for, until a new Governor be elected and qualified.

Article VI

Judiciary

Section I

1. The Judicial power shall be vested in a Court of Errors and Appeals in the last resort in all causes as heretofore; A Court for the trial of impeachments; a Court of Chancery; a Prerogative Court; a Supreme Court; Circuit Courts, and such inferior Courts as now exist, and as may be hereafter ordained and established by law; which Inferior Courts the Legislature may alter or abolish, as the public good shall require.

Section II

1. The Court of Errors and Appeals shall consist of the Chancellor, the Justices of the Supreme Court, and six Judges, or a major part of them; which Judges are to be appointed for six years.

2. Immediately after the Court shall first assemble, the six Judges shall arrange themselves in such manner that the seat of one of them shall be vacated every year, in order that thereafter one Judge may be annually appointed.

3. Such of the Six judges as shall attend the Court shall receive, respectively, a per diem compensation, to be provided by law.

4. The Secretary of State shall be the Clerk of this Court.

5. When an appeal from an Order or decree shall be heard the Chancellor shall inform the Court, in writing, of the reasons for his order or decree; but he shall not sit as a member, or have a voice in the hearing or final sentence.

6. When a writ of Error shall be brought, no Justice who has given a Judicial opinion in the cause in favor of or against any Error complained of, shall sit as a member, or have a voice on the hearing, or for its affirmance or reversal; but the reasons for such opinion shall be assigned to the Court in writing.

Section III

1. The House of Assembly shall have the sole power of impeaching by a vote of a majority of all the members; and all impeachments shall be tried by the Senate: The members, when

sitting for that purpose, to be on oath or affirmation "truly and impartially to try and determine the charge in question according to evidence:" and no person shall be convicted without the concurrence of two-thirds of all the members of the Senate.

2. Any judicial officer impeached shall be suspended from exercising his office until his acquittal.

3. Judgment in cases of impeachment shall not extend farther than to removal from office, and to disqualification to hold and enjoy any office of honor, profit or trust under this State: but the party convicted shall nevertheless be liable to indictment, trial and punishment according to law.

4. The Secretary of State shall be the Clerk of this Court.

Section IV

1. The Court of Chancery shall consist of a Chancellor.

2. The Chancellor shall be the Ordinary or Surrogate General, and Judge of the Prerogative Court.

3. All persons aggrieved by any order, sentence, or decree of the Orphans Court, may appeal from the same, or from any part thereof to the Prerogative Court; but such order, sentence, or decree shall not be removed into the Supreme Court, or Circuit Court if the subject matter thereof be within the jurisdiction of the Orphans Court.

4. The Secretary of State shall be the register of the Prerogative Court, and shall perform the duties required of him by law in that respect.

Section V

1. The Supreme Court shall consist of a Chief Justice and four Associate Justices. The number of Associate Justices may be increased or decreased by law, but shall never be less than two.

2. The Circuit Courts shall be held in every County of this State, by one or more of the Justices of the Supreme Court, or a Judge appointed for that purpose; and shall in all cases within the County, except in those of a Criminal nature, have common law jurisdiction, concurrent with the Supreme Court; And any final judgment of a Circuit Court may be docketed in the Supreme Court and shall operate as a Judgment obtained in the Supreme Court from the time of such docketing.

3. Final judgments in any Circuit Court may be brought by writ of error into the Supreme Court, or directly into the Court of Errors and Appeals.

Section VI

1. There shall be no more than five Judges of the Inferior Court of Common Pleas in each of the Counties in this State after the terms of the Judges of said Court now in office shall terminate. One Judge for each County shall be appointed every year, and no more, except to fill vacancies which shall be for the unexpired term only.

2. The Commissions for the first appointments of Judges of said Court shall bear date and take effect on the first day of April next; and all subsequent commissions for Judges of said Court shall bear date and take effect on the first day of April in every successive year, except Commissions to fill vacancies which shall bear date and take effect when issued.

Section VII

1. There may be elected under this Constitution, two, and not more than five, Justices of the Peace in each of the townships of the several Counties of this State, and in each of the wards, in Cities that may vote in wards. When a township or ward contains two thousand inhabitants or less, it may have two Justices: when it contains more than two thousand inhabitants, and not more than four thousand, it may have four Justices: and when it contains more than four thousand inhabitants, it may have five Justices: provided, that whenever any township not voting in wards contains more than seven thousand inhabitants, such Township may have an additional Justice for each additional three thousand inhabitants above four thousand.

2. The population of the Townships in the several Counties of the State and of the several wards shall be ascertained by the last preceding census of the United States, until the Legislature shall provide, by law, some other mode of ascertaining it.

Article VII

Appointing Power and Tenure of Office

Section I

Militia Officers

1. The Legislature shall provide by law for enrolling, organizing and arming the militia.

2. Captains, Subalterns, and non-commissioned officers shall be elected by the members of their respective companies.

3. Field officers of regiments, independent battalions, and squadrons shall be elected by the commissioned officers of their respective regiments, battalions or squadrons.

4. Brigadier Generals shall be elected by the Field Officers of their respective brigades.

5. Major Generals, the adjutant-general and quartermaster-general shall be nominated by the Governor, and appointed by him, with the advice and consent of the Senate.

6. The Legislature shall provide, by law, the time and manner of electing militia officers, and of certifying their elections to the

Governor, who shall grant their commissions, and determine their rank, when not determined by law;—And no Commissioned Officer shall be removed from office, but by the Sentence of a Court Martial, pursuant to law.

7. In case the electors of Subalterns, Captains, or Field Officers, shall refuse or neglect to make such elections, the Governor shall have power, to appoint such officers, and to fill all vacancies caused by such refusal or neglect.

8. Brigade Inspectors shall be chosen by the Field Officers, of their respective brigades.

9. The Governor shall appoint all militia officers, whose appointment is not otherwise provided for in this Constitution.

10. Major Generals, Brigadier Generals and commanding officers of regiments, independent battalions, and Squadrons, shall appoint the staff officers of their divisions, Brigades, regiments, independent battalions, and Squadrons respectively.

Section II

Civil Officers

1. Justices of the Supreme Court, Chancellor, Judges of the Court of Errors and Appeals, and judges of the inferior court of common pleas, shall be nominated by the Governor, and appointed by him, with the advice and consent of the Senate. The Justices of the Supreme Court and Chancellor shall hold their offices for the term of seven years; shall at stated times receive for their services a compensation which shall not be diminished during the term of their appointments; and they shall hold no other office under the Government of this State or of the United States.

(2.) Judges of the Courts of Common Pleas shall be appointed by the Senate and General Assembly, in joint meeting. They shall hold their offices for five years;—but when appointed to fill vacancies they shall hold for the unexpired term only.

2. The State Treasurer and comptroller shall be appointed by the Senate and General Assembly in Joint meeting. They shall hold their offices for three years, and until their successors shall be qualified into office.

3. The Attorney General, Prosecutors of the Pleas, Clerk of the Supreme Court, Clerk of the Court of Chancery, Secretary of State, and the Keeper of the State Prison, shall be nominated by the Governor and appointed by him with the advice and consent of the Senate. They shall hold their offices for five years.

4. The law reporter shall be appointed by the Justices of the Supreme Court or a majority of them; And the Chancery reporter shall be appointed by the Chancellor. They shall hold their offices for five years.

5. Clerks and Surrogates of Counties shall be elected by the people of their respective counties, at the annual elections for members of the General Assembly. They shall hold their offices for five years.

6. Sheriffs and Coroners shall be elected by the people of their respective Counties at the elections for members of the General Assembly, and they shall hold their offices for three years, after which, three years must elapse before they can be again capable of serving. Sheriffs shall annually renew their bonds.

7. Justices of the Peace shall be elected by ballot at the annual meetings of the Townships in the several Counties of the State, and of the wards in Cities that may vote in wards, in such manner and under such regulations as may be hereafter provided by law. They shall be Commissioned for the County, and their Commissions shall bear date and take effect on the first day of May next after their election. They shall hold their offices for five years;—but when elected to fill vacancies, they shall hold for the unexpired term only; provided, that the Commission of any Justice of the Peace shall become vacant upon his ceasing to reside in the township in which he was elected. The first election for Justices of the Peace, shall take place at the next annual town-meetings of the townships in the several Counties of the State, and of the wards in Cities, that may vote in wards.

8. All other officers, whose appointments are not otherwise provided for by law, shall be nominated by the Governor and appointed by him with the advice and consent of the Senate; and shall hold their offices for the time prescribed by law.

9. All civil officers elected or appointed, pursuant to the provisions of this Constitution shall be Commissioned by the Governor.

10. The term of office of all officers elected or appointed pursuant to the provisions of this Constitution, except when herein otherwise directed, shall commence on the day of the date of their respective Commissions; but no Commission for any office shall bear date prior to the expiration of the term of the incumbent of said office.

Article VIII

General Provisions

1. The Secretary of State shall be ex officio an auditor of the accounts of the Treasurer, and as such, it shall be his duty to assist the legislature in the annual examination and settlement of said accounts, until otherwise provided by law.

2. The seal of the State shall be kept by the Governor or person administering the Government, and used by him officially, and shall be called the great Seal of the State of New Jersey.

3. All grants and commissions shall be in the name and by the

authority of the State of New Jersey, sealed with the great seal, signed by the Governor or person administering the government, and countersigned by the Secretary of State, and shall run thus: "The State of New Jersey, to ....., Greeting." All writs shall be in the name of the State; And all indictments shall conclude in the following manner, viz.: "against the peace of this State the government and dignity of the same."

4. This Constitution shall take effect and go into operation on the second day of September in the year of our Lord one thousand eight hundred and forty-four.

Article IX

Amendments

Any specific amendment or amendments, to the Constitution may be proposed in the Senate or General Assembly, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months previous to making such choice, in at least one newspaper of each County, if any be published therein; and if in the Legislature, next chosen, as aforesaid, such proposed amendment or amendments, or any of them, shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments, or such of them as may have been agreed to as aforesaid by the two legislatures, to the people, in such manner and at such time, at least four months after the adjournment of the Legislature, as the legislature shall prescribe; And if the people at a special election to be held for that purpose only, shall approve and ratify such amendment or amendments, or any of them by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments so approved and ratified shall become part of the constitution: provided that if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for, or against each amendment separately and distinctly; but no amendment or amendments shall be submitted to the people by the Legislature oftener than once in five years.

Article X

Schedule

That no inconvenience may arise from the change in the Constitution of this State, and in order to carry the same into complete operation, it is hereby declared and ordained, that—

1. The common law and statute laws now in force not repugnant to this Constitution, shall remain in force until they expire by their own limitation, or be altered or repealed by the Legislature; and all writs, actions, causes of action, prosecutions, contracts, claims and rights of individuals and of bodies corporate, and of the State, and all charters of incorporation, shall continue, and all indictments, which shall have been found, or which may hereafter be found, for any crime or offence committed before the adoption of this Constitution, may be proceeded upon as if no change had taken place. The several Courts of law and equity, except as herein otherwise provided, shall continue with the like powers and jurisdiction as if this Constitution had not been adopted.

2. All officers now filling any office or appointment, shall continue in the exercise of the duties thereof, according to their respective Commissions or appointments, unless, by this Constitution it is otherwise directed.

3. The present Governor, Chancellor and Ordinary or Surrogate General, and Treasurer shall continue in office until successors elected or appointed under this Constitution shall be sworn or affirmed into office.

4. In case of death, resignation, or disability of the present Governor, the person who may be Vice President of Council at the time of the adoption of this Constitution shall continue in office and administer the Government until a Governor shall have been elected and sworn or affirmed into office under this Constitution.

5. The present Governor, or in case of his death or inability to act, the Vice President of Council, together, with the present members of the Legislative Council and Secretary of State shall constitute a board of state canvassers, in the manner now provided by law, for the purpose of ascertaining and declaring the result of the next ensuing election for Governor, members of the House of Representatives and electors of President and Vice President.

6. The returns of the votes for Governor, at the said next ensuing election shall be transmitted to the Secretary of State, the votes counted, and the election declared, in the manner now provided by law in the case of the Election of Electors of President and Vice President.

7. The Election of Clerks and Surrogates, in those Counties where the term of office of the present incumbent shall expire previous to the general election of eighteen hundred and forty five, shall be held at the general election next ensuing the adoption of this Constitution; the result of which election shall be ascertained in the manner now provided by law for the election of Sheriffs.

8. The elections for the year eighteen hundred and forty four shall take place as now provided by law.

9. It shall be the duty of the Governor to fill all vacancies in office happening between the adoption of this Constitution and the

first session of the Senate, and not otherwise provided for and the Commissions shall expire at the end of the first session of the Senate or when successors shall be elected or appointed and qualified.

10. The restriction of the pay of members of the Legislature, after forty days from the commencement of the session, shall not be applied to the first legislature convened under this Constitution.

11. Clerks of Counties shall be Clerks of the Inferior Courts of Common Pleas and Quarter Sessions of the several counties, and perform the duties, and be subject to the regulations now required of them by law until otherwise ordained by the Legislature.

12. The Legislature shall pass all laws necessary to carry into effect the provisions of this Constitution.

APPENDIX II

Joint Resolutions

Creating and Reconstituting the Commission on Revision of the New Jersey Constitution

---

STATE OF NEW JERSEY

JOINT RESOLUTION No. 2

Joint Resolution creating a research committee to study the revision of the New Jersey Constitution and prescribing its powers and duties, and making an appropriation therefor.

Whereas, The party platforms of both major political parties have indicated the necessity for constitutional revision; and

Whereas, The Governor and members of the Legislature have advocated certain constitutional changes; and

Whereas, It is in the interest of the citizens of the State that a commission be created for the purpose of inquiring into the subject of constitutional revision and of suggesting to the Governor and the Legislature changes in the Articles of the present Constitution of the State and to report to the Governor and the Legislature recommendations in the form of proposed changes in the Constitution together with the reasons upon which said recommended changes are founded; now therefore

Be it resolved *by the Senate and General Assembly of the State of New Jersey:*

1. There is hereby created a commission the members of which shall be appointed as follows:

Two members to be appointed by the Governor;

Two members to be appointed by the President of the Senate;

Two members to be appointed by the Speaker of the House of Assembly; and one member to be selected by a majority of the appointed members.

All members shall serve without compensation.

2. Within seven days after the effective date of this joint resolution the Governor, the President of the Senate and the Speaker of the House of Assembly shall make their respective appointments under this joint resolution.

3. Within fourteen days after the effective date of this joint resolution the appointed members shall meet and select the member of the commission to be selected by the appointed members and shall elect from its membership a chairman who shall be its presiding and executive officer.

Four members of the commission shall constitute a quorum and the majority of the quorum may act for the commission.

4. The commission shall be charged with the duty of inquiring into the subject of constitutional revision and of suggesting in what respects the Constitution of New Jersey should be changed and make recommendations to provide for the more effective working of present-day representative processes.

5. The commission is authorized to hold hearings, call witnesses and to draft necessary legal and clerical assistance from such State departments as may be required. It shall also have authority to engage and appoint a secretary, not of its own number, and such competent and expert advisors and clerical and stenographic assistants as it may deem necessary to the proper accomplishment of the purpose of this joint resolution; *provided,* that the compensation to be paid such assistant shall at all times be within the limits of the appropriation hereby made.

6. The commission is directed to report on or before February second, one thousand nine hundred and forty-two, to the regular session of the Legislature of one thousand nine hundred and forty-two and to the Governor.

7. For the purpose of carrying into effect this joint resolution there is hereby appropriated the sum of five thousand dollars ($5,000.00) or so much thereof as may be necessary.

8. This joint resolution shall take effect immediately.

Approved November 18, 1941.

STATE OF NEW JERSEY

JOINT RESOLUTION No. 1

JOINT RESOLUTION for the continuation and reconstitution of the commission appointed pursuant to pamphlet laws of one thousand nine hundred and forty-one, Joint Resolution number two, entitled "Joint Resolution creating a research committee to study the revision of the New Jersey Constitution and prescribing its powers and duties and making an appropriation therefor," approved November eighteenth, one thousand nine hundred and forty-one.

WHEREAS, It is in the interests of the citizens of the State that the commission heretofore created for the purpose of inquiring into the subject of constitutional revision and of suggesting to the Governor and the Legislature changes in the Articles of the present Constitution of the State and to report to the Governor and the Legislature recommendations in the form of proposed changes in the Constitution together with the reasons upon which said recommended changes should be founded, shall be continued and reconstituted; now, therefore

BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey:*

1. The commission created, appointed and selected pursuant to the provisions of pamphlet laws of one thousand nine hundred and forty-one, Joint Resolution Number Two, be and the same hereby is continued and reconstituted for the purposes in said joint resolution set forth.

2. The said commission shall be continued and reconstituted with the same members as were appointed and selected under said Joint Resolution Number Two, who shall serve without compensation, and four members of the commission shall constitute a quorum and a majority of the quorum may act for the commission.

3. The commission shall be charged with the duty of inquiring and continuing the inquiry already begun into the subject of constitutional revision and of suggesting in what respects the Constitution of New Jersey should be changed and of making recommendations to provide for the more effective working of present-day representative processes.

4. The commission is authorized to hold hearings, call witnesses and to draft necessary legal and clerical assistance from such State departments as may be required. It shall also have authority to engage and appoint a secretary, not of its own number, and such competent and expert advisors and clerical and stenographic assistants as it may deem necessary to the proper accomplishment of the purpose of this joint resolution; *provided,* that the com-

pensation to be paid such assistants shall at all times be within the limits of the appropriation hereby made.

5. The commission is directed to report on or before June first, one thousand nine hundred and forty-two, to the regular session of the Legislature of one thousand nine hundred and forty-two and to the Governor. (as amended April 1, 1942)

6. For the purpose of carrying into effect this joint resolution there is hereby appropriated the unencumbered balance of the sum of five thousand dollars ($5,000.00) heretofore appropriated to said commission or so much thereof as may be necessary.

7. This joint resolution shall take effect immediately.

Approved January 24, 1942.

APPENDIX III

REPORT
of the
COMMISSION ON REVISION
of the
NEW JERSEY CONSTITUTION
Appointed pursuant to Laws of 1941 Joint Resolution No. 2
Submitted to the Governor, the Legislature and the People of New Jersey, May, 1942
TRENTON, NEW JERSEY

THE COMMISSION ON REVISION OF THE NEW JERSEY CONSTITUTION

ROBERT C. HENDRICKSON, *Chairman*
Senator, Gloucester County
by appointment of the President of the Senate

WALTER J. FREUND
Freeholder and former Assemblyman, Bergen County
by appointment of the Speaker of the House

CRAWFORD JAMIESON
Senator, Mercer County
by appointment of the Governor

JAMES KERNEY, JR.
Editor, Trenton Times Newspapers
by election by the appointed members

JOHN F. SLY
Director, Princeton Surveys
by appointment of the President of the Senate

WALTER D. VAN RIPER
Judge, Court of Common Pleas
by appointment of the Speaker of the House

ARTHUR T. VANDERBILT
County Counsel, Essex County
by appointment of the Governor

CHARLES R. ERDMAN, JR., *Secretary*
Director, State Municipal Aid Administration
Mayor of Princeton
by appointment of the Commission

* * *

STAFF

JOSEPH H. FUHRMAN, *Public Relations*
WILLIAM MILLER, *Research and Drafting*
TRENTON, NEW JERSEY
MAY, 1942

PART I

Statement of Transmittal
with
Highlights of the Proposed Constitution
and
Summary and Explanation

Statement of Transmittal

To the Governor, the Legislature, and the People of New Jersey:

The document submitted in this report for your consideration is not a model constitution. It does not purport to embody the most advanced thinking of political scientists. It sets forth, instead, what your commission believes to be the requirements to secure to New Jersey the benefits of experience in public affairs extending over a century and a half. The commission has sought the best informed State opinion, has examined the constitutions and constitutional experience of other States, and has attempted to avoid the compromises which might impede or destroy the fundamental precepts of government in New Jersey. The result, it believes, is a document which can meet the demands of sound government.

The citizens of this State look to their constitution for the embodiment of principles designed to produce a well-ordered commonwealth. These principles are interpreted to the individual in terms of his liberty, his security, his protection, and in guarantees of unprejudiced administration of all public affairs. He expresses his acceptance of constituted authority by contributing to its support, by rendering his services when called, and by voting effectively. These benefits, in terms of rights and obligations, are the things that a good constitution secures to every one, without favor or privilege.

As an instrument of government, the constitution allocates authority, defines powers and sets up procedures. It does not prescribe details—these are supplied by the laws, orders, rulings, and regulations of the various public agencies operating under its general provisions, including the Governor, the Legislature, the courts, the administrative agencies and local authorities. In the American Federal system, a State constitution is a complementing document to the Constitution of the United States. It operates in a clearly defined sphere—at times supplementing, at times implementing, but most often providing the means of putting into effect the powers reserved to the State.

As the foundation upon which organized social life rests in a body politic, the Constitution must be both a stabilizer and a shock-absorber. The flexibility demanded in the constitution is a requirement of progress. Changes in personal habits, economic

pursuits, social needs, and political horizons are the marks of a progressive people. The constitution must keep pace with these changes, if it is to establish the conditions of order and stability which make progress possible. It becomes, therefore, a reflection of experience of the past, knowledge of the present, and a program for the future.

If the Commission has succeeded in expressing these principles in the proposed revision,

This Constitution Will Not:

1. Disturb the civil rights secured to individuals throughout our constitutional history;
2. Stifle future development by a clutter of untempered devices and untried political fads; nor
3. Contain details, where legislative and executive discretion will produce a more flexible working pattern.

This Constitution Will:

1. Guarantee basic rights and obligations, fundamental structures and procedures;
2. Confer power commensurate with the responsibility placed upon public officials; and
3. Provide for public scrutiny and control of the conduct of public affairs.

New Jersey's particular needs controlled the construction of the revised constitution. Where existing requirements were consonant with need, they were retained. Where provisions had become obsolete through practice, they were deleted. And where developments needed constitutional recognition to give them a formalized status, they were added. Those provisions which confused the legislative process were clarified and adjusted. Those which defeated real executive control and supervision were abandoned and in their place was set forth the basis of a strong and efficient administration. Those perpetuating an archaic, inflexible, and cumbersome judicial organization were superseded by provisions for a responsible, flexible, and unified court system. In these ways, the groundwork has been laid for an efficient, simplified, and competent State government. The constitutional machinery, however, can be no better than those who operate it. The transformation from a program—the constitution—to a government functioning with adequacy and integrity, and in the public interest, can only be carried out by an intelligent, conscientious, and observant electorate.

The commission sees its responsibility as twofold: (1) to the Governor and Legislature from whom it derived its immediate authority, and (2) to the people of New Jersey in whom reside

the sovereign power in State affairs and the political right of self-government. The recommendations contained in this report are thus respectfully submitted to the Governor, to the Legislature and to the people of the State of New Jersey.

THE COMMISSION ON REVISION OF THE NEW JERSEY CONSTITUTION

THE COMMISSION UNANIMOUSLY RECOMMENDS

A REVISED CONSTITUTION FOR THE STATE OF NEW JERSEY, THE TEXT OF WHICH IS SET FORTH IN PART II OF THIS REPORT;

That through suitable enabling legislation, the Legislature at the primary election in September, next, shall request authority from the people to submit a revised constitution at the general election of November, 1942;

That upon a favorable vote of the people on this question at the primary election a revised constitution shall be incorporated in a legislative bill and be enacted as a law;

That this law shall set in motion the machinery for submission of the constitution to the people at the general election in November, 1942;

That the law also provide for such distribution and publication of the revised constitution as the Legislature may deem appropriate;

That submission of the revised constitution shall be in such form that the people will vote either for or against the document as a whole.

The commission is of the opinion that the foregoing procedure is the most efficient, economical and speedy method for ascertaining the will of the sovereign people to adopt a new constitution. It also conforms to the best accepted American constitutional theory and tradition. It is impractical to utilize the amending method provided by Article IX of the present constitution. The great number of interdependent changes which under this article would have to be submitted to the people separately should not be torn apart by piece-meal acceptance if we are to have a workable constitution. In addition, under Article IX it would be necessary to submit separate amendments in a special election at an estimated cost to the State of $700,000. Furthermore, at no special election in the history of the State have a majority of the voters ever participated, and it is inimicable to the democratic process that a minority of the people should pass upon comprehensive revision of the fundamental law. In the unanimous opinion of the commission, the only feasible alternative to the method which it recommends is a constitutional convention.

• • • • • •

HIGHLIGHTS OF THE PROPOSED CONSTITUTION:

THE LEGISLATURE:

Membership and Organization: No changes are made in the basis of representation and organization of the legislative branch of the government. The terms of office and salaries of legislators are increased, and sessions are limited to every other year for a ninety-day period. A new feature—a legislative council—is added to guide, plan and co-ordinate the legislative program. Eligibility of legislators for appointive State offices is restricted, the confirmation of gubernatorial nominations is expedited and the activities of lobbyists curtailed. All appointments to office with the exception of the State Treasurer and the State Comptroller are vested in the executive department subject to the power of the Senate with respect to confirmation.

Powers and Duties: Many technical refinements of existing legislative limitations are made, and the power of investigation is improved. Fiscal procedures are regulated by the abolition of dedicated funds, and of supplementary appropriations except upon compliance with rigid conditions. A single budget appropriation bill for the support of State government is made mandatory, and limitations upon the borrowing power are modernized without removing the necessity for a referendum. Finally, restrictions upon mandatory local expenditures and special legislation are made more stringent.

THE GOVERNOR:

Executive Office: The Governor's term of office is extended to four years, and eligibility restricted to one term. The veto power is redefined, a two-thirds vote being required to override vetoes of spending items, while in other cases the present practice is continued. The Governor is given the power of pardoning and commuting sentence, after having received the recommendation of a Parole Commission. The Parole Commission, which is set up in the constitution, is given exclusive power over paroles. The Governor's control over the militia is redefined and these sections modernized.

Administration: Nine major departments are set forth, and the Governor is required to allocate all existing agencies within these departments. Functions, powers and duties may be reallocated by the Governor among and within the nine departments. A single executive will head each administrative department, unless the Legislature provides otherwise. All heads of departments are appointed by the Governor to serve at his pleasure, except the Treasurer and Comptroller who are elected in joint session of the Legislature, as heretofore, so that legislative representatives may audit and check expenditures authorized by that body. A merit system in the civil service is required, and pension rights in funds maintained by the State are given contractual status.

THE COURTS:

Organization: The present structure of State courts and the county courts, are superseded by an entirely new system. A court of seven justices, with appellate jurisdiction only, becomes the highest tribunal in the State, called the Supreme Court. A single State-wide court with law and equity sections, for the trial of all civil and criminal cases, called the Superior Court, replaces nine different existing courts. Appellate divisions of the Superior Court, each consisting of three justices, are established to hear appeals from trial courts.

Administration: The Chief Justice of the Supreme Court is made the administrative head of all courts in the State. He will appoint an executive director to assist him in handling the business affairs of the courts. The system is designed to afford efficiency in administration and prompt trials before specialized judges, to expedite appeals and to permit the assignment of judges to each county as they are needed.*

AMENDMENTS:

The present amending process is changed in only two respects: (1) the requirement of passage by two successive Legislatures is replaced by one Legislature and a two-thirds vote; and (2) submission of amendments at a special election, now mandatory, is changed to submission at a general election.

A SUMMARY AND EXPLANATION
of
WHAT IS NEW IN THE REVISED CONSTITUTION
(*Arranged in the same order as the Revised Constitution*)

The questions facing the Constitutional Revision Commission were those which have occurred to most Jerseymen during the prolonged discussions of constitutional change in New Jersey. What is the purpose of revision? What should be the legislative, executive and judicial functions of state government? Any worthwhile constitutional revision depends on the answer to these questions. The revised constitution answers them as follows:

Article I. Rights and Privileges.
II. State Government.
III. Legislature.
IV. Executive.
V. Judiciary.
VI. Public Officers.
VII. Finance.
VIII. Elections.
IX. Amendments.
X. General Provisions.
XI. Schedule.

* A report on a survey of the work of the courts, prepared by Dr. Ralph Temple under direction of the commission, is in course of completion and will be available shortly.

ARTICLE I
RIGHTS AND PRIVILEGES

Summary:

A new paragraph guarantees every citizen or taxpayer the right to restrain any violation of the constitution. There is no other substantial change.

Explanation:

No change has been made in the time-tested provisions of the bill of rights, with the exception of the addition of a provision guaranteeing every citizen and taxpayer the right to restrain any violation of the constitution. Any citizen who believes an act of the Legislature authorizing an expenditure of public money violates the constitution cannot now prevent the expenditure, unless he can show that the injury to him is different in kind or degree from what every other citizen suffers. The new provision wipes out this legal impediment and brings the State government under effective public scrutiny and control.

ARTICLE II
STATE GOVERNMENT

Summary:

1. All powers of government, except as expressly limited by the constitution, shall be embraced within the legislative power.

2. The procedure of administrative agencies shall, where private rights are concerned, conform to published regulations which, so far as practicable, shall be uniform.

Explanation:

The Legislature is definitely freed of any implication that, like the Congress, it cannot serve the people unless the power it wishes to exercise is spelled out in the constitution. Our present theory of American state government, that state constitutions, unlike the Federal document, do not grant but merely limit sovereign powers, is given formal expression by the new clause.

In order to serve the people effectively administrative agencies which combine all three types of powers have become a permanent part of the machinery of government. Viewed in the light of the development of administrative agencies; the threefold division of powers has been saved only through intelligent judicial interpretation. In recognition of this situation, the new clause sets up fundamental standards of responsibility that the people demand of such agencies. The new clause guarantees, first, that the public business handled by administrative agencies will be subject to uniform published procedures barring secret and irregular transactions, and secondly, that all citizens shall receive fair and uniform treatment from such agencies.

Article III

Legislature

Summary:

1. The Legislature shall meet in a ninety-day session once every other year.

2. Special sessions shall meet on call for a single, specific purpose and shall last no longer than fifteen days.

3. The terms of Senators shall be four years and Assemblymen two years, with elections in odd-numbered years, in order to remove the influence of presidential and congressional elections.

4. The salaries of members of the Legislature shall be $1,500 a year.

5. No member of the Legislature shall be eligible for appointment to a State office during the term for which he was elected and for one year thereafter.

6. The Legislature cannot appoint or elect any executive, administrative or judicial officer except the State Treasurer and State Comptroller.

7. The Senate shall act upon all nominations within thirty days and vote in public on all nominations.

8. Lobbying shall be prohibited in legislative chambers, and shall be regulated through a system of compulsory registration.

9. A seven-man legislative council shall be established consisting of the Governor (or, in his absence, the Attorney-General), the President of the Senate, the Speaker of the House, the majority and minority leaders of the Senate, and the majority and minority leaders of the House.

The duties of the legislative council shall be to carry on legislative work between sessions, make studies, prepare legislative programs and act as a contact between the legislative and executive branches of government. The six legislative members of the legislative council shall receive compensation of $1,500 a year for their services on the council.

10. The right of labor to organize and bargain collectively shall not be impaired.

11. The zoning and condemnation clauses are changed to safeguard public property and permit highway beautification and the building of parkways.

12. Mandatory expenditures are curbed by strengthening the prohibitions against special legislation.

Explanation:

Comparisons with other states discloses that New Jersey has

long and complicated legislative sessions, underpaid legislators, rare meetings of legislative committees, and little discussion of legislative problems. One of the basic purposes which the revision is designed to accomplish is to stabilize the legislative process.

The present system, based upon a practice of unlimited sessions of the Legislature, meeting on but one day a week, inadequate compensation for the people's representatives and free rein for all kinds of lobbying, is encouraged by the present constitutional framework. The system results in the breakdown of the best features of the committee system and the necessity for disposing of major legislation through the hazardous proceedings of party caucuses. Legislative exercise of the power of appointment to public office—an essentially executive power—has also contributed to reduce the effectiveness of the Legislature as a law-making body.

The revision of the legislative article attacks all of these weaknesses at their source. While there may be disadvantages to the biennial session in financial planning, they are far outweighed by advantages in legislative effectiveness under New Jersey's special conditions. The constitutions of all States except Rhode Island, New York, South Carolina and New Jersey call for sessions every other year. In South Carolina an amendment to effect biennial sessions is pending. This plan, including the ninety-day limit on the duration of the session, will concentrate legislative attention on important proposals, compel a short businesslike and continous session, and curtail the mass of unnecessary laws. It will also encourage more men of ability, whose time is limited, to seek seats in the Legislature.

With a Legislature meeting every two years it would, of course, be absurd to elect Assemblymen every year or Senators every three years as at present. Their terms are for this reason increased to two and four years, respectively, which are the usual terms of office for legislators in other States. New Jersey is now the only State in the country that elects Assemblymen for a one-year term.

The compensation of legislators should be more commensurate with time and service rendered. Salaries paid in neighboring states are informative; for example, Massachusetts, $2,000 a session; New York, $2,500 a year; Ohio, $2,000 a year; and Pennsylvania, $3,000 a session. These figures make the recommended increases for this state most conservative.

A major cause of legislative confusion has been the lack of opportunity for full and careful consideration of legislative matters. Each member of the Legislature is expected to be familiar with criminal laws, state departmental needs, the tax structure and a host of other intricate and involved questions. Meanwhile, most committees in the Legislature meet neither long nor often. To aid in consideration of legislative affairs, many states have set up legislative councils which devote all their time to the study of proposed legislation, with a full-time research staff assisting.

The council as established in the proposed constitution promises guidance, co-ordination and planning for the legislative process. Between biennial sessions, the council would investigate important legislative problems which require technical competence. During the session, its program would form a guide for the most efficient use of legislative time. After each session, the council will follow up important new legislation to check upon its practical results in operation.

Since the Legislature has all powers which are not taken from it by express constitutional provision, true innovations, insofar as the recommendations of the commission are concerned, would consist only of further limitations upon legislative power or the deletion of existing restrictions. The commission, after careful study of the subject of mandatory local expenditures, concluded that this problem cannot practically be solved through constitutional provision without confusing the present system of state and local relationships. The commission has, however, tightened up that part of existing restrictions on special legislation which relates to salaries and other rights of public employees in a manner which will eventually compel uniform treatment of all public employees whose responsibilities and situations are similar.

The inalienable right of the working man and woman to organize and bargain collectively is recognized.

Other changes, such as those relating to protection of public property and beautification of highways and the building of parkways, are included so as to remove any possible implication from present provisions in the constitution that such power does not already exist.

Article IV

Executive

Summary:

1. The Governor shall serve for four years, starting the fifteenth of December after his election.

2. The Governor shall be eligible to hold office for only one term.

3. The heads of all administrative departments, except the Treasurer and the Comptroller, shall be appointed by the Governor with the advice and consent of the Senate.

4. Unless the Senate confirms or rejects an appointment by the Governor within thirty days, the appointment shall be deemed confirmed.

5. The heads of all administrative departments shall serve at the pleasure of the Governor.

6. All administrative and executive offices, boards, bureaus, commissions and departments of the State government shall be placed by the Governor within nine administrative departments as follows: Agriculture, Commerce, Education and Civil Service, Labor, Law, Public Works, Social Welfare, State, and Taxation and Finance.

7. The functions, powers and duties of executive and administrative offices and agencies may be reallocated by the Governor within and among the nine civil departments, but the Legislature may veto any executive order of allocation within thirty days after the order is transmitted to both houses.

8. The Governor shall have the right to remove all State officials, except members of the Legislature, officers elected or appointed by the Legislature and judicial officers, for misfeasance or malfeasance in office after a public hearing.

9. Three days shall elapse between the veto of any legislative act and reconsideration by either house of the Legislature. The Governor's veto of any item in an appropriation bill shall require a two-thirds vote of each house of the Legislature for passage over the veto.

10. The power to pardon and commute sentences, after conviction, is vested in the Governor. A commission on parole, appointed by the Governor, shall have State-wide jurisdiction to grant paroles and supervise parolees. The commission shall also make recommendations to the Governor upon applications for executive clemency.

11. The militia remains under the Governor with an Adjutant-General to serve at his pleasure. All officers shall be commissioned by the Governor after selection upon a merit basis according to Federal standards.

Explanation:

The functions of modern executives in all forms of business organization contrast sharply with the office of Governor of New Jersey, who can be an executive in name only. Hampered by whimsical laws and inadequate constitutional authority, the Governor of New Jersey suffers as an executive from the multiplicity of offices, commissions, boards, bureaus, and other agencies, and from lack of authority to control his most important departments. Our greatest need, to which the revision is directed, is to strengthen the executive authority.

This has been achieved by redefining the role of the executive as head of the administrative organization, by making possible the simplification of the subordinate administrative structure and by clarifying the relationship of the Governor to the Legislature.

As chief executive officer, the Governor is responsible for the efficient, orderly, and co-ordinated conduct of governmental business. The extent of his accountability depends upon his power to obtain from all of his subordinates an adequate performance of

their duties. This in turn means that these subordinates must be rendered accountable to him. Under the existing constitution, the Attorney-General, Secretary of State and keeper of the State prison are given five-year terms which place them outside the line of executive control. In addition to these officials, numerous state officers, boards and commissions have been established without any concerted plan of synchronizing their terms of office, their appointment to office, or their functions within a properly co-ordinated and responsible executive department. The result is that the office of Governor has been deprived of real managerial functions and executive responsibility has been scattered among executive agencies created and filled by legislative authority.

The first remedy for this situation is supplied by providing for the nomination and appointment of the heads of all administrative departments by the Governor with the advice and consent of the Senate. The hand of the Governor is strengthened in this respect by a provision requiring senatorial action within thirty days on such nominations as the Governor may make. Only the State Treasurer and the Comptroller remain legislative offices, in the sense of appointment and responsibility, in order to give the Legislature a check upon the expenditure of appropriations which it has authorized. By fixing the term of all such department heads to coincide with that of the Governor, and by authorizing their removal at his pleasure, the Governor is appropriately granted the power essential to secure smooth-running state government..

The second remedy is provided in administrative organization. Provision is made for the allocation of all executive and administrative offices together with their powers, duties and functions, within nine major departments. The responsibility to achieve this allocation by executive order is placed upon the Governor. Any reallocation of functions, however, is made subject to veto by the Legislature within thirty days. Such a reorganization will bring into a compact administrative organization more than ninety agencies at present performing administrative functions. No constitutional allocation is attempted because of the special treatment demanded by the variety in type, size, term, and duties of these agencies. By combining administrative activities into nine departments, there will be created a responsible and accountable corps of administrative officers to function as a gubernatorial cabinet. In order to allow for situations where a plural executive has proved advantageous, the Legislature is authorized to make an exception to the general requirement of a single executive at the head of each administrative department. The Governor is thus provided with the means of securing control over administrative activity. His program can be planned in consultation with his chief administrative assistants, and his policies can be carried out under his supervision. Within the field of administration, duplication of effort can thus be eliminated, conflicting spheres of action can be avoided and purposes co-ordinated.

The principle of strengthening the executive does not occasion a corresponding weakening of the Legislature. When the Governor is made a powerful and responsible head in his own sphere of administration, the Legislature can be relieved of executive functions and its attention confined solely to legislation. The relation of the Governor to the Legislature is thus defined more clearly by retaining each branch in its own sphere and preserving the traditional checks and balances. Only in connection with budgetary matters is this relationship altered in the proposed revision. The item veto over appropriation bills, now possessed by the Governor as the responsible budgetary officer, is strengthened by requiring a two-thirds vote in the Legislature before it may be overridden.

It is not in the best interest of the state to give the Governor power to dominate the Legislature through any other increase in the veto power. For the same reason, the opportunity for political control over the Legislature is minimized by the provision that hereafter no Governor may serve more than one term. This limitation on the Governor's term eliminates the possibility of a Governor perpetuating himself in office through the creation of a strong political machine. On the other hand, the Governor's term of office is lengthened to four years in order to provide him with ample opportunity to carry out his program.

Article V

Judicial

Summary:

1. The highest court in New Jersey shall be a Supreme Court, to be the appellate court of last resort and to replace the present Court of Errors and Appeals. The Supreme Court shall also make rules as to pleading, practice and evidence in all the courts.

2. The Supreme Court shall consist of a Chief Justice and six associate justices, to be appointed by the Governor with the advice and consent of the Senate.

3. There shall be a State-wide trial court of general jurisdiction in law and equity, to be known as the Superior Court. This court shall replace the present Supreme Court, Court of Chancery, Prerogative Court, Circuit Courts, orphans' courts, common pleas courts, courts of oyer and terminer, courts of special sessions and courts of quarter sessions.

4. The Superior Court shall have a total membership of not less than twenty-five justices, and shall hold sessions in each county.

5. Appeals shall be heard by appellate divisions of the

Superior Court. Further appeals to the Supreme Court shall be taken in certain specified classes of cases.

6. Every controversy shall be completely determined by any justice before whom it is heard, and upon appeal the appellate court shall exercise all jurisdiction necessary to do full justice.

7. The Chief Justice shall be the responsible supervisory head of all the courts, and shall enforce rules of administration to be adopted by the Supreme Court.

8. The Chief Justice shall appoint an executive director of the courts who shall handle the business affairs of the courts.

9. The Chief Justice shall annually prepare a public report on the work of the courts.

10. The justices of the Supreme Court shall in the first instance be appointed by the Governor with the advice and consent of the Senate from among the Chief Justice, the Chancellor, the justices of the Supreme Court, judges of the Court of Errors and Appeals who are counsellors-at-law of at least ten years' standing, Circuit Court judges and Vice-Chancellors. All of the foregoing members of the judiciary who are not appointed to the Supreme Court shall be justices of the Superior Court, each for the balance of his unexpired term. No member of the judiciary shall receive any increase or decrease in his salary by virtue of his transfer to the Superior Court.

11. All justices of the Superior Court shall be appointed for a term of seven years and, if reappointed, shall have tenure during good behavior.

12. All justices of the Supreme Court shall be chosen from among the justices of the Superior Court and shall have tenure during good behavior.

13. All members of the judiciary shall retire upon reaching the age of seventy years.

Explanation:

New Jersey has the most complicated scheme of courts existing in any English speaking state. These courts were modeled after the chief English courts of the period before the American Revolution. They were continued here first under the Constitution of 1776 and then under the Constitution of 1844. Indeed, the jurisdiction of these courts can only be ascertained even today by an historical inquiry into the jurisdiction before the Revolution of their predecessor courts in England. In England three-quarters of a century ago, and in nearly every other American State as well, the court structure was simplified into a simple system consisting generally of (1) a Supreme Court with appellate jurisdiction only, (2) a trial court of general jurisdiction with appellate divisions, and (3) lower courts of limited jurisdiction created by the Legislature with local or special jurisdiction. Of all the common law jurisdictions New Jersey alone has lagged, due to the difficulties of amendment under the present constitution, in simplifying its judicial system.

Due also to the same cause, New Jersey is the only common law State except Delaware in which the highest judges have a multiplicity of duties in different courts. Thus, the Chancellor is not only the Court of Chancery, and the Ordinary or Surrogate General, but he also is a member of and part of the time the presiding judge in the Court of Errors and Appeals, as well as a member of the Court of Pardons, as it is popularly called. The nine Supreme Court Justices are not only members of the Court of Errors and Appeals, but they also sit in the appellate terms of the Supreme Court three terms a year, and in addition thereto they have responsibilities of presiding justices in the courts of the twenty-one counties. The special judges of the Court of Errors and Appeals, popularly called "lay judges," are not only judges of that court but members of the Court of Pardons, and in addition, they are permitted to practice law or engage in private business. That such multiplicity of function is unbusinesslike and results not only in diminution of judicial efficiency but delay in the disposition of the business of the courts is too obvious to require argument. Not only is a simplification of the judicial system essential; a simplification of the functions of each judge is needed.

The courts of New Jersey also suffer through the lack of a single responsible head. Thus, while the Chancellor is designated as the president judge of the Court of Errors and Appeals, because he is the Court of Chancery he cannot sit on appeals from his court. In such appeals, which comprise a substantial part of the work of that court, the court is presided over by the Chief Justice. Again, while the Chancellor has limited rights of supervision over the Vice-Chancellors and his Advisory Masters, he has no jurisdiction whatsoever over the numerous judges of the law courts. Neither has the Chief Justice, or even the entire Supreme Court for that matter, any substantial power of direction as to the work of the judges of the law courts. What is needed, therefore, to effect a businesslike administration of the courts is a single responsible executive head with competent administrative assistance. In this field the Federal courts with a Director of the Administrative Office of the United States Courts have set an example which the several States would do well to emulate.

Another matter in which the courts of New Jersey have lagged has been in the tradition of separate courts of law and equity, resulting frequently in resorting to two trial courts to dispose

of a single controversy. Law and equity have long since been merged in every State except New Jersey and Delaware. In the United States courts under the Federal rules of civil procedure legal and equitable controversies are disposed of in a single case. A merger of law and equity in this State would tend to bring our practice in line with that of the Federal courts and other American jurisdictions.

A citizen when obliged to litigate is entitled to have his right to a speedy disposition of his case guaranteed by the constitution. The present constitution sets up no standards as to what constitutes a reasonable time within which to try a case or dispose of an appeal. There is no provision under the present constitution making it easy to send the judges where they are most necessary to relieve any congestion in litigation. Nor is there any provision for setting up temporarily appellate and trial courts when the work of either system of courts falls in arrears. Without the power in the Chief Justice to assign judges to areas where litigation is congested, and without any provision for setting up temporary special courts to meet emergencies, a citizen's right to a speedy disposition of his case becomes recognized only in the breach.

The chief requirement of any judicial system is honest, independent, capable judges. The existence of such a bench depends in the first instance upon the appointing and confirming powers and more indirectly upon an alert and courageous bar and enlightened public opinion. Constitutional provisions with respect to the appointment and terms of judges may either help or hinder in the attainment of these paramount objectives. The elimination of short terms with the consequent fear of failure of reappointment would make judges more independent. The requirement of previous judicial experience for appointment to the high court will insure not only great care in the selection of trial judges, but will also guarantee the recognition of meritorious service on the bench.

The proposed constitution seeks to overcome these defects with reference to the judicial system by fundamental changes which have stood the test of time in other jurisdictions:

For a most complicated scheme of courts there is substituted (1) a Supreme Court of seven justices selected from among the judges of the Superior Court and appointed during good behavior with appellate jurisdiction only in capital cases and in cases involving the constitutionality of statutes, ordinances or administrative rulings, and cases that may be certified by an appellate division of the Superior Court to it, or certified by it from an appellate division, (2) a Superior Court of general trial jurisdiction with judges appointed first for a term of seven years and if reappointed with tenure during good behavior, this court being divided into

a law section with civil, criminal and matrimonial jurisdiction, and an equity and probate section exercising all other jurisdictions, each section having an appellate division of three justices to which an appeal from any decision may be taken as of right, and (3) lower courts of limited jurisdiction such as the district courts and the recorder's courts, which continue to be within the control of the Legislature but which may be integrated with the Superior Court by appropriate legislation.

The Chief Justice is given the power to assign the justices of the Superior Court annually to the end that each judge may be delegated to the type of work for which he is best fitted by temperament and training. In this manner all of the advantages of judges with specialized training are retained without the disadvantages of a cumbersome scheme of courts. Each judge will function in but one court at one time.

The Supreme Court is given complete power (and responsibility) with respect to making rules as to administration, pleading, practice and evidence in all of the courts of the State.

The Chief Justice is made the administrative head of all of the courts and empowered to supervise their work. He is authorized to appoint an executive director of the courts to serve at his pleasure. This executive director shall assist the Chief Justice in all matters of the administration and personnel of the courts, publishing annually a statistical record of judicial services prescribing reports and audits for all the courts.

If the Supreme Court fails to hear any case within two months after an appeal is perfected, or fails to decide any case within two months after it has been argued or submitted, the Chief Justice is required to certify that fact to the Governor and the Governor may appoint a special term of the Supreme Court from among the justices of the Superior Court to act until the congestion of cases has been overcome. Under the same conditions the Chief Justice may request the Governor to appoint a special term of the Superior Court for temporary service not to exceed one year.

On December 1st of each year the Chief Justice shall file with the Governor and Legislature a report of the work of the courts for the preceding court year. This public document will be the accounting of the courts to the people of the State.

No effort has been spared to simplify the judicial system, to avoid conflicting judicial duties, to provide a responsible head, to insure the selection of experienced and independent judges, and to provide for speedy trials and prompt appeals.

Article VI

Public Officers

Summary:

1. The merit system of appointment and promotion in

civil service, with uniform salaries for similar work, shall be compulsory.

2. Benefits payable to employees under State pension and retirement funds shall be a contractual obligation on the part of the State.

3. In any official investigation, every public officer or employee must answer all questions relating to his conduct in office. If he refuses to answer, or to waive immunity from prosecution with respect to any matter upon which he may testify, he shall immediately be removed from office.

4. Sheriffs may hereafter succeed themselves in office.

Explanation:

In this article are collected all of the provisions relating generally to public officers and employees, as distinguished from those provisions which are peculiar to, and may be found within, the legislative, executive or judicial articles.

The new provision which gives constitutional status to the merit system in public service will have threefold effect: first, it will complement the executive article in that the Governor's extensive powers are tempered by restricting appointments of the great mass of public employees to a merit basis; secondly, it will eliminate an existing cause of great dissatisfaction amongst employees in the State service by requiring a complete job analysis and classification and the establishment of uniform pay for similar work, regardless of department; thirdly, it will encourage the Legislature to bring more county and municipal employees into the State Civil Service system wherever that is practical. The latter effect has, at least, been observed in the State of New York.

The rights of public employees are also stabilized by the section giving contractual status to benefits in State pension funds. The State has always recognized its moral obligation in this respect and constitutional status merely eliminates uncertainty from the situation. The freedom of the State government, on the other hand, to manage its financial problems as need arises is in no way affected. For the sake of prudence, of course, the State pension funds should be continued on a sound actuarial basis.

Many municipal pension funds are not now on such a basis and they never can achieve it at a reasonable cost because they are too small. Pension funds, like insurance, really spread the risk—in this case, of economic life expiring before natural life—among all the participants in the fund. It follows that the greater the number of sound risks included in a fund, the broader is its actuarial basis. For this reason municipalities and counties are permitted by law to join the State Employees' Retirement System on an actuarial basis. Thus far only Bergen and Ocean counties, the boroughs of Butler, Mantoloking, North Arlington and Princeton and Teaneck township have availed themselves of this valuable privilege. The new assurance that State funds confer benefits that can never be impaired whereas local funds must face the possibility of being unable to meet promised benefits, will tend to accelerate participation in the State plan. As this result is achieved, realization of the public desire for sound pension systems at reasonable cost will finally have been effected.

Strengthening of the legislative power of investigation, on the other hand, will directly result in improved accountability of public officers and employees for the faithful performance of their trust. The new provision on this subject requires any public officer who may be called upon to testify with respect to his official duties to answer all legitimate questions and either to waive his privilege against self-incrimination or lose his privilege of continung in the public service.

Since the reason for originally prohibiting sheriffs from succeeding themselves—that is, their former extensive powers—has long since disappeared, this restriction is removed from the constitution.

Article VII

Finance

Summary:

1. All dedicated funds shall be abolished.

2. All appropriations for support of the State government shall be made in a single budget appropriation bill.

3. No supplementary appropriations may be made unless restricted to a single object or purpose and approved by a two-thirds vote of the membership of each house of the Legislature.

4. State borrowing shall be further limited to serial bonds which call for an annual reduction in the principal amount of the loan.

5. The State shall be free to repay its debts out of any revenue it may have available but whenever debt charges fall due the State Treasurer must set apart a sufficient sum from the first revenue he receives.

Explanation:

So long as the State's left hand is not permitted to know what its right hand is doing in a fiscal sense, the State's financial management is obviously under a severe handicap. The provision abolishing so-called dedicated funds will remedy this situation by preventing separate little treasuries for favored projects from being established, regardless of the demands of pressure groups.

The matter of dedicated funds is related primarily to the revenue side of State government, while appropriations, also reg-

ulated by a new provision, deal with public expenditures. In order to compel careful planning of this vital matter, the Legislature is required to gather together all appropriations in a single budget appropriation bill so that the real cost of all State government will be plainly apparent. There are, of course, emergencies and truly unforeseeable contingencies that may arise during the fiscal year. These may be dealt with through supplemental appropriations but only upon a two-thirds vote of each house upon a bill which directs its attention to an item for some single object or purpose. The latter provision will eliminate log-rolling to raise the necessary vote. Finally, the requirement that funds must be available will give pause to supplementary appropriations made without thought of the source of payment. These provisions should lead to greater economy and efficiency.

The history of State government has proved the wisdom of rigid restrictions upon State borrowing. For this reason the requirement of a referendum upon all indebtedness exceeding $100,000 is carefully retained. Serial bonds which call for amortization of the debt each year are made mandatory because they eliminate the need for State sinking funds. The former requirement that the law which authorizes the bonds must pledge the source of payment is deleted because it imposes an unfair rigidity to the State's fiscal policies for as much as thirty-five years. In order to protect the State's credit position, however, a substitute for the old provision requires the State Treasurer to pay the annual public debt charges out of the first moneys he receives.

Article VIII

Elections and Suffrage

Summary:

1. Elective State officers shall be chosen in odd-numbered years.

2. All questions upon which a vote of the people may be taken shall be submitted at a general election, or in the case of local propositions, at a regular county or municipal election.

3. All qualified voters who are properly registered shall be entitled to vote for offices that are elective by the people and upon all questions which may be submitted to the people. Men in the armed services shall be provided with means for casting absentee ballots.

Explanation:

The provisions of the revised Constitution which relate to elections are restricted to the most fundamental standards. Many of the changes are clarifications of this kind. The requirement which, in effect, keeps questions from being submitted at a special

election is a departure from past practice. It was once thought that the voters' attention could be concentrated on a particular question by holding a special election. Experience has proved, however, that the added and substantial expense of special elections is unwarranted because all such elections have been but lightly attended by voters. The new requirement of submission at general elections will assure that the true sense of the greatest possible number of qualified voters will be taken on public questions.

Article IX

Amendments

Summary:

1. Proposed amendments shall, if approved by a vote of two-thirds of the members of each house of the Legislature, be submitted to the people at the next general election to be held not less than three months after such approval by the Legislature.

2. The five-year limitation on resubmission of amendments, contained in the present constitution, is retained, but it is clarified so as definitely to apply to the same amendment or one dealing with the same subject matter, which may not be submitted more than once in five years.

Explanation:

The new amending provision requires passage of proposed amendments by one Legislature instead of two, as in the past, but a two-thirds vote is required instead of the simple majority now used. The difficulty of sustaining interest in a proposal through two Legislatures has caused many needed amendments to fail in the past. The old practice apparently was based upon the notion that the people could commit their representatives on pending constitutional amendments at the time that the second Legislature was being elected. This is completely contradictory to modern theories of a constituent assembly, as well as obviously impractical in light of the election of only one-third of the Senators each year and of the complex issues upon which legislators would have to commit themselves without reference to any given piece of legislation. Since the people are the ultimate sanction for any change in the fundamental law, the procedure which precedes their action should, in the democratic process, be made as simple as possible. In order to guard against thoughtless submission of an excessive number of amendments, however, the two-thirds vote will be advantageous.

Elimination of the existing requirement of a special election on amendments will save the people $700,000 each time amendments are submitted as well as assure consideration by the largest possible proportion of the voters at a general election. Experience

in this State has shown that a majority of the people have never participated in a special election, however vital the issue may have been. The change to general elections is made in recognition of this historical fact.

Article X—Article XI

General Provisions—Schedule

Summary:

1. The new constitution is made to take effect on January 1, 1943, and the Legislature is required to pass all laws that may be necessary to place it in full operation.

2. Transition of offices and agencies, personnel and laws from the old constitution to the new is effected.

Explanation:

The provisions of Article X are of a technical nature and are required by good legal practice. Article XI is of a temporary nature and relates to transitional matters, such as the transfer of officers and employees, the displacement of existing courts by the new court system and special effective dates for various provisions involving preparatory steps.

PART II

Text of the Proposed Constitution
with
Source Table
and
Distribution Table

Constitution of the State of New Jersey

Preamble.—We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavours to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this constitution.

Article I

Rights and Privileges

1. All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

3. No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretence whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform.

4. There shall be no establishment of one religious sect in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right merely on account of his religious principles.

5. Every person may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

6. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.

7. The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil suits, when the matter in dispute does not exceed fifty dollars, by a jury of six persons.

8. In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel in his defense.

9. No person shall be held to answer for a capital or other infamous crime, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

10. No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or presumption great.

11. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it.

12. The military shall be in strict subordination to the civil power.

13. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war except in a manner prescribed by law.

14. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

15. Excessive bail shall not be required, excessive fines shall not be imposed, and cruel and unusual punishments shall not be inflicted.

16. Private property shall not be taken for public use without just compensation. Possession of land may be taken by any agency, instrumentality or political subdivision of the State, but not by any individual or private corporation, pending and prior to the determination and payment of such compensation.

17. No person shall be imprisoned for debt in any action, or on any judgment founded upon contract, unless in cases of fraud; nor shall any person be imprisoned for a militia fine in time of peace.

18. The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances.

19. Any citizen or taxpayer may restrain the violation of any provision of this constitution by a suit with leave of the Superior Court upon notice to the Attorney-General.

20. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

Article II

State Government

1. The functions, powers and responsibilities of the government of this State shall be divided among three distinct branches —the Legislative, Executive and Judicial. No person belonging to or constituting one of these branches shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this constitution.

2. All powers of government which are not by this constitution vested in the Executive or Judicial branches, nor in conflict with rights reserved by the people, nor specifically proscribed to the Legislative branch, shall be embraced within the legislative power and may be exercised in such manner as may be provided by law.

3. The exercise of any powers or discharge of any responsibilities of a legislative or executive character by administrative agencies shall be limited to the effectuation of declared general standards or principles set forth by law and, to the extent that private rights are affected or privileges conferred or withheld, shall conform to established and published practices and procedures which, so far as practicable, shall be of uniform character.

Article III

Legislative

Section 1: *General*

1. The legislative power shall be vested in a Senate and General Assembly.

2. No person shall be a member of the Senate who shall not have attained the age of thirty years, and have been a citizen and inhabitant of the State for four years, and of the county for which he shall be chosen one year, next before his election; and no person shall be a member of the General Assembly who shall not have attained the age of twenty-one years, and have been a citizen and inhabitant of the State for two years, and of the county for which he shall be chosen one year next before his election, but no person shall be eligible as a member of either house of the Legislature who shall not be entitled to the right of suffrage.

3. The two houses of the Legislature shall meet separately, in regular session, biennially on the second Tuesday in January, and shall adjourn sine die not exceeding ninety calendar days thereafter, except as provided in the executive article of this constitution. The Senate shall, however, remain in continuous session and shall convene from time to time at the call of the President of the Senate or of the Governor for the sole purpose of receiving and acting upon nominations to office made by the Governor.

4. Special sessions of the Legislature shall be called by the Governor upon petition of two-thirds of the members of each house and may be called by the Governor at such other times as in his opinion the public interest may require. In either event, the call for a special session shall specify the matter or matters to be considered and no other matter shall be considered at such ses-

sion. No special session shall exceed fifteen calendar days in duration, except as provided in the executive article of this constitution.

SECTION II: *Composition*

1. The Senate shall be composed of one Senator from each county in the State elected by the legally qualified voters of the counties, respectively, for a term of four years begining on the second Tuesday in January next following his election.

2. The members of the Senate shall be elected in two classes so that, as nearly as may be, one-half of the total number shall be elected biennially. The first classification for the purposes of this section shall be effectuated as provided in the schedule of this constitution.

3. The General Assembly shall be composed of members from each county elected biennially by the legally qualified voters of the counties, respectively, for a term of two years beginning on the second Tuesday in January next following their election.

4. Members of the General Assembly shall be apportioned among the several counties in proportion, as nearly as may be, to population, as determined by the latest census of the United States, except that each county shall at all times be entitled to one member and the whole number of members shall never exceed sixty. An apportionment of members of the General Assembly shall be made by the Legislature at its first session after each Federal census, and shall remain unaltered until the next Federal census shall have been taken.

5. Vacancies in the office of Senator or Assemblyman shall be filled for the remainder of the unexpired term by election at the next general election held not less than sixty days after the occurrence of the vacancy.

SECTION III: *Legislative Office*

1. Members of the Senate and General Assembly shall receive annually the sum of one thousand five hundred dollars during the time for which they shall have been elected, and while they shall hold their office, and no other allowance or emolument, directly or indirectly, for any purpose whatever, except for service on the legislative council and as presiding officer of either house. The President of the Senate and the Speaker of the House of Assembly shall, by virtue of their offices, receive an additional compensation, equal to one-third of their allowance as members.

2. Members of the Senate and General Assembly shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same.

For any speech or debate, in either house, they shall not be questioned in any other place.

3. No member of the Senate or General Assembly shall, during the time for which he or she was elected and for one year thereafter, be eligible to hold any appointive office under the authority of this State, including the offices of State Treasurer and State Comptroller.

4. The seat of any member of the Legislature shall be vacated by his acceptance of any office, position or appointment of profit under the government of this State or of the United States.

5. No person possessed of any office, position or appointment of profit under the government of this State or of the United States and no judge of any court shall be entitled to a seat in the Legislature. Such office, position or employment under the government of this State or any judicial office held under the laws thereof shall be deemed to have been vacated, however, by the acceptance of a seat in either house of the Legislature.

6. Each member of the Legislature shall, before he enters upon the duties of his office, take and subscribe an oath or affirmation to support the constitution of this State and of the United States and faithfully to discharge the duties of his office according to the best of his ability. Members-elect of the Senate or General Assembly may administer to each other such oath or affirmation.

SECTION IV: *Procedure*

1. Each house shall direct writs of election for supplying vacancies, occasioned by death, resignation, or otherwise; but if vacancies occur during the recess of the Legislature, the writs may be issued by the Governor, under such regulations as may be prescribed by law.

2. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

3. Each house shall choose its own officers, determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, may expel a member.

4. Each house shall keep a journal of its proceedings, and from time to time publish the same; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

5. Neither house, during the session of the Legislature, shall, without the consent of the other, adjourn for more than three

days, nor to any other place than that in which the two houses shall be sitting.

6. The Senate shall vote in public on the question of confirmation of any nominations to office made by the Governor.

7. Lobbying in the legislative chambers of either house shall be prohibited. Persons or associations who engage to influence legislative action shall register with the Secretary of State, disclosing the names and interest of those for whom they may act, the compensation received or agreed, the measures which they may be engaged in promoting or opposing and all expenditures made or incurred in connection therewith. All such information shall constitute a public record. The Legislature shall impose suitable penalties for violations of these provisions.

Section V: *Legislative Council*

1. There shall be a legislative council consisting, ex officio, of the Governor or, in his absence, the Attorney-General, the President of the Senate and the Speaker of the House of Assembly, the majority leaders and the leaders of the ranking minority party, for the time being, of each house of the Legislature. Members of the legislative council except the Governor and Attorney-General, shall receive the sum of one thousand five hundred dollars per annum while they serve as members thereof.

2. The legislative council shall: (a) make or cause to be made sound technical studies of the governmental needs of the State, and shall plan and formulate a program of necessary legislative measures predicated thereon in the form of draft bills, for consideration during each session of the Legislature; (b) provide independent research and consultative services in aid of its other powers and duties, within the limits of available appropriations, and co-operate with such other legislative agencies as may be established by law; (c) hold its first meeting at the call of the President of the Senate at such time and place as he shall designate, organize for the transaction of its business, adopt such rules of procedure as it may deem necessary, except as such rules may be established by law, and report at the opening session of each Legislature, and at such times thereafter and with respect to such matters as the council may deem in the public interest; (d) have such other powers and duties, not inconsistent with the foregoing, as may be from time to time prescribed by law.

Section VI: *Legislation*

1. The laws of this State shall begin in the following style, "Be it enacted by the Senate and General Assembly of the State of New Jersey."

2. All bills for raising revenue shall originate in the House of Assembly; but the Senate may propose or concur with amendments, as on other bills.

3. All bills and joint resolutions shall be read three times in each house, before the final passage thereof; and no bill or joint resolution shall pass, unless there be a majority of all the members of each body personally present and agreeing thereto; and the yeas and nays of the members voting on such final passage shall be entered on the journal.

4. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title. This paragraph shall not, however, be given effect to invalidate any law constituting a compilation, consolidation, revision or rearrangement of all or part of the laws heretofore or hereafter enacted upon recommendation of any permanent law revision agency, nor to invalidate any law enacted upon recommendation of the legislative council.

5. No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length.

6. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part thereof, shall be applicable, other than by inserting it in such act, except as otherwise provided in this section.

7. The Legislature may by law, notwithstanding any express or implied limitation of this constitution, incorporate by reference with present and future effect any provision of Federal public law or any Federal administrative rule or regulation relating to the regulation of industry or commerce, or to taxation, or establishing technical standards of any kind.

8. All the statutory law shall be continuously revised by such permanent agency as may be designated by law. The Legislature shall, from time to time upon recommendation of such agency and otherwise, enact revisions of such parts of the statutory law as need appears, to the end that all the law shall be completely revised at least once every ten years.

Section VII: *Legislative Powers*

1. Neither the Legislature nor either house thereof shall elect or appoint any executive, administrative or judicial officers, except the State Treasurer and the State Comptroller.

2. The right of labor to organize and bargain collectively shall not be impaired.

3. No divorce shall be granted by the Legislature.

4. The Legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or

depriving a party of any remedy for enforcing a contract which existed when the contract was made.

5. It shall be lawful to hold, carry on, and operate in this State race meetings whereat the trotting, running or steeplechase racing of horses only may be conducted between the hours of sunrise and sunset on week days only and in duly legalized race tracks, at which the pari-mutuel system of betting shall be permitted. No lottery, roulette, or game of chance of any form shall be authorized by the Legislature in this State, and no ticket in any lottery shall be bought or sold within this State, or offered for sale; nor shall pool-selling, bookmaking, or gambling of any kind be authorized or allowed within this State, except pari-mutuel betting on the results of the racing of horses only, from which the State shall derive a reasonable revenue for the support of government, nor shall any gambling device, practice, or game of chance, or pari-mutuel betting thereon now prohibited by law, except as herein stated and otherwise provided, be legalized, or the remedy, penalty, or punishment now provided therefor be in any way diminished.

6. The Legislature may enact general laws under which municipalities and counties may limit and restrict to specified districts and regulate therein, land uses, buildings and structures according to their construction, and the nature and extent of their use. The Legislature may similarly limit and restrict the uses of property adjacent to any public parkway, highway, other public improvement or public place for the protection and conservation thereof. Such laws shall be deemed to be within the police power of the State and shall be subject to repeal or alteration by the Legislature.

7. Any agency of the State or any political subdivision thereof which is empowered to take or otherwise acquire private property for any public highway, parkway, other public improvement or public place, may acquire the fee or any lesser interest, and may be empowered by law to take or otherwise acquire the benefit of a fee or restrictions or easements upon abutting property to preserve and protect the public highway, parkway, other public improvement or public place.

8. The fund for the support of free schools, and all money, stock, and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public free schools, for the equal benefit of all the people of the State; and it shall not be competent for the Legislature to borrow, appropriate, or use the said

fund or any part thereof, for any other purpose, under any pretence whatever. The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this State between the ages of five and eighteen years.

9. No general law shall embrace any provision of a private, special or local character. The Legislature shall not pass any private, special or local laws:

(1) Authorizing the sale of any lands belonging in whole or in part to a minor or minors or other persons who may at the time be under any legal disability to act for themselves.

(2) Creating, increasing or decreasing the emoluments, term, tenure or pension rights of public officers or employees.

(3) Relating to taxation or exemption therefrom.

(4) Laying out, opening, altering and working roads or highways.

(5) Vacating any road, town plot, street, alley, or public grounds.

(6) Regulating the internal affairs of towns and counties; appointing local offices or commissions to regulate municipal affairs.

(7) Selecting, drawing, summoning or impaneling grand or petit jurors.

(8) Changing the law of descent.

(9) Granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever.

(10) Granting to any corporation, association or individual the right to lay down railroad tracks.

(11) Providing for changes of venue in civil or criminal cases.

(12) Providing for the management and support of free public schools.

The Legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The Legislature shall pass no special act conferring corporate powers, but shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the Legislature.

10. No private, special or local bill shall be passed, unless public notice of the intention to apply therefor, and of the general object thereof, shall have been previously given. The Legislature, at the next session after the adoption hereof, and from

time to time thereafter, shall prescribe the time and mode of giving such notice, the evidence thereof, and how such evidence shall be preserved.

Article IV

Executive and Administrative

Section 1: *Executive Office*

1. The executive power shall be vested in a Governor.

2. The Governor shall be elected in odd-numbered years by the legally qualified voters of this State. The person receiving the greatest number of valid votes shall be the Governor; but if an equal and greatest number of votes are received by more than one candidate, one of such candidates shall be chosen Governor by the votes of a majority of the members of both houses of the Legislature in joint meeting. Contested elections for the office of Governor shall be determined in such manner as may be provided by law.

3. The Governor shall serve for a term of four years, beginning on the fifteenth day of December next following his election, and no person hereafter elected shall be eligible for more than one term.

4. The Governor shall be not less than thirty years of age, and shall have been for twenty years at least a citizen of the United States, and a resident of this State seven years next before his election, unless he shall have been absent during that time on the public business of the United States or of this State.

5. No member of Congress, or person holding an office under the United States, or this State, shall exercise the office of Governor except during his temporary absence from the State or temporary disability as specifically provided in this constitution; and in case the Governor, or person administering the government, shall accept any office under the United States or this State, his office of Governor shall thereupon be vacant. Nor shall he be elected by the Legislature to any office under the government of this State or of the United States during the term for which he shall have been elected Governor.

6. In case of impeachment of the Governor, his absence from the State, or temporary inability to discharge the duties of his office, the powers, duties and emoluments of the office shall devolve to the head of the Department of Taxation and Finance until such time as the Governor shall be acquitted, or shall return to the State, or the temporary inability shall cease. In case of any vacancy in the office of Governor caused by death or removal of the Governor, by death or resignation of the Governor-elect, or his failure to qualify, or from any other cause, the powers, duties and emoluments of the office shall devolve to the

head of the Department of Taxation and Finance who shall serve until a new Governor shall have been elected and qualified. The new Governor shall be elected, in the manner provided by this constitution, at the next general election to be held, in an odd-numbered year, not less than ninety days after the occurrence of the vacancy.

Section 2: *General*

1. The Governor shall take care that the laws be faithfully executed, convene the Legislature or the Senate alone whenever, in his opinion, public necessity so requires, communicate a message to the Legislature relating to the condition of the State at the opening of each session and at such other times and with respect to such legislative measures or other public matters as he may deem in the public interest. He shall be commander-in-chief of all the military and naval forces of the State, and shall grant, under the great seal of the State, commissions to all civil and military officers elected or appointed pursuant to requirements of this constitution. The Governor shall also nominate and appoint, by and with the advice and consent of the Senate, all officers so subject to appointment by this constitution and all other officers whose election or appointment is not otherwise provided for by law.

2. The Senate shall either confirm or reject the Governor's nominations for appointive offices within thirty days after they are submitted. If the Senate fails to act upon a nomination, the nominee shall be deemed confirmed at the expiration of thirty days from the date of submission of his name by the Governor. But the Governor shall make no nominations to the Senate during the last month of his term.

3. Every bill which shall have passed both houses shall be submitted to the Governor for approval. If the Governor shall approve, he shall sign the bill and it shall thereupon become a law. If any bill submitted to the Governor shall contain one or more items of appropriation of money, he may approve and sign the bill, but may specially disapprove by a written statement appended thereto of one or more of such items, and the items so disapproved shall not take effect. If the Governor shall disapprove a bill, or an item or items of appropriation which may be contained therein, he shall return it, with a written statement of his objections, to the house in which the bill originated. The Governor's objections shall be entered at large in the journal of the proceedings of that house and a copy thereof shall be sent to the other house.

4. Any bill shall become a law notwithstanding disapproval by the Governor if, upon reconsideration on or after the third day following return thereof to the house of origin, it shall receive the affirmative votes of a majority of the membership of each house of the Legislature, except that a supplementary ap-

propriation bill may so become a law only by the affirmative votes of two-thirds such membership. Any item of appropriation specially disapproved by the Governor shall become effective notwithstanding such disapproval if, upon being separately reconsidered on or after the third day following return of the bill in which it is contained to the house of origin, it shall receive the affirmative votes of two-thirds of the membership of each house of the Legislature.

The vote taken upon reconsideration of any bill or item of appropriation after disapproval by the Governor shall be by yeas and nays and there shall be entered upon the journal of each house, respectively, the names of the members voting for and against.

5. At noon, on the seventh day, Sundays excepted, following the date of submission of any bill to the Governor, if he shall not prior thereto have returned it to the house of origin, the bill shall become a law with like effect as if he had signed it. If the Legislature shall by adjournment prevent return of a bill within seven days as aforesaid, the bill shall not become a law unless the Governor shall sign it within twenty days after such adjournment.

6. The Governor may, upon complaint submitted to him by at least twenty reputable citizens, cause an investigation to be made of the conduct in office of any State officer, except a member of the Legislature, an officer appointed or elected by the Legislature or a judicial officer. The Governor may remove any such officer after notice and an opportunity to be heard, whenever, in his opinion, such investigation discloses misfeasance or malfeasance in office.

7. The Governor may grant pardons and commute sentences after receiving recommendations of the parole commission established by this article. He may also suspend the collection of fines and forfeitures and may grant reprieves which may not extend beyond ninety days after conviction; but neither these powers nor the pardoning power shall apply to cases of impeachment.

Section III: *Administration*

1. There shall be nine administrative departments in the State government designated as Agriculture, Commerce, Education and Civil Service, Labor, Law, Public Works, Social Welfare, State, and Taxation and Finance, which shall be under the supervision and control of the Governor, and a State Treasurer and a State Comptroller who shall be appointed by and be responsible to the Legislature. The Governor shall, by executive order, from time to time allocate all executive and administrative offices, agencies and instrumentalities of the State government among and within the foregoing departments and offices.

2. Executive and administrative functions, powers and duties

in the State government as authorized by law shall from time to time be allocated by the Governor, by executive order, among and within the departments and offices prescribed by this constitution in such manner as to promote efficiency and economy in the operation of the State government, and to group, co-ordinate and consolidate the offices, agencies and instrumentalities thereof according to major purposes, as nearly as may be. No executive order shall, however, allocate functions, powers and duties of receipt and disbursement of public moneys other than to the State Treasurer, nor of accounting, audit and control other than to the State Comptroller.

3. Any executive order which allocates or reallocates functions, powers or duties pursuant to paragraph two of this section shall be transmitted by the Governor to each house of the Legislature while it is in regular or special session. Such order shall take effect in accordance with its terms, provided that it has been before the Legislature for thirty calendar days and prior to the expiration thereof the Legislature has not, by concurrent resolution, disapproved of the order. In the event of such disapproval, the order shall be void and of no effect. Limitations imposed by this constitution upon the duration of regular and special sessions of the Legislature shall, solely for the purposes of this paragraph, be suspended to allow consideration of an executive order, but not exceeding thirty calendar days in any event.

4. The heads of all administrative departments shall comprise a single executive, unless otherwise provided by law. All such department heads and the members of all boards, councils and commissions, except the State Comptroller and the State Treasurer, shall be nominated and appointed by the Governor, by and with the advice and consent of the Senate.

5. The heads of all administrative departments shall serve during the term of the Governor appointing them, at his pleasure, and until their successors have been appointed and qualified.

6. The State Comptroller and the State Treasurer shall be appointed by the Senate and General Assembly in joint meeting. They shall hold their offices, respectively, for four years. The Governor may, whenever in his opinion it would be in the public interest, require from the Comptroller or the Treasurer written statements under oath of information on any matter relating to the conduct of their respective offices.

7. The Governor and the heads of executive and administrative departments of the State government shall, at stated times, receive for their services such compensation as may be fixed by law which shall be neither increased nor diminished during their respective terms.

8. Appointive officers and employees of the State government shall receive no compensation for their public services in addition

to such annual salary as may be fixed by law. Any other moneys or fees received by any such officer or employee by virtue of or in connection with his office or position, except as reimbursement for expenses actually incurred in the course of his public duties, shall be forthwith paid into the State treasury.

9. No rule or regulation made by any executive or administrative agency of the State government except such as relates to the organization or internal management of an executive or administrative agency of the State government shall be effective until it is filed with the Secretary of State. The Legislature shall provide by law for the speedy publication of such rules and regulations.

Section IV: *Militia*

1. The Legislature shall provide by law for enrolling, organizing and arming the militia, of which the Governor shall be commander-in-chief.

2. An Adjutant-General, who shall be chief of staff of the militia with the rank of Major-General, shall be nominated and appointed by the Governor with the advice and consent of the Senate. The Adjutant-General shall serve at the pleasure of the Governor.

3. Officers of the militia shall be appointed and commissioned by the Governor according to merit and fitness which shall be determined in such manner and upon such standards as now are or hereafter may be applied by the War Department of the United States for officers of equivalent rank.

4. No commissioned officer shall be removed from office other than by sentence of a court martial, or by a board constituted and empowered by law, except that all general officers may be suspended for cause by the Governor.

Section V: *Parole Commission*

1. There shall be a Commission on Parole in the executive branch of the government. The commission shall comprise three members, at least one of whom shall be a member of the bar of this State, who shall be nominated and appointed by the Governor, by and with the advice and consent of the Senate. Members of the commission shall hold office for a term of four years, but of those first appointed one shall be appointed for a term of two years, one for four years and one for six years. Members of the commission may be removed by the Governor, for cause upon notice and hearing, prior to the expiration of their respective terms. They shall receive such fixed annual compensation for their services as may be provided by law.

2. The Commission on Parole shall grant paroles and supervise parolees, as may be provided by law. The commission may remit fines and forfeitures and shall make recommendations to the Governor upon applications for executive clemency after conviction, in all cases except impeachments.

3. The Commission on Parole shall meet at stated times, and all hearings and proceedings of the commission shall be public. Every order of the commission remitting, reducing or affecting any fine, forfeiture or sentence, recommending or disapproving any application for executive clemency, with the reasons set forth at length, shall be filed with the clerk of the Supreme Court at least ten days before it may become effective, and shall constitute a public record.

Article V

Judicial

Section I: *Judicial Power*

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

2. In all matters in which there is any conflict or variance between equity and common law, equity shall prevail, and subject to rules of the Supreme Court every controversy shall be fully determined by the justice hearing it.

3. The Supreme Court shall sit at the State Capitol and the Superior Court shall sit in each county. The Supreme Court and appellate divisions of the Superior Court shall hold at least ten monthly terms each year, and all trial courts shall hold such terms as may be fixed by rules of the Supreme Court.

Section II: *Supreme Court*

1. The Supreme Court shall consist of a Chief Justice and six associate justices. Five members of the court shall constitute a quorum. The presiding justice of the court shall designate a justice of the Superior Court to serve temporarily when necessary to constitute a quorum.

2. The Supreme Court shall exercise appellate jurisdiction in the last resort in all causes subject to the limitations imposed by this constitution. The court may, upon leave granted by a justice thereof, review any indictment before trial by certiorari. The court shall also have jurisdiction of the admission and discipline of attorneys and counsellors.

3. The Supreme Court shall make rules as to the administration of all of the courts, and, subject to law, as to pleading, practice and evidence in all the courts.

Section III: *Superior Court*

1. The Superior Court shall consist of such number of justices as may be authorized by law, but not less than twenty-five, each of whom may exercise the powers of the court, subject to rules of the Supreme Court. The Superior Court shall have original general jurisdiction throughout the State in all cases.

2. The Superior Court shall be divided into a law section, to exercise civil, criminal, and matrimonial jurisdiction, and an equity and probate section, to exercise all other jurisdiction of the court, each section having such parts as may be provided by rules of the Supreme Court.

3. Any justice of the Superior Court may grant prerogative writs, returnable in an appellate division which shall otherwise have original jurisdiction relating thereto, and shall determine in such manner as the rules of the Supreme Court may prescribe, and without a jury, questions of fact arising therein; or the hearing may be in the first instance before a single justice, whose decision, both as to law and fact, shall be reviewable by the appellate division.

Section IV: *Appeals and Appellate Divisions*

1. There shall be established in the Superior Court at least two appellate divisions. Each appellate division shall consist of three justices of the Superior Court designated by rules of the Supreme Court who shall hear appeals from designated sections of the Superior Court and such additional appeals from inferior courts as may be provided by law. Such justices shall be annually assigned for that purpose by the Chief Justice of the Supreme Court.

2. An appeal to an appellate division may be taken as a matter of right from any order of the Superior Court. Appeals in cases involving restraints or the appointment of receivers shall, in whatever court pending, be preferred as to argument and disposition.

3. Judgments and orders of an appellate division shall be final, subject to an appeal to the Supreme Court. Appeals to the Supreme Court may be taken only:

(1) In capital cases and cases involving a constitutional question, which appeals shall be taken directly to the Supreme Court and shall be preferred as to argument and disposition;

(2) In the event of a dissenting opinion in an appellate division;

(3) On certification of an appellate division; or,

(4) On certification by the Supreme Court to any court.

4. The appellate courts, in addition to considering questions of law, may also set aside judgments, wholly or in part, where the finding of fact is against the weight of the evidence, or the verdict is excessive or inadequate. The appellate courts may exercise such original jurisdiction as may be incident to the complete determination of the controversy.

Section V: *Judicial Officers*

1. The Governor shall nominate and appoint, by and with the advice and consent of the Senate, the Chief Justice and associate justices of the Supreme Court, the justices of the Superior Court, and the judges of any inferior court with jurisdiction extending to more than one municipality. The Legislature shall provide by law for a uniform method of appointment of all other judges.

2. Each justice of the Supreme Court shall, prior to his appointment, have been a justice of the Superior Court for at least one year. Justices of the Superior Court shall, prior to their appointment have been counsellors at law in good standing for at least ten years.

3. The Chief Justice and associate justices of the Supreme Court shall be appointed to hold office during good behavior. Justices of the Superior Court shall hold office for a term of seven years and if reappointed shall thereafter hold office during good behavior. The issue of good behavior shall, with respect to justices of the Supreme Court, be triable by the Senate, and with respect to all other justices or judges of any court shall be triable by the Supreme Court. No justice or judge of any court shall continue in office after he has attained the age of seventy years.

4. Justices and judges of every court shall, at stated times, receive for their services such salary as may be provided by law, which shall not be diminished during the term of their appointment. They shall hold no other office or position of profit in the government of this State, or of the United States, nor of any instrumentality or political subdivision of either of them.

5. Any judge or justice of any court in this State who shall become a candidate for an elective office under authority of this State or of the United States shall thereby vacate his judicial office. The justices of the Supreme Court, of the Superior Court and such other judicial officers as may be provided by law shall not during their continuance in office engage in the practice of law or other gainful occupation.

6. A justice of the Superior Court may exercise the powers of a judge of any court established by law in the county or counties to which he may be assigned, and may hold any such court with like jurisdiction, powers and duties as a judge thereof.

Section VI: *Administration*

1. The Chief Justice of the Supreme Court shall be the ad-

ministrative head of all the courts, and shall supervise their work. He shall appoint an executve director of the courts to serve at his pleasure. The executive director shall:

(1) Assist the Chief Justice in all matters related to the administration, finance and personnel of the courts;

(2) Publish annually a statistical record of the judicial services of all the courts, justices and judges in the State, and of the costs thereof;

(3) Prescribe records, reports and audits for the inferior courts;

(4) Have such other duties as may be delegated by the Chief Justice.

2. The Supreme Court shall appoint a court reporter and a clerk of the court, each of whom shall hold office at the pleasure of the court. Within each county, respectively, the county clerks and, as to probate matters, the surrogates, shall be clerks of the Superior Court.

3. The Chief Justice of the Supreme Court shall annually assign justices of the Superior Court to counties, divisions, sections or parts thereof, and may from time to time transfer justices from one assignment to another as need appears.

4. Whenever the Supreme Court fails to hear any case within two months after an appeal therein is perfected or fails to decide any case within two months after it has been argued or submitted, the Chief Justice shall certify that fact to the Governor. The Governor may thereupon appoint a special term of the Supreme Court, from among the justices of the Superior Court, to exercise concurrently the jurisdiction of the court until the delay is cured.

5. Special judges may, upon request of the Chief Justice, be nominated and appointed by the Governor, by and with the advice and consent of the Senate, for temporary service not exceeding one year whenever and so long as any court fails to try or hear any case within two months after notice of trial has been filed or an appeal therein perfected, or fails to decide any case within two months after it has been argued or submitted. Such special judges may exercise all the powers and shall have all of the duties of a justice or judge of the court to which they are appointed.

6. On or before December first in each year the Chief Justice shall file with the Governor and the Legislature a report of the work of the courts during the year ending September first next preceding.

Article VI

Public Officers

Section 1: *Generally*

1. Every appointive officer of the State government shall, before entering upon the duties of his office, take and subscribe an oath or affirmation to support the constitution of this State and of the United States and faithfully, impartially and justly to perform the duties of his office to the best of his ability.

2. In the civil service of the State and all of its civil divisions, all offices and positions shall be classified according to duties and responsibilities, salary ranges shall be established for the various classes, and all appointments and promotions shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive.

3. The Legislature or either house thereof may by resolution constitute and empower a committee thereof or any public officer or agency to investigate any and all phases of State and local government, or any part thereof, the fidelity of any public officer or employee, or the performance of any public office, employment or trust. No person shall be privileged from testifying in relation to any such matters and upon so testifying he shall be immune from criminal prosecution with respect to any matter to which such testimony may relate. Any public officer or employee who shall refuse or willfully fail to obey any subpoena lawfully issued by such investigating committee, officer or agency, or who shall refuse to testify or to answer any questions relating to any matter properly under investigation, or who shall refuse to waive immunity from prosecution with respect to any matter upon which he may testify, shall thereby become disqualified to continue in his office, position or employment, which shall forthwith be deemed vacant. Any such person shall not thereafter be eligible for any public office, position or employment.

4. County clerks and surrogates shall be elected by the people of their respective counties at a general election. They shall hold office for a term of five years. Whenever a vacancy occurs in the office of clerk or surrogate of any county, the Governor shall fill such vacancy by appointment for a term to expire when a successor is elected and qualified.

5. Sheriffs and coroners shall be elected by the people of their respective counties at a general election. They shall hold office for a term of three years.

6. After July first, one thousand nine hundred and forty-three, benefits payable by virtue of membership in any State pension or retirement system shall constitute a contractual relationship and shall not be diminished or impaired.

7. All civil officers elected or appointed pursuant to the provisions of this constitution shall be commissioned by the Governor.

8. The term of office of all officers elected or appointed pursuant to the provisions of this constitution, except when herein otherwise directed, shall commence on the day of the date of their

respective commissions; but no commission for any office shall bear date prior to the expiration of the term of the incumbent of said office.

SECTION II: *Impeachments*

1. The Governor and all other civil officers of the State government shall be liable to impeachment for misdemeanor in office during their continuance in office and for two years thereafter.

2. The House of Assembly shall have the sole power of impeaching by a vote of a majority of all the members. Except as otherwise provided by this constitution with respect to judicial officers, all such impeachments shall be tried by the Senate, and members, when sitting for that purpose, shall be on oath or affirmation "truly and impartially to try and determine the charge in question according to evidence;" and no person shall be convicted without the concurrence of two-thirds of of all the members of the Senate. The presiding officer, respectively, of each house of the Legislature may call it into session for the purpose of impeachment proceedings.

3. Judgment in cases of impeachment shall not extend farther than to removal from office, and to disqualification to hold and enjoy any office of honor, profit or trust under this State; but the party convicted shall nevertheless be liable to indictment, trial and punishment according to law.

ARTICLE VII

FINANCE

1. The credit of the State shall not be directly or indirectly loaned in any case.

2. No political subdivision or special district shall give any money or property, or loan its money or credit, to or in aid of any individual association or corporation, or become security for or be directly or indirectly the owner of any stock or bonds of any association or corporation.

3. Neither the State nor any municipal corporation shall make any donation of land or appropriation of money to or for the use of any society, association or corporation.

4. All revenues of the State government from whatever source derived, including revenues of all departments, agencies and offices, except the income of the fund for the support of free schools, shall be paid into a single fund, to be known as the General State Fund, subject to appropriation for any public purpose, except that separate funds may be maintained for revenues realized from any tax levied specifically for the purpose of maintaining free public schools, for the proceeds of bond issues, earnings of self-liquidating public improvements, revenues of restricted use under or in compliance with federal law, and revenues held in trust

for retirement of the public debt, for the benefit of State or local public officers or employees or for a specific public purpose required by a private donation.

5. No money shall be drawn from the State treasury but for appropriations made by law.

All appropriations for the support of the State government, and for the several public purposes for which appropriations are made, shall be contained in one general appropriation bill enacted for each biennium and indicating the amounts appropriated for each fiscal period in the biennium. No other bill appropriating public money for any purpose shall be enacted unless it shall (1) provide for some single object or purpose, (2) receive the affirmative votes of two-thirds of the membership of each house of the Legislature, and (3) together with all prior appropriations for the same fiscal period, shall not exceed the total amount of revenue available therefor.

6. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value.

7. Except for purposes of war, or to repel invasion or to suppress insurrection, no debt or liability shall be contracted by or on behalf of the State in an amount which, singly or in the aggregate with any previous debts or liabilities, shall at any time exceed one hundred thousand dollars, unless authorized by a law which shall, at a general election, have been submitted to the people, and have received the sanction of a majority of all the votes cast for and against it.

8. Any such law shall provide for some single object or work, to be distinctly specified therein, and for the payment of the debt or liability thereby authorized in equal annual installments, the first of which shall be payable not more than one year, and the last of which shall be payable not more than thirty-five years after such debt or liability, or any portion thereof, shall have been contracted. In contracting any debt or liability, however, the privilege of paying all or any part thereof prior to maturity may be reserved to the State in such manner and upon such terms as may be provided by law.

9. All money to be raised by authority of any law authorizing the contracting of a debt or liability by or on behalf of the State shall be applied only to the specific object or work stated therein or to the payment of such debt or liability. Such law shall provide the ways and means, exclusive of loans, to pay and discharge the principal and interest of the debt or liability thereby authorized. If such law should be repealed prior to such payment and discharge, the Legislature shall make adequate provision for payment of the remaining annual installments of principal and interest, and upon failure thereof a sufficient sum shall be set apart

by the State Treasurer from the first revenues received and shall be applied to such purpose.

Article VIII

Elections and Suffrage

1. General elections shall be held annually on the first Tuesday after the first Monday in November. The Governor, members of the Legislature and such local officers as may be provided by law shall be chosen at a general election.

2. All questions which may be subject to a vote of the people shall be submitted at a general election, or, in the case of local propositions, at a regular county or municipal election.

3. Every citizen of the United States who shall have attained the age of twenty-one years, been a resident of this State one year and of the county in which the vote is claimed five months, next before an election, and who shall have been duly registered as a voter pursuant to law, shall be entitled to vote therein for all officers that are now or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people.

4. No pauper, idiot, insane person, or person convicted of a crime which at common law would have excluded him from being a witness, unless pardoned or restored by law to the right of suffrage, shall enjoy the right of an elector. Persons convicted of bribery may be deprived by law of the right of suffrage.

5. No person shall, for the purpose of the suffrage, be deemed to have become a resident of, nor to have abandoned prior residence in this State or any county thereof by reason of his presence in or absence therefrom during active service in the military or naval service of this State or of the United States.

6. The Legislature shall provide by law the manner in which, and the time and place at which ballots may be cast by electors absent in the actual service of the military or naval forces of this State or of the United States, and for the return and canvass of such absentee votes in the election district in which the voters respectively reside. The Legislature may also provide for voting by other absent electors and for the like return and canvass of their votes.

7. Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the privilege of the suffrage and for the registration of all qualified voters. Registration shall be upon personal application in the case of the first registration of any voter, and shall remain effective for such period as the Legislature may prescribe.

Article IX

Amendments

1. Any specific amendment or amendments to the constitution may be proposed in the Senate or General Assembly, and if the same shall be approved by two-thirds of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon.

2. The Legislature shall publish any approved amendment once in at least one newspaper of each county, if any be published therein, not less than three months prior to its submission to the people.

3. Approved amendments which have been published as required by this section shall be submitted to the people at a general election held not more than four months after the date of publication thereof. Submission shall be in such manner as the Legislature may prescribe.

4. If a majority of the qualified voters who vote thereon shall approve and ratify any amendment, it shall become part of the constitution.

5. If more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly. The same amendment or one effecting the same change in the constitution shall not be submitted to the people more often than once in five years.

Article X

General Provisions

1. The provisions of this constitution shall be self-executing, to the fullest extent that their respective natures permit. Legislation shall be enacted in furtherance of their purposes and to facilitate their operation.

2. Any recital of specific functions, powers or duties in this constitution shall not be construed in any manner to restrict by implication any general functions, powers or duties of government not inconsistent therewith.

3. The seal of the State shall be kept by the Governor or person administering the government, and used by him officially, and shall be called the great seal of the State of New Jersey.

4. All grants and commissions shall be in the name and by the authority of the State of New Jersey, sealed with the great seal, signed by the Governor or person administering the government, and countersigned by the Secretary of State, and shall run thus: "The State of New Jersey, to ....., Greeting." All writs shall be in the name of the State; and all indictments shall conclude in the following manner, viz.: "against the peace of this State the government and dignity of the same."

5. This constitution shall take effect on the first day of Jan-

uary, one thousand nine hundred and forty-three, subject to the provisions of the schedule hereinafter set forth.

Article XI

Schedule

Election I: *General*

1. This constitution shall supersede the constitution of 1844 as amended, and the Legislature shall enact all laws necessary to make this constitution fully effective.

2. No office, position or employment existing on the effective date of this constitution shall be altered or abolished by virtue of the adoption hereof, except as otherwise provided herein.

3. All persons holding office upon the effective date of this constitution shall continue in office and to exercise their respective powers and duties except as otherwise provided herein. The adoption of this constitution shall not cause the term of office of any incumbent to be either extended or reduced, except as otherwise provided herein.

4. All the statutory and common law in force on the effective date hereof, which is not inconsistent with this constitution, shall remain in full force and effect until it expires by its own limitation or is altered or repealed by law. All causes of action, indictments, prosecutions, rights, claims, demands, duties and obligations, of individuals and of bodies corporate, and of the State, and all charters and franchises shall continue unabated by the adoption of this constitution. All indictments heretofore or hereafter found for any crime or offense committed before the adoption of this constitution may be proceeded upon as if no change had taken place.

Section II: *Legislative*

1. The first biennial session of the Legislature under this constitution shall be held in the year one thousand nine hundred and forty-four.

2. Members of the Legislature shall be elected for the term of office provided in this constitution at the election held in one thousand nine hundred and forty-three and at each biennial election thereafter, except as otherwise provided in this schedule.

3. The two classes of Senators required to be elected under the constitution shall be first established as follows:

Seats in the Senate that, had this constitution not been adopted would have been filled by election in the years one thousand nine hundred and forty-three and one thousand nine hundred and forty-five, respectively, shall remain elective in those years. The terms of the incumbents of those seats in the Senate that would have become elective in the year one thousand nine hundred and forty-four, had this constitution not been adopted, shall be extended for an additional year. Three of the seats thereby made elective in the year one thousand nine hundred and forty-five shall be chosen by the Senate to be filled in that year for a term of two years and thereafter for the four-year term provided by this constitution.

4. The compensation for members of the Legislature provided by this constitution shall be paid from and after the effective date hereof.

Section III: *Executive*

1. On or before July first, one thousand nine hundred and forty-three, the Governor shall complete the first allocation of executive and administrative agencies, offices and instrumentalities of the State government within and among the departments and offices required by this constitution. Prior to such allocation, each agency, office, and instrumentality shall continue to function as heretofore, except as may be otherwise provided by law.

2. Appropriation balances, personnel, property and records may be transferred as need appears by provision in any executive order allocating executive or administrative agencies, offices or instrumentalities, or their functions, powers and duties.

3. In case of death, resignation, removal or disability of the Governor or of his absence from the State prior to his appointment of the heads of civil departments required by this constitution, all the powers, duties and emoluments of the office shall, as heretofore, devolve upon the President of the Senate and the Speaker of the House of Assembly, in that order.

Section IV: *Judicial*

1. Immediately ofter the adoption of this constitution, the Governor shall nominate and appoint, by and with the advice and consent of the Senate, from the persons then holding the offices of Chancellor, Chief Justice, justices of the Supreme Court, such judges of the Court of Errors and Appeals as are counsellors at law of ten years' standing, vice-chancellors and Circuit Court judges, a Chief Justice and six associate justices of the new Supreme Court.

The remaining judicial officers above enumerated and the judges of the courts of common pleas shall constitute the justices of the new Superior Court, each for the unexpired period of his original term. If reappointed thereafter, any such justice shall have tenure during good behavior as provided in this constitution. Nothing in this section shall be construed, however, to permit any justice to continue in office after attaining the age of seventy years.

2. The compensation of any judicial officer as fixed by law immediately prior to his transfer by this constitution to either

the new Supreme or Superior Courts shall not be increased or diminished during the term for which he was originally appointed. Common pleas judges shall be justices of the Superior Court for the remainder of the term for which they were originally appointed, at the same salary, with the same privileges, and assigned to the county from which they were appointed, and shall be eligible for reappointment on the same basis as all other Superior Court justices.

3. All causes pending in the Court of Errors and Appeals shall be transferred to the new Supreme Court. All other causes pending on appeal and all pending causes involving prerogative writs shall be transferred to the appellate division of the Superior Court. All causes pending in any other county or State courts, which are superseded, shall be transferred to the Superior Court.

4. All property, funds, records, files, books, papers and documents of the Court of Errors and Appeals, of the Prerogative Court, of the Court of Chancery and of the Supreme Court or in custody of any of these courts, shall be turned over by their respective clerks to the clerk of the new Supreme Court, who shall dispose of them as the court may by rule direct.

5. The circuit courts, courts of common pleas, oyer and terminer, quarter sessions, special sessions and the orphans' courts are superseded, and all their jurisdiction, functions, powers and duties are transferred to the Superior Court. Causes pending in such superseded courts shall be heard in the Superior Court sitting in the same county. All property, funds, records, files, books, papers and documents of the orphans' courts, or in custody thereof, shall be turned over by their respective clerks to the clerk of the Superior Court in their respective counties.

6. All the functions, powers and duties conferred by statute or rule upon justices and judges of courts superseded by this constitution, to the extent that such functions, powers and duties are not inconsistent herewith, are hereby transferred to and may be exercised by justices of the Superior Court until otherwise provided by law or rule of court.

7. Appropriations made by law for judicial expenditures during the fiscal year 1942-1943 may be transferred to similar objects and purposes required by the judicial article. Restrictions upon supplemental appropriations contained in this constitution shall not apply to any appropriations which may be required to finance the new judicial system prior to the fiscal year 1943-1944.

8. Article V shall take effect on the first day of July, one thousand nine hundred and forty-three, except that any provision of this constitution which may require any act to be done prior thereto or in preparation therefor shall take effect immediately upon its adoption.

Source Table

Proposed New Constitution			Source Constitution of 1844			Proposed New Constitution			Source Constitution of 1844		
Art.	Sec.	Par.	Art.	Sec.	Par.	Art.	Sec.	Par.	Art.	Sec.	Par.
I	—	1	I	—	1	IV	III	1	new		
		2			2			2	new		
		3			3			3	new		
		4			4			4	new		
		5			5			5	new		
		6			6			6	VII	II	2 rev.
		7			7 rev.			7	V		5 rev.
		8			8			8	new		
		9			9 rev.			9	new		
		10			10		IV	1	VII	I	1 rev.
		11			11			2	new		
		12			12			3	VII	I	6 rev.
		13			13			4			6 rev.
		14			14		V	1	new		
		15			15			2	new		
		16			16 rev.			3	new		
			IV	VII	8	V	I	1	VI	I	1 rev.
		17	I		17			2	new		
		18			18			3	new		
		19	new				II	1	new		
		20	I		21			2	new		
II	—	1	III	—	1 rev.			3	new		
		2	new				III	1	new		
		3	new					2	new		
III	I	1	IV	I	1			3	new		
		2			2		IV	1	new		
		3			3 rev.			2	new		
		4	new					3	new		
	II	1	IV	II	1 rev.			4	new		
		2			2 rev.		V	1	new		
		3		III	1 rev.			2	new		
		4			1 rev.			3	new		
		5	new					4	new		
	III	1	IV	IV	7 rev.			5	new		
		2			8 rev.			6	new		
		3		V	1 rev.		VI	1	new		
		4			2 rev.			2	new		
		5			3 rev.			3	new		
		6		VIII	1 rev.			4	new		
	IV	1		IV	1			5	new		
		2			2			6	new		
		3			3	VI	I	1	IV	VIII	2 rev.
		4			4			2	new		
		5			5			3	new		
		6	new					4	VII	II	5 rev.
		7	new					5			6 rev.
	V	1	new					6	new		
	V	2	new					7	VII	II	9
	VI	1	IV	VII	5			8			10
		2		VI	1		II	1	V		11 rev.
		3		IV	6			2	VI	III	1 rev.
		4		VII	4 rev.			3			3 rev.
		5			4 rev.	VII		1	IV	VI	3
		6			4 rev.			2	I		19
		7	new					3			20 rev.
		8	new					4	new		
	VII	1	new					5	IV	VI	2 rev.
		2	new					6		VII	12
		3	IV	VII	1			7		VI	4 rev.
		4			3			8			4 rev.
		5			2			9			4 rev.
		6		VI	5 rev.	VIII		1	IV	I	3 rev.
		7	new					2	new		
		8	IV	VII	6	VIII		3	II		1 rev.
		9			4, 7, 11			4			1 rev.
		10			9			5			1 rev.
IV	I	1	V	—	1			6			1 rev.
		2			2 rev.			7	new		
		3			3 rev.	IX		1	IX		rev.
		4			4			2			rev.
		5			8 rev.			3			rev.
		6			12-14 rev.			4			rev.
	II	1			6 rev.			5			rev.
		2	new			X		1	new		
		3	V		7 rev.			2	new		
		4			7 rev.			3	VIII		2
		5			7 rev.			4			3
		6	new					5	new		
		7	V		9 rev.	XI			new		

Distribution Table

Constitution of 1844			Proposed New Constitution			Constitution of 1844			Proposed New Constitution		
Art.	Sec.	Par.	Art.	Sec.	Par.	Art.	Sec.	Par.	Art.	Sec.	Par.
I	—	1	I	—	1 same	V	—	1	IV	I	1 same
		2			2 same			2			2 rev.
		3			3 same			3			3 rev.
		4			4 same			4			4 same
		5			5 same			5		III	7 rev.
		6			6 same			6		II	1 rev.
		7			7 rev.			7			3 rev.
		8			8 same			8		I	5 rev.
		9			9 rev.			9		II	2 rev.
		10			10 same			10			2 rev.
		11			11 same			11		I	7 rev.
		12			12 same			12		I	6 rev.
		13			13 same			13			6 rev.
		14			14 same			14			6 rev.
		15			15 same						
		16			16 rev.						
		17			17 same	VI	I	1	V	I	1 rev.
		18			18 same		II	1		superseded	
		19	VII		2 rev.			2		"	
		20	VII		3 rev.			3		"	
		21			20 same			4		"	
								5		"	
II		1	VIII		3-6 rev.			6		"	
		2	VIII		2 rev.		III	1	VI	II	1-3 rev.
								2		superseded	
III		1	II		1 rev.			3	VI	II	1-3 rev.
								4		omitted	
IV	I	1	III	I	1 same		IV	1		superseded	
		2			2 same			2		"	
		3			3 rev.			3		"	
	II	1		II	1 rev.			4		"	
		2			2 rev.		V	1		"	
	III	1			3-4 rev.			2		"	
	IV	1		IV	1 same			3		"	
		2			2 same			4		"	
		3			3 same			1		"	
		4			4 same		VI	2		"	
		5			5 same			1		"	
		6		VI	3 same	VII	I	1	IV	IV	1 rev.
		7		III	1 rev.			2		superseded	
		8			2 rev.			3		"	
	V	1			3 rev.			4		"	
		2			5 rev.			5		"	
		3			6 rev.			6		"	
	VI	1		VI	2 same			7		"	
		2	VII	—	5 same			8		"	
		3			1 rev.			9		"	
		4			4-9 rev.			10		"	
		5	III	VII	1 rev.		II	1		superseded	
								2	IV	III	6 rev.
	VII	1	III	VII	2 same			3		superseded	
		2			4 same			4		"	
		3			3 same			5	VI	I	4 rev.
		4		VI	4-6 rev.			6			5 rev.
		5			1 same			7		omitted	
		6		VII	7 same			8	V	II	1 rev.
		7			8 rev.			9	VI	I	7 same
		8	I	—	16 rev.			10			8 same
		9	III	VII	9 same	VIII		1		omitted	
		10		omitted				2	VIII	—	3 same
		11	III	VII	8 rev.			3			4 same
		12	VII	—	6 rev.			4			5 rev.
VIII		1	III	III	6 rev.	IX			IX		1-5 rev.
		2	VI	I	1 rev.	X				superseded	

APPENDIX IV

STATE OF NEW JERSEY

Proposed Constitution (1942)

Constitution of 1844, as Amended

Arranged for comparison for

JOINT LEGISLATIVE COMMITTEE CONSTITUTED
UNDER SENATE CONCURRENT RESOLUTION NO. 19,
ADOPTED JUNE 15, 1942

Hon. Lloyd L. Schroeder, Chairman

Hon. John M. Summerill, Jr.

Hon. H. Rivington Pyne

Hon. Edward J. O'Mara

Members appointed from The New Jersey Senate

Hon. Manfield G. Amlicke

Hon. Dominic A. Cavicchia

Hon. Vincent S. Haneman

Hon. Mildred A. Preen

Members appointed from The Neww Jersey House of Assembly

Arranged and Compiled by

Charles DeF. Besoré

John B. McGeehan

Counsel to Commission on Statutes

CONSTITUTION OF THE STATE OF NEW JERSEY

Preamble.—We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavours to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution.

ARTICLE I

RIGHTS AND PRIVILEGES

1. All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

3. No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretence whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform.

4. There shall be no establishment of one religious sect in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right merely on account of his religious principles.

No change (Preamble)

No change (Art. I, Par. 1)

No change (Art. I, Par. 2)

No change (Art. I, Par. 3)

No change (Art. I, Par. 4)

5. Every person may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

6. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.

7. The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil suits, when the matter in dispute does not exceed fifty dollars, by a jury of six persons.

8. In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel in his defense.

9. No person shall be held to answer for a capital or other infamous crime, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

10. No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident or presumption great.

No change (Art. I, Par. 5)

No change (Art. I, Par. 6)

cf. I-7

7. The right of trial by jury shall remain inviolate: but the Legislature may authorize the trial of civil suits, when the matter in dispute does not exceed fifty dollars, by a jury of six men. (Art. I, Par. 7.)

No change (Art. I, Par. 8)

cf. I-9

9. No person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or navy; or in the militia, when in actual service in time of war or public danger. (Art. I, Par. 9.)

No change (Art. I, Par 10)

Art. I, Pars. 11-19

11. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it.

12. The military shall be in strict subordination to the civil power.

13. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war except in a manner prescribed by law.

14. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

15. Excessive bail shall not be required, excessive fines shall not be imposed, and cruel and unusual punishments shall not be inflicted.

16. Private property shall not be taken for public use without just compensation. Possession of land may be taken by any agency, instrumentality or political subdivision of the State, but not by any individual or private corporation, pending and prior to the determination and payment of such compensation.

17. No person shall be imprisoned for debt in any action, or on any judgment founded upon contract, unless in cases of fraud; nor shall any person be imprisoned for a militia fine in time of peace.

18. The people have the right freely to assemble together, to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances.

19. Any citizen or taxpayer may restrain the violation of any provision of this Constitution by a suit with leave of the Superior Court upon notice to the Attorney-General.

No change (Art. I, Par. 11)

No change (Art. I, Par. 12)

No change (Art. I, Par. 13)

No change (Art. I, Par. 14)

No change (Art. I, Par. 15)

cf. I-16

16. Private property shall not be taken for public use without just compensation; but land may be taken for public highways as heretofore until the Legislature shall direct compensation to be made. (Art. I, Par. 16.)

cf. I-16

8. Individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners. (Art. IV, Sec. VII, Par. 8.)

No change (Art. 1, Par. 17)

No change (Art. I, Par. 18)

New

20. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

ARTICLE II

STATE GOVERNMENT

1. The functions, powers and responsibilities of the government of this State shall be divided among three distinct branches—the Legislative, Executive and Judicial. No person belonging to or constituting one of these branches shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.

2. All powers of government which are not by this Constitution vested in the Executive or Judicial branches, nor in conflict with rights reserved by the people, nor specfically proscribed to the Legislative branch, shall be embraced within the legislative power and may be exercised in such manner as may be provided by law.

3. The exercise of any powers or discharge of any responsibilities of a legislative or executive character by administrative agencies shall be limited to the effectuation of declared general standards or principals set forth by law and, to the extent that private rights are affected or privileges conferred or withheld, shall conform to established and published practices and procedures which, so far as practicable, shall be of uniform character.

No change (Art. I, Par. 21)

cf. II-1. 1. The powers of the government shall be divided into three distinct departments—the Legislative, Executive and Judicial; and no person or persons belonging to, or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except as herein expressly provided. (Art. III, Par. 1.)

New

New

Art. III, Sec. 1, Pars. 1-4

ARTICLE III

LEGISLATIVE

SECTION I

General

1. The legislative power shall be vested in a Senate and General Assembly.

2. No person shall be a member of the Senate who shall not have attained the age of thirty years, and have been a citizen and inhabitant of the State for four years, and of the county for which he shall be chosen one year, next before his election; and no person shall be a member of the General Assembly who shall not have attained the age of twenty-one years, and have been a citizen and inhabitant of the State for two years, and of the county for which he shall be chosen one year next before his election, but no person shall be eligible as a member of either house of the Legislature who shall not be entitled to the right of suffrage.

3. The two houses of the Legislature shall meet separately, in regular session, biennially on the second Tuesday in January, and shall adjourn sine die not exceeding ninety calendar days thereafter, except as provided in the executive article of this Constitution. The Senate shall, however, remain in continuous session and shall convene from time to time at the call of the President of the Senate or of the Governor for the sole purpose of receiving and acting upon nominations to office made by the Governor.

4. Special sessions of the Legislature shall be called by the Governor upon petition of two-thirds of the members of each house and may be called by the Governor at such other times as in his opinion the public interest may require. In either event, the call for a special session shall specify the matter or matters to be considered and no other matter shall be considered at such session. No special session shall exceed fifteen calendar days in duration, except as provided in the executive article of this Constitution.

No change (Art. IV, Sec. I, Par. 1)

cf. III-1-2

2. No person shall be a member of the Senate who shall not have attained the age of thirty years, and have been a citizen and inhabitant of the State for four years, and of the county for which he shall be chosen one year, next before his election; and no person shall be a member of the General Assembly who shall not have attained the age of twenty-one years, and have been a citizen and inhabitant of the State for two years, and of the county for which he shall be chosen one year next before his election; provided, that no person shall be eligible as a member of either house of the Legislature, who shall not be entitled to the right of suffrage. (Art. IV, Sec. I, Par. 2.)

[cf. VIII-1]
[III-II-3]
[infra]

3. Members of the Senate and General Assembly shall be elected yearly and every year, on the first Tuesday after the first Monday in November;

cf. III-I-3

and the two houses shall meet separately on the second Tuesday in January next after the said day of election, at which time of meeting, the legislative year shall commence;

[cf. VIII-1]
[infra]

but the time of holding such election may be altered by the Legislature. (Art. IV, Sec. I, Par. 3.)

New

SECTION II

Composition

1. The Senate shall be composed of one Senator from each county in the State elected by the legally qualified voters of the counties, respectively, for a term of four years beginning on the second Tuesday in January next following his election.

2. The members of the Senate shall be elected in two classes so that, as nearly as may be, one-half of the total number shall be elected biennially. The first classification for the purposes of this section shall be effectuated as provided in the schedule of this Constitution.

3. The General Assembly shall be composed of members from each county elected biennially by the legally qualified voters of the counties, respectively, for a term of two years beginning on the second Tuesday in January next following their election.

4. Members of the General Assembly shall be apportioned among the several counties in proportion, as nearly as may be, to population, as determined by the latest census of the United States, except that each county shall at all times be entitled to one member and the whole number of members shall never exceed sixty. An apportionment of members of the General Assembly shall be made by the Legislature at its first session after each Federal census, and shall remain unaltered until the next Federal census shall have been taken.

cf. III-II-1

1. The Senate shall be composed of one Senator from each county in the State, elected by the legal voters of the counties, respectively, for three years. (Art. IV, Sec. II, Par. 1.)

---

cf. III-II-2

2. As soon as the Senate shall meet after the first election to be held in pursuance of this Constitution, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the first year; of the second class at the expiration of the second year; and of the third class at the expiration of the third year; so that one class may be elected every year:

[cf. III-II-5] [infra]

And if vacancies happen, by resignation or otherwise, the persons elected to supply such vacancies shall be elected for the unexpired terms only. (Art. IV, Sec. II, Par. 2.)

---

cf. III-II-3
[cf. VIII-1] [infra]

3. Members of the Senate and General Assembly shall be elected yearly and every year, on the first Tuesday after the first Monday in November;

[cf. III-I-3] [supra]

and the two houses shall meet separately on the second Tuesday in January next after the said day of election, at which time of meeting, the legislative year shall commence;

[cf. VIII-I] [infra]

but the time of holding such election may be altered by the Legislature. (Art. IV, Sec. I, Par. 3.)

---

cf. III-II-3

1. The General Assembly shall be composed of members annually elected by the legal voters of the counties, respectively,

cf. III-II-4

who shall be apportioned among the said counties as nearly as may be according to the number of their inhabitants. The present apportionment shall continue until the next census of the United States shall have been taken, and an apportionment of members of the General Assembly shall be made by the Legislature at its first session after the next and every subsequent enumeration or census, and when made shall remain unaltered until another enumeration shall have been taken; provided, that each county shall at all times be entitled to one member; and the whole number of members shall never exceed sixty. (Art. IV, Sec. III, Par. 1)

Art. III, Sec. II, Par. 5
Art. III, Sec. III, Pars. 1-3

5. Vacancies in the office of Senator or Assemblyman shall be filled for the remainder of the unexpired term by election at the next general election held not less than sixty days after the occurrence of the vacancy.

SECTION III

Legislative Office

1. Members of the Senate and General Assembly shall receive annually the sum of one thousand five hundred dollars during the time for which they shall have been elected, and while they shall hold their office, and no other allowance or emolument, directly or indirectly, for any purpose whatever, except for service on the legislative council and as presiding officer of either house. The President of the Senate and the Speaker of the House of Assembly shall, by virtue of their offices, receive an additional compensation, equal to one-third of their allowance as members.

2. Members of the Senate and General Assembly shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same. For any speech or debate, in either house, they shall not be questioned in any other place.

3. No member of the Senate or General Assembly shall, during the time for which he or she was elected and for one year thereafter, be eligible to hold any appointive office under the authority of this State, including the offices of State Treasurer and State Comptroller.

[cf. III-II-2] [supra] 2. As soon as the Senate shall meet after the first election to be held in pursuance of this Constitution, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the first year; Of the second class at the expiration of the second year; and of the third class at the expiration of the third year; so that one class may be elected every year:

cf. III-II-5 And if vacancies happen, by resignation or otherwise, the persons elected to supply such vacancies shall be elected for the unexpired terms only. (Art. IV, Sec. II, Par. 2.)

---

cf.III-III-1 7. Members of the Senate and General Assembly shall receive annually the sum of five hundred dollars during the time for which they shall have been elected, and while they shall hold their office, and no other allowance or emolument, directly or indirectly, for any purpose whatever. The President of the Senate and the Speaker of the House of Assembly shall, in virtue of their offices, receive an additional compensation, equal to one-third of their allowance as members. (Art. IV, Sec. IV, Par. 7.)

---

cf. III-III-2 8. Members of the Senate and General Assembly shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sitting of their respective houses, and in going to and returning from the same: And for any speech or debate, in either house, they shall not be questioned in any other place. (Art. IV, Sec. IV, Par. 8.)

---

cf. III-III-3 1. No member of the Senate or General Assembly shall, during the time for which he was elected, be nominated or appointed by the Governor or by the Legislature in joint meeting, to any civil office under the authority of this State, which shall have been created, or the emoluments whereof shall have been increased, during such time. (Art. IV, Sec. V, Par. 1.)

4. The seat of any member of the Legislature shall be vacated by his acceptance of any office, position or appointment of profit under the government of this State or of the United States.

5. No person possessed of any office, position or appointment of profit under the government of this State or of the United States and no judge of any court shall be entitled to a seat in the Legislature. Such office, position or employment under the government of this State or any judicial office held under the laws thereof shall be deemed to have been vacated, however, by the acceptance of a seat in either house of the Legislature.

6. Each member of the Legislature shall, before he enters upon duties of his office, take and subscribe an oath or affirmation to support the Constitution of this State and of the United States and faithfully to discharge the duties of his office according to the best of his ability. Members-elect of the Senate or General Assembly may administer to each other such oath or affirmation.

No counterpart

cf. III-III-4

2. If any member of the Senate or General Assembly shall be elected to represent this State in the Senate or House of Representatives of the United States, and shall accept thereof, or shall accept of any office or appointment under the government of the United States, his seat in the Legislature of this State shall hereby be vacated. (Art. IV, Sec. V, Par. 2.)

cf. III-III-5

3. No justice of the Supreme Court, nor judge of any other court, sheriff, justice of the peace, nor any person or persons possessed of any office of profit under the government of this State shall be entitled to a seat either in the Senate or in the General Assembly; but on being elected and taking his seat his office shall be considered vacant; and no person holding any office of profit under the government of the United States shall be entitled to a seat in either house. (Art. IV, Sec. V, Par. 3.)

cf. III-III-6

1. Members of the Legislature shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of New Jersey, and that I will faithfully discharge the duties of Senator (or member of the General Assembly, as the case may be) according to the best of my ability." And members-elect of the Senate or General Assembly are hereby empowered to administer to each other the said oath or affirmation. (Art. IV, Sec. VIII, Par. 1.)

2. Every officer of the Legislature shall, before he enters upon his duties, take and subscribe the following oath or affirmation: "I do solemnly promise and swear (or affirm) that I will faithfully, impartially and justly perform all the duties of the office of ....., to the best of my ability and understanding; that I will carefully preserve all records, papers, writings, or property entrusted to me for safe keeping by virtue of my office, and make such disposition of the same as may be required by law." (Art. IV, Sec. VIII, Par. 3.)

SECTION IV

Procedure

1. Each house shall direct writs of election for supplying vacancies, occasioned by death, resignation, or otherwise; but if vacancies occur during the recess of the Legislature, the writs may be issued by the Governor, under such regulations as may be prescribed by law.

2. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

3. Each house shall choose its own officers, determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, may expel a member.

4. Each house shall keep a journal of its proceedings, and from time to time publish the same; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

5. Neither house, during the session of the Legislature, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

6. The Senate shall vote in public on the question of confirmation of any nominations to office made by the Governor.

7. Lobbying in the legislative chambers of either house shall be prohibited. Persons or associations who engage to influence legislative action shall register with the Secretary of State, disclosing the names and interest of those for whom they may act, the compensation received or agreed, the measures which they may be engaged in promoting or opposing and all expenditures made or incurred in connection therewith. All such information shall constitute a public record. The Legislature shall impose suitable penalties for violations of these provisions.

No change (Art. IV, Sec. IV, Par. 1)

No change (Art. IV, Sec. IV, Par. 2)

No change (Art. IV, Sec. IV, Par. 3)

No change (Art. IV, Sec. IV, Par. 4)

No change (Art. IV, Sec. IV, Par. 5)

New

New

Art. III, Sec. V, Para. 1-2

SECTION V

Legislative Council

1. There shall be a legislative council consisting, ex officio, of the Governor or, in his absence, the Attorney-General, the President of the Senate and the Speaker of the House of Assembly, the majority leaders and the leaders of the ranking minority party, for the time being, of each house of the Legislature. Members of the legislative council except the Governor and Attorney-General, shall receive the sum of one thousand five hundred dollars per annum while they serve as members thereof.

2. The legislative council shall: (a) make or cause to be made sound technical studies of the governmental needs of the State, and shall plan and formulate a program of necessary legislative measures predicated thereon in the form of draft bills, for consideration during each session of the Legislature; (b) provide independent research and consultative services in aid of its other powers and duties, within the limits of available appropriations, and co-operate with such other legislative agencies as may be established by law; (c) hold its first meeting at the call of the President of the Senate at such time and place as he shall designate, organize for the transaction of its business, adopt such rules of procedure as it may deem necessary, except as such rules may be established by law, and report at the opening session of each Legislature, and at such times thereafter and with respect to such matters as the council may deem in the public interest; (d) have such other powers and duties, not inconsistent with the foregoing, as may be from time to time prescribed by law.

New

New

SECTION VI

Legislation

1. The laws of this State shall begin in the following style, "Be it enacted by the Senate and General Assembly of the State of New Jersey."

2. All bills for raising revenue shall originate in the House of Assembly; but the Senate may propose or concur with amendments, as on other bills.

3. All bills and joint resolutions shall be read three times in each house, before the final passage thereof; and no bill or joint resolution shall pass, unless there be a majority of all the members of each body personally present and agreeing thereto; and the yeas and nays of the members voting on such final passage shall be entered on the journal.

4. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title. This paragraph shall not, however, be given effect to invalidate any law constituting a compilation, consolidation, revision or rearrangement of all or part of the laws heretofore or hereafter enacted upon recommendation of any permanent law revision agency, nor to invalidate any law enacted upon recommendation of the legislative council.

5. No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length.

6. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part therof, shall be applicable, other than by inserting it in such act, except as otherwise provided in this section.

No change (Art. IV, Sec. VII, Par. 5)

No change (Art. IV, Sec. VI, Par. 1)

No change (Art. IV, Sec. IV, Par. 6)

cf. III-VI-4

4. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.

cf. III-VI-5

No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length.

[cf. III-VII-9] [infra].

No general law shall embrace any provision of a private, special or local character.

cf. III-VI-6

No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act. (Art. IV, Sec. VII, Par. 4.)

7. The Legislature may by law, notwithstanding any express or implied limitation of this Constitution, incorporate by reference with present and future effect any provision of Federal public law or any Federal administrative rule or regulation relating to the regulation of industry or commerce, or to taxation, or establishing technical standards of any kind.

8. All the statutory law shall be continuously revised by such permanent agency as may be designated by law. The Legislature shall, from time to time upon recommendation of such agency and otherwise, enact revisions of such parts of the statutory law as need appears, to the end that all the law shall be completely revised at least once every ten years.

New

New

Art. III, Sec, VII, Pars. 1-5

SECTION VII

Legislative Powers

1. Neither the Legislature nor either house thereof shall elect or appoint any executive, administrative or judicial officers, except the State Treasurer and the State Comptroller.

2. The right of labor to organize and bargain collectively shall not be impaired.

3. No divorce shall be granted by the Legislature.

4. The Legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

5. It shall be lawful to hold, carry on, and operate in this State race meetings whereat the trotting, running or steeplechase racing of horses only may be conducted between the hours of sunrise and sunset on week days only and in duly legalized race tracks, at which the pari-mutuel system of betting shall be permitted. No lottery, roulette, or game of chance of any form shall be authorized by the Legislature in this State, and no ticket in any lottery shall be bought or sold within this State, or offered for sale; nor shall pool-selling, bookmaking, or gambling of any kind be authorized or allowed within this State, except pari-mutuel betting on the results of the racing of horses only, from which the State shall derive a reasonable revenue for the support of government, nor shall any gambling device, practice, or game of chance, or pari-mutuel betting thereon now prohibited by law, except as herein stated and otherwise provided, be legalized, or the remedy, penalty, or punishment now provided therefor be in any way diminished.

New

New

No change (Art. IV, Sec. VII, Par. 1)

No change (Art. IV, Sec. VII, Par. 3)

cf. III-VII-5

2. It shall be lawful to hold, carry on, and operate in this State race meetings whereat the trotting, running or steeplechase racing of horses only may be conducted between the hours of sunrise and sunset on week days only and in duly legalized race tracks, at which the pari-mutuel system of betting shall be permitted. No lottery, roulette, or game of chance of any form shall be authorized by the Legislature in this State, and no ticket in any lottery shall be bought or sold within this State, or offered for sale; nor shall pool-selling, book-making, or gambling of any kind be authorized or allowed within this State, except pari-mutuel betting on the results of the racing of horses only, from which the State shall derive a reasonable revenue for the support of government; nor shall any gambling device, practice, or game of chance, or pari-mutuel betting thereon now prohibited by law, except as herein stated and otherwise provided, be legalized, or the remedy, penalty, or punishment now provided therefor be in any way diminished. (Art. IV, Sec. VII, Par. 2)

Art. III, Sec. VII, Pars. 6-8

6. The Legislature may enact general laws under which municipalities and counties may limit and restrict to specified districts and regulate therein, land uses, buildings and structures according to their construction, and the nature and extent of their use. The Legislature may similarly limit and restrict the uses of property adjacent to any public parkway, highway, other public improvement or public place for the protection and conservation thereof. Such laws shall be deemed to be within the police power of the State and shall be subject to repeal or alteration by the Legislature.

7. Any agency of the State or any political subdivision thereof which is empowered to take or otherwise acquire private property for any public highway, parkway, other public improvement or public place, may acquire the fee or any lesser interest, and may be empowered by law to take or otherwise acquire the benefit of a fee or restrictions or easements upon abutting property to preserve and protect the public highway, parkway, other public improvement or public place.

8. The fund for the support of free schools, and all money, stock, and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public free schools, for the equal benefit of all the people of the State; and it shall not be competent for the Legislature to borrow, appropriate, or use the said fund or any part thereof, for any other purpose, under any pretence whatever. The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this State between the ages of five and eighteen years.

cf. III-VII-6

5. The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the exercise of such authority shall be deemed to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature. (Art. IV, Sec. VI, Par. 5.)

New

No change. (Art. IV, Sec. VII, Par. 6.)

Art. III, Sec. VII, Par. 9

9. No general law shall embrace any provision of a private, special or local character. The Legislature shall not pass any private, special or local laws:

(1) Authorizing the sale of any lands belonging in whole or in part to a minor or minors or other persons who may at the time be under any legal disability to act for themselves.

(2) Creating, increasing or decreasing the emoluments, term, tenure or pension rights of public officers or employees.

(3) Relating to taxation or exemption therefrom.

(4) Laying out, opening, altering and working roads or highways.

(5) Vacating any road, town plot, street, alley or public grounds.

(6) Regulating the internal affairs of towns and counties; appointing local offices or commissions to regulate municipal affairs.

(7) Selecting, drawing, summoning or impaneling grand or petit jurors.

(8) Changing the law of descent.

(9) Granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever.

(10) Granting to any corporation, association or individual the right to lay down railroad tracks.

(11) Providing for changes of venue in civil or criminal cases.

(12) Providing for the management and support of free public schools.

(Continued on Page 990)

[cf. III-VI-4] [supra]

4. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.

[cf. III-VI-5] [supra]

No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length.

cf.III-VII-9

No general law shall embrace any provision of a private, special or local character.

[cf. III-VI-6] [supra]

No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act. (Art. IV, Sec. VII, Par 4.)

cf. III-VII-9 (1)

7. No private or special law shall be passed authorizing the sale of any lands belonging in whole or in part to a minor or minors or other persons who may at the time be under any legal disability to act for themselves. (Art. IV, Sec. VII, Par. 7.)

cf.III-VII-9

11. The Legislature shall not pass private, local or special laws in any of the following enumerated cases, that is to say:

" (4) Laying out, opening, altering and working roads or highways.

" (5) Vacating any road, town plot, street, alley or public grounds.

" (6) Regulating the internal affairs of towns and counties; appointing local offices or commissions to regulate municipal affairs.

" (7) Selecting, drawing, summoning or impaneling grand or petit jurors.

" (2) Creating, increasing or decreasing the percentage or allowance of public officers during the term for which said officers were elected or appointed.

" (8) Changing the law of descent.

" (9) Granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever.

" (10) Granting to any corporation, association or individual, the right to lay down railroad tracks.

" (11) Providing for changes of venue in civil or criminal cases.

" (12) Providing for the management and support of free public schools.

(Continued on Page 991)

Art. III, Sec. VII, Pars. 9 cont'd-10

The Legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The Legislature shall pass no special act conferring corporate powers, but shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the Legislature.

10. No private, special or local bill shall be passed, unless public notice of the intention to apply therefor, and of the general object thereof, shall have been previously given. The Legislature, at the next session after the adoption hereof, and from time to time thereafter, shall prescribe the time and mode of giving such notice, the evidence thereof, and how such evidence shall be preserved.

The Legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The Legislature shall pass no special act conferring corporate powers, but they shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the Legislature. (Art. IV, Sec. VII, Par. 11.)

---

cf. III-VII-10

9. No private, special or local bill shall be passed, unless public notice of the intention to apply therefor, and of the general object thereof, shall have been previously given. The Legislature, at the next session after the adoption thereof, and from time to time thereafter, shall prescribe the time and mode of giving such notice, the evidence thereof, and how such evidence shall be preserved. (Art. IV, Sec. VII, Par. 9.)

ARTICLE IV
EXECUTIVE AND ADMINISTRATIVE

SECTION I

Executive Office

1. The executive power shall be vested in a Governor.

2. The Governor shall be elected in odd-numbered years by the legally qualified voters of this State. The person receiving the greatest number of valid votes shall be the Governor; but if an equal and greatest number of votes are received by more than one candidate, one of such candidates shall be chosen Governor by the votes of a majority of the members of both houses of the Legislature in joint meeting. Contested elections for the office of Governor shall be determined in such manner as may be provided by law.

3. The Governor shall serve for a term of four years, beginning on the fifteenth day of December next following his election, and no person hereafter elected shall be eligible for more than one term.

4. The Governor shall be not less than thirty years of age, and shall have been for twenty years at least a citizen of the United States, and a resident of this State seven years next before his election, unless he shall have been absent during that time on the public business of the United States or of this State.

No change (Art. V, Par. 1)

cf. IV-I-2

2. The Governor shall be elected by the legal voters of this State. The person having the highest number of votes shall be the Governor; but if two or more shall be equal and highest in votes, one of them shall be chosen Governor by the vote of a majority of the members of both houses in joint meeting. Contested elections for the office of Governor shall be determined in such manner as the Legislature shall direct by law. When a Governor is to be elected by the people, such election shall be held at the time when and at the places where the people shall respectively vote for members of the Legislature. (Art. V, Par. 2.)

cf. IV-I-3

3. The Governor shall hold his office for three years, to commence on the third Tuesday of January next ensuing the election for Governor by the people, and to end on the Monday preceding the third Tuesday of January, three years thereafter: And he shall be incapable of holding that office for three years next after his term of service shall have expired:

[cf. IV-II-2] [infra]

And no appointment or nomination to office shall be made by the Governor during the last week of his said term. (Art. V, Par. 3.)

cf. IV-I-4

4. The Governor shall be not less than thirty years of age, and shall have been for twenty years, at least, a citizen of the United States, and a resident of this State seven years next before his election, unless he shall have been absent during that time on the public business of the United States or of this State. (Art. V, Par. 4.)

5. No member of Congress, or person holding an office under the United States, or this State, shall exercise the office of Governor except during his temporary absence from the State or temporary disability as specifically provided in this Constitution; and in case the Governor, or person administering the government, shall accept any office under the United States or this State, his office of Governor shall thereupon be vacant. Nor shall he be elected by the Legislature to any office under the government of this State or of the United States during the term for which he shall have been elected Governor.

6. In case of impeachment of the Governor, his absence from the State, or temporary inability to discharge the duties of his office, the powers, duties and emoluments of the office shall devolve to the head of the Department of Taxation and Finance until such time as the Governor shall be acquitted, or shall return to the State, or the temporary inability shall cease. In case of any vacancy in the office of Governor caused by death or removal of the Governor, by death or resignation of the Governor-elect, or his failure to qualify, or from any other cause, the powers, duties and emoluments of the office shall devolve to the head of the Department of Taxation and Finance who shall serve until a new Governor shall have been elected and qualified. The new Governor shall be elected, in the manner provided by this Constitution, at the next general election to be held, in an odd-numbered year, not less than ninety days after the occurrence of the vacancy.

cf. IV-I-5

8. No member of Congress, or person holding an office under the United States, or this State, shall exercise the office of Governor; and in case the Governor, or person administering the government shall accept any office under the United States or this State, his office of Governor shall thereupon be vacant. Nor shall he be elected by the Legislature to any office under the government of this State or of the United States, during the term for which he shall have been elected Governor. (Art. V, Par. 8.)

cf. IV-I-6

12. In case of the death, resignation, or removal from office of the Governor, the powers, duties, and emoluments of the office, shall devolve upon the President of the Senate, and in case of his death, resignation or removal, then upon the Speaker of the House of Assembly, for the time being, until another Governor shall be elected and qualified; but in such case another Governor shall be chosen at the next election for members of the Legislature unless such death, resignation, or removal, shall occur within thirty days immediately preceding such next election, in which case a Governor shall be chosen at the second succeeding election for members of the Legislature.

[cf. IV-II-2] [infra]

When a vacancy happens, during the recess of the Legislature in any office which is to be filled by the Governor and Senate, or by the Legislature in joint meeting, the Governor shall fill such vacancy, and the commission shall expire at the end of the next session of the Legislature, unless a successor shall be sooner appointed:

[cf. VI-I-4] [infra]

when a vacancy happens in the office of the clerk or surrogate of any county, the Governor shall fill such vacancy, and the commission shall expire when a successor is elected and qualified.

[cf. IV-II-2] [infra]

No person who shall have been nominated to the Senate by the Governor for any office of trust or profit under the government of this State, and shall not have been confirmed before the recess of the Legislature shall be eligible for appointment to such office during the continuance of such recess. (Art. V, Par. 12.)

(Continued on page 997)

Art. IV, Sec. II, Par. 1

(*For Article IV Section I par. 6 see page* 994)

SECTION II

General

1. The Governor shall take care that the laws be faithfully executed, convene the Legislature or the Senate alone whenever, in his opinion, public necessity so requires, communicate a message to the Legislature relating to the condition of the State at the opening of each session and at such other times and with respect to such legislative measures or other public matters as he may deem in the public interest. He shall be commander-in-chief of all the military and naval forces of the State, and shall grant, under the great seal of the State, commissions to all civil and military officers elected or appointed pursuant to requirements of this Constitution. The Governor shall also nominate and appoint, by and with the advice and consent of the Senate, all officers so subject to appointment by this Constitution and all other officers whose election or appointment is not otherwise provided for by law.

cf. IV-I-6

13. In case of the impeachment of the Governor, his absence from the State, or inability to discharge the duties of his office, the powers, duties and emoluments of the office shall devolve upon the President of the Senate; and in case of his death, resignation or removal, then upon the Speaker of the House of Assembly for the time being, until the Governor absent, or impeached shall return or be acquitted, or until the disqualification or inability shall cease, or until a new Governor be elected and qualified. (Art. V, Par. 13.)

cf. IV-I-6

14. In case of a vacancy in the office of Governor from any other cause than those herein enumerated, or in case of the death of the Governor-elect before he is qualified into office, the powers, duties and emoluments of the office shall devolve upon the President of the Senate or Speaker of the House of Assembly, as above provided for, until a new Governor be elected and qualified. (Art. V, Par. 14.)

---

cf. IV-II-1

6. He shall be the commander-in-chief of all the military and naval forces of the State; he shall have power to convene the Legislature or the Senate alone, whenever in his opinion public necessity requires it; he shall communicate by message to the Legislature at the opening of each session, and at such other times as he may deem necessary, the condition of the State, and recommend such measures as he may deem expedient; he shall take care that the laws be faithfully executed, and grant, under the great seal of the State, commissions to all such officers as shall be required to be commissioned. (Art. V, Par. 6.)

cf. IV-II-1
[cf. IV-III-4]
[infra]
[cf. V-VI-2]
[infra]

3. The Attorney-General, Prosecutors of the Pleas, Clerk of the Supreme Court, Clerk of the Court of Chancery, Secretary of State, and the Keeper of the State Prison, shall be nominated by the Governor and appointed by him with the advice and consent of the Senate. They shall hold their offices for five years. (Art. VII, Sec. 11, Par. 3.)

cf. IV-II-1
[cf. IV-III-4]
[infra]

8. All other officers, whose appointments are not otherwise provided for by law, shall be nominated by the Governor and appointed by him with the advice and consent of the Senate; and shall hold their offices for the time prescribed by law. (Art. VII, Sec. II, Par. 8.)

Art. IV, Sec. II, Par. 2

2. The Senate shall either confirm or reject the Governor's nominations for appointive offices within thirty days after they are submitted. If the Senate fails to act upon a nomination, the nominee shall be deemed confirmed at the expiration of thirty days from the date of submission of his name by the Governor. But the Governor shall make no nominations to the Senate during the last month of his term.

[cf. IV-I-3] [supra]

3. The Governor shall hold his office for three years, to commence on the third Tuesday of January next ensuing the election for Governor by the people, and to end on the Monday preceding the third Tuesday of January, three years thereafter: And he shall be incapable of holding that office for three years next after his term of service shall have expired:

And no appointment or nomination to office shall be made by the Governor during the last week of his said term. (Art. V, Par. 3.)

cf. IV-II-2

[cf. IV-I-6] [supra]

12. In case of the death, resignation, or removal from office of the Governor, the powers, duties, and emoluments of the office, shall devolve upon the President of the Senate, and in case of his death, resignation or removal, then upon the Speaker of the House of Assembly, for the time being, until another Governor shall be elected and qualified; but in such case another Governor shall be chosen at the next election for members of the Legislature unless such death, resignation, or removal, shall occur within thirty days immediately preceding such next election, in which case a Governor shall be chosen at the second succeeding election for members of the Legislature.

cf. IV-II-2

When a vacancy happens, during the recess of the Legislature in any office which is to be filled by the Governor and Senate, or by the Legislature in joint meeting, the Governor shall fill such vacancy, and the commission shall expire at the end of the next session of the Legislature, unless a successor shall be sooner appointed:

[cf. VI-I-4] [infra]

when a vacancy happens in the office of the clerk or surrogate of any county, the Governor shall fill such vacancy, and the commission shall expire when a successor is elected and qualified.

cf. IV-11-2

No person who shall have been nominated to the Senate by the Governor for any office of trust or profit under the government of this State, and shall not have been confirmed before the recess of the Legislature shall be eligible for appointment to such office during the continuance of such recess. (Art. V, Par. 12.)

Art. IV, Sec. II, Pars. 3-5

3. Every bill which shall have passed both houses shall be submitted to the Governor for approval. If the Governor shall approve, he shall sign the bill and it shall thereupon become a law. If any bill submitted to the Governor shall contain one or more items of appropriation of money, he may approve and sign the bill, but may specially disapprove by a written statement appended thereto of one or more of such items, and the items so disapproved shall not take effect. If the Governor shall disapprove a bill, or an item or items of appropriation which may be contained therein, he shall return it, with a written statement of his objections, to the house in which the bill originated. The Governor's objections shall be entered at large in the journal of the proceedings of that house and a copy thereof shall be sent to the other house.

4. Any bill shall become a law notwithstanding disapproval by the Governor if, upon reconsideration on or after the third day following return thereof to the house of origin, it shall receive the affirmative votes of a majority of the membership of each house of the Legislature, except that a supplementary appropriation bill may so become a law only by the affirmative votes of two-thirds such membership. Any item of appropriation specially disapproved by the Governor shall become effective notwithstanding such disapproval if, upon being separately reconsidered on or after the third day following return of the bill in which it is contained to the house of origin, it shall receive the affirmative votes of two-thirds of the membership of each house of the Legislature.

The vote taken upon reconsideration of any bill or item of appropriation after disapproval by the Governor shall be by yeas and nays and there shall be entered upon the journal of each house, respectively, the names of the members voting for and against.

5. At noon, on the seventh day, Sundays excepted, following the date of submission of any bill to the Governor, if he shall not prior thereto have returned it to the house of origin, the bill shall become a law with like effect as if he had signed it. If the Legislature shall by adjournment prevent return of a bill within seven days as aforesaid, the bill shall not become a law unless the Governor shall sign it within twenty days after such adjournment.

cf. IV-II-3

7. Every bill which shall have passed both houses shall be presented to the Governor: if he approve he shall sign it, but if not he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it;

cf. IV-II-4

if, after such reconsideration, a majority of the whole number of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved of by a majority of the whole number of that house, it shall become a law; but, in neither house shall the vote be taken on the same day on which the bill shall be returned to it: and in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively.

cf. IV-II-5

If any bill shall not be returned by the Governor, within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature by their adjournment, prevent its return in which case it shall not be a law.

cf. IV-II-3

If any bill presented to the Governor contain several items of appropriations of money, he may object to one or more of such items while approving of the other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the appropriations so objected to shall not take effect.

cf. IV-II-4

If the Legislature be in session he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If, on reconsideration, one or more of such items be approved by a majority of the members elected to each house, the same shall be a part of the law, notwithstanding the objections of the Governor.

cf. IV-II-4

All the provisions of this section in relation to bills not approved by the Governor shall apply to cases in which he shall withhold his approval from any item or items contained in a bill appropriating money. (Art. V. Par. 7.)

Art. IV, Sec. II, Pars. 6-7

6. The Governor may, upon complaint submitted to him by at least twenty reputable citizens, cause an investigation to be made of the conduct in office of any State officer, except a member of the Legislature, an officer appointed or elected by the Legislature or a judicial officer. The Governor may remove any such officer after notice and an opportunity to be heard, whenever, in his opinion, such investigation discloses misfeasance or malfeasance in office.

7. The Governor may grant pardons and commute sentences after receiving recommendations of the parole commission established by this article. He may also suspend the collection of fines and forfeitures and may grant reprieves which may not extend beyond ninety days after conviction; but neither these powers nor the pardoning power shall apply to cases of impeachment.

New.

cf. IV-II-7

9. The Governor or person administering the government shall have power to suspend the collection of fines and forfeitures, and to grant reprieves, to extend until the expiration of a time not exceeding ninety days after conviction; but this power shall not extend to cases of impeachment. (Art. V, Par. 9.)

Art. IV, Sec. III, Para. 1-3

SECTION III

Administration

1. There shall be nine administrative departments in the State government designated as Agriculture, Commerce, Education and Civil Service, Labor, Law, Public Works, Social Welfare, State, and Taxation and Finance, which shall be under the supervision and control of the Governor, and a State Treasurer and a State Comptroller who shall be appointed by and be responsible to the Legislature. The Governor shall, by executive order, from time to time allocate all executive and administrative offices, agencies and instrumentalities of the State government among and within the foregoing departments and offices.

2. Executive and administrative functions, powers and duties in the State government as authorized by law shall from time to time be allocated by the Governor, by executive order, among and within the departments and offices prescribed by this Constitution in such manner as to promote efficiency and economy in the operation of the State government, and to group, co-ordinate and consolidate the offices, agencies and instrumentalities thereof according to major purposes, as nearly as may be. No executive order shall, however, allocate functions, powers and duties of receipt and disbursement of public moneys other than to the State Treasurer, nor of accounting, audit and control other than to the State Comptroller.

3. Any executive order which allocates or reallocates functions, powers or duties pursuant to paragraph two of this section shall be transmitted by the Governor to each house of the Legislature while it is in regular or special session. Such order shall take effect in accordance with its terms, provided that it has been before the Legislature for thirty calendar days and prior to the expiration thereof the Legislature has not, by concurrent resolution, disapproved of the order. In the event of such disapproval, the order shall be void and of no effect. Limitations imposed by this Constitution upon the duration of regular and special sessions of the Legislature shall, solely for the purposes of this paragraph, be suspended to allow consideration of an executive order, but not exceeding thirty calendar days in any event.

New

New

New

4. The heads of all administrative departments shall comprise a single executive, unless otherwise provided by law. All such department heads and the members of all boards, councils and commissions, except the State Comptroller and the State Treasurer, shall be nominated and appointed by the Governor, by and with the advice and consent of the Senate.

5. The heads of all administrative departments shall serve during the term of the Governor appointing them, at his pleasure, and until their successors have been appointed and qualified.

6. The State Comptroller and the State Treasurer shall be appointed by the Senate and General Assembly in joint meeting. They shall hold their offices, respectively, for four years. The Governor may, whenever in his opinion it would be in the public interest, require from the Comptroller or the Treasurer written statements under oath of information on any matter relating to the conduct of their respective offices.

7. The Governor and the heads of executive and administrative departments of the State government shall, at stated times, receive for their services such compensation as may be fixed by law which shall be neither increased nor diminished during their respective terms.

8. Appointive officers and employees of the State government shall receive no compensation for their public services in addition to such annual salary as may be fixed by law. Any other moneys or fees received by any such officer or employee by virtue of or in connection with his office or position, except as reimbursement for expenses actually incurred in the course of his public duties, shall be forthwith paid into the State treasury.

cf. IV-III-4
[cf. IV-II-1]
[supra]
[cf. V-VI-2]
[infra]

3. The Attorney-General, Prosecutors of the Pleas, Clerk of the Supreme Court, Clerk of the Court of Chancery, Secretary of State, and the Keeper of the State Prison, shall be nominated by the Governor and appointed by him with the advice and consent of the Senate. They shall hold their offices for five years. (Art. VII, Sec. II, Par. 3.)

cf. IV-III-4
[cf. IV-II-1]
[supra]

8. All other officers, whose appointments are not otherwise provided for by law, shall be nominated by the Governor and appointed by him with the advice and consent of the Senate; and shall hold their offices for the time prescribed by law. (Art. VII, Sec. II, Par. 8.)

New

---

cf. IV-III-6

2. The State Treasurer and Comptroller shall be appointed by the Senate and General Assembly in joint meeting. They shall hold their offices for three years, and until their successors shall be qualified into office. (Art. VII, Sec. II, Par. 2.)

---

cf. IV-III-7

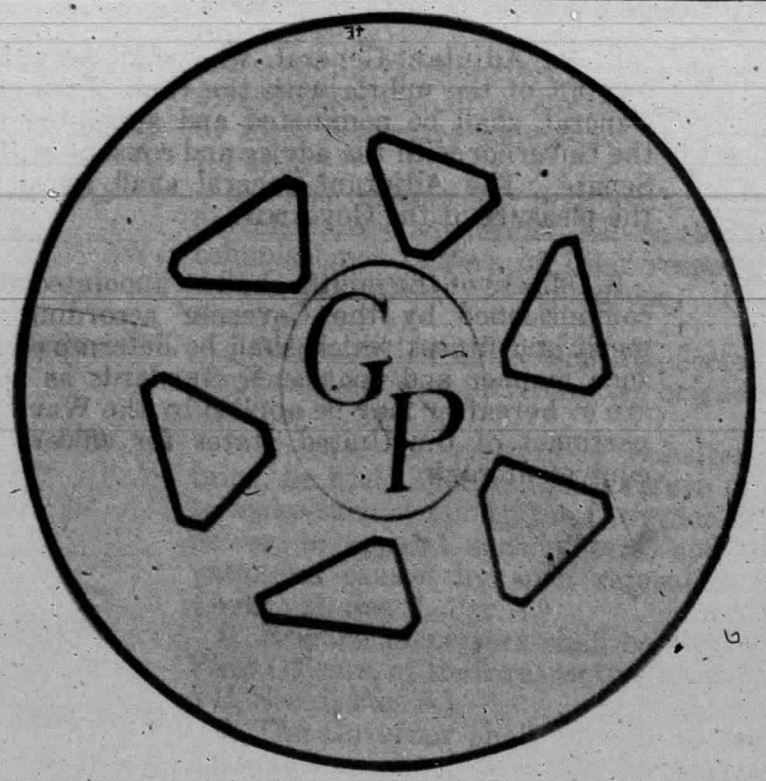
5. The Governor shall, at stated times, receive for his services a compensation which shall be neither increased nor diminished during the period for which he shall have been elected. (Art. V, Par. 5.)

New

Art. IV, Sec. III, Par. 9

9. No rule or regulation made by any executive or administrative agency of the State government except such as relates to the organization or internal management of an executive or administrative agency of the State government shall be effective until it is filed with the Secretary of State. The Legislature shall provide by law for the speedy publication of such rules and regulations.

New



SECTION IV

Militia

1. The Legislature shall provide by law for enrolling, organizing and arming the militia, of which the Governor shall be commander-in-chief.

2. An Adjutant-General, who shall be chief of staff of the militia with the rank of Major-General, shall be nominated and appointed by the Governor with the advice and consent of the Senate. The Adjutant-General shall serve at the pleasure of the Governor.

3. Officers of the militia shall be appointed and commissioned by the Governor according to merit and fitness which shall be determined in such manner and upon such standards as now are or hereafter may be applied by the War Department of the United States for officers of equivalent rank.

4. No commissioned officer shall be removed from office other than by sentence of a court martial, or by a board constituted and empowered by law, except that all general officers may be suspended for cause by the Governor.

cf. IV-IV-1 1. The Legislature shall provide by law for enrolling, organizing and arming the militia. (Art. VII, Sec. I, Par. 1.)

cf. IV-IV-2 5. Major-Generals, the Adjutant-General and

cf. IV-IV-3 Quartermaster-General shall be nominated by the Governor, and appointed by him, with the advice and consent of the Senate. (Art. VII, Sec. I, Par. 5.)

cf. IV-IV-3 2. Captains, Subalterns, and non-commissioned officers shall be elected by the members of their respective companies. (Art. VII, Sec. I, Par. 2.)

cf. IV-IV-3 3. Field officers of regiments, independent battalions, and squadrons shall be elected by the commissioned officers of their respective regiments, battalions or squadrons. (Art. VII, Sec. I, Par. 3.)

cf. IV-IV-3 4. Brigadier-Generals shall be elected by the Field Officers of their respective brigades. (Art. VII, Sec. I, Par. 4.)

cf. IV-IV-3 7. In case the electors of Subalterns, Captains, or Field Officers, shall refuse or neglect to make such elections, the Governor shall have power, to appoint such officers, and to fill all vacancies caused by such refusal or neglect. (Art. VII, Sec. I, Par. 7.)

cf. IV-IV-3 8. Brigade Inspectors shall be chosen by the Field Officers, of their respective brigades. (Art. VII, Sec. I, Par. 8.)

cf. IV-IV-3 9. The Governor shall appoint all militia officers, whose appointment is not otherwise provided for in this Constitution. (Art. VII, Sec. I, Par. 9.)

cf, IV-IV-3 10. Major-Generals, Brigadier-Generals and Commanding Officers of regiments, independent battalions, and squadrons, shall appoint the Staff Officers of their divisions, brigades, regiments, independent battalions, and squadrons respectively. (Art. VII, Sec. I, Par. 10.)

cf. IV-IV-3 6. The Legislature shall provide, by law, the time and manner of electing militia officers, and of certifying their elections to the Governor, who shall grant their commissions, and determine their rank, when not determined by law;—

cf. IV-IV-4 And no commissioned Officer shall be removed from office, but by the sentence of a court martial, pursuant to law. (Art. VII, Sec. I, Par. 6.)

Art. IV, Sec. V, Pars. 1-3

SECTION V

Parole Commission

1. There shall be a Commission on Parole in the executive branch of the government. The commission shall comprise three members, at least one of whom shall be a member of the bar of this State, who shall be nominated and appointed by the Governor, by and with the advice and consent of the Senate. Members of the commission shall hold office for a term of four years, but of those first appointed one shall be appointed for a term of two years, one for four years and one for six years. Members of the commission may be removed by the Governor, for cause upon notice and hearing, prior to the expiration of their respective terms. They shall receive such fixed annual compensation for their services as may be provided by law.

2. The Commission on Parole shall grant paroles and supervise parolees, as may be provided by law. The commission may remit fines and forfeitures and shall make recommendations to the Governor upon applications for executive clemency after conviction, in all cases except impeachments.

3. The Commission on Parole shall meet at stated times, and all hearings and proceedings of the commission shall be public. Every order of the commission remitting, reducing or affecting any fine, forfeiture or sentence, recommending or disapproving any application for executive clemency, with the reasons set forth at length, shall be filed with the clerk of the Supreme Court at least ten days before it may become effective, and shall constitute a public record.

cf. IV-V-1
cf. IV-V-2
cf. IV-V-3

10. The Governor, or person administering the government, the Chancellor, and the six Judges of the Court of Errors and Appeals, or a major part of them, of whom the Governor, or person administering the government, shall be one, may remit fines and forfeitures, and grant pardons, after conviction, in all cases except impeachment. (Art. V, Par. 10.)

Art. V, Sec. I, Pars. 1-3

ARTICLE V
JUDICIAL
SECTION I
Judicial Power

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

2. In all matters in which there is any conflict or variance between equity and common law, equity shall prevail, and subject to rules of the Supreme Court every controversy shall be fully determined by the justice hearing it.

3. The Supreme Court shall sit at the State Capitol and the Superior Court shall sit in each county. The Supreme Court and appellate divisions of the Superior Court shall hold at least ten monthly terms each year, and all trial courts shall hold such terms as may be fixed by rules of the Supreme Court.

cf. V-I-1

1. The judicial power shall be vested in a Court of Errors and Appeals in the last resort in all causes as heretofore; A court for the trial of impeachments; a Court of Chancery; a Prerogative Court; a Supreme Court; Circuit Courts, and such inferior courts as now exist, and as may be hereafter ordained and established by law; which Inferior Courts the Legislature may alter or abolish, as the public good shall require. (Art. VI, Sec. I, Par. 1.)

---

cf. V-I-2

10. The Legislature may vest in the Circuit Courts, or courts of common pleas within the several counties of this State Chancery powers, so far as relates to the foreclosure of mortgages, and sale of mortgaged premises. (Art. IV, Sec. VII, Par. 10.)

New

Art. V, Sec. II, Pars. 1-3
Art. V, Sec. III, Pars. 1-3

SECTION II

Supreme Court

1. The Supreme Court shall consist of a Chief Justice and six associate justices. Five members of the court shall constitute a quorum. The presiding justice of the court shall designate a justice of the Superior Court to serve temporarily when necessary to constitute a quorum.

2. The Supreme Court shall exercise appellate jurisdiction in the last resort in all causes subject to the limitations imposed by this Constitution. The court may, upon leave granted by a justice thereof, review any indictment before trial by certiorari. The court shall also have jurisdiction of the admission and discipline of attorneys and counsellors.

3. The Supreme Court shall make rules as to the administration of all of the courts, and, subject to law, as to pleading, practice and evidence in all the courts.

SECTION III

Superior Court

1. The Superior Court shall consist of such number of justices as may be authorized by law, but not less than twenty-five, each of whom may exercise the powers of the court, subject to rules of the Supreme Court. The Superior Court shall have original general jurisdiction throughout the State in all cases.

2. The Superior Court shall be divided into a law section, to exercise civil, criminal, and matrimonial jurisdiction, and an equity and probate section, to exercise all other jurisdiction of the court, each section having such parts as may be provided by rules of the Supreme Court.

3. Any justice of the Superior Court may grant prerogative writs, returnable in an appellate division which shall otherwise have original jurisdiction relating thereto, and shall determine in such manner as the rules of the Supreme Court may prescribe, and without a jury, questions of fact arising therein; or the hearing may be in the first instance before a single justice, whose decision, both as to law and fact, shall be reviewable by the appellate division.

1. The Court of Errors and Appeals shall consist of the Chancellor, the justices of the Supreme Court, and six judges, or a major part of them; which judges are to be appointed for six years. (Art. VI, Sec. II, Par. 1.)

2. Immediately after the court shall first assemble, the six judges shall arrange themselves in such manner that the seat of one of them shall be vacated every year, in order that thereafter one judge may be annually appointed. (Art. VI, Sec. II, Par. 2.)

3. Such of the six judges as shall attend the court shall receive, respectively, a per diem compensation, to be provided by law. (Art. VI, Sec. II, Par. 3.)

4. The Secretary of State shall be the clerk of this court. (Art. VI, Sec. II, Par. 4.)

5. When an appeal from an order or decree shall be heard the Chancellor shall inform the court, in writing, of the reasons for his order or decree; but he shall not sit as a member, or have a voice in the hearing or final sentence. (Art. VI, Sec. II, Par. 5.)

6. When a writ of error shall be brought, no justice who has given a judicial opinion in the cause in favor of or against any error complained of, shall sit as a member, or have a voice on the hearing, or for its affirmance or reversal; but the reasons for such opinion shall be assigned to the court in writing. (Art. VI, Sec. II, Par. 6.)

1. The Court of Chancery shall consist of a Chancellor. (Art. VI, Sec. IV, Par. 1.)

2. The Chancellor shall be the Ordinary or Surrogate-General, and judge of the Prerogative Court. (Art. VI, Sec. IV, Par. 2.)

3. All persons aggrieved by any order, sentence, or decree of the Orphans' Court, may appeal from the same, or from any part thereof to the Prerogative Court; but such order, sentence, or decree shall not be removed into the Supreme Court, or Circuit Court if the subject matter thereof be within the jurisdiction of the Orphans' Court. (Art. VI, Sec. IV, Par. 3.)

Art. V, Sec. IV, Pars. 1-4

SECTION IV

Appeals and Appellate Divisions

1. There shall be established in the Superior Court at least two appellate divisions. Each appellate division shall consist of three justices of the Superior Court designated by rules of the Supreme Court who shall hear appeals from designated sections of the Superior Court and such additional appeals from inferior courts as may be provided by law. Such justices shall be annually assigned for that purpose by the Chief Justice of the Supreme Court.

2. An appeal to an appellate division may be taken as a matter of right from any order of the Superior Court. Appeals in cases involving restraints or the appointment of receivers shall, in whatever court pending, be preferred as to argument and disposition.

3. Judgments and orders of an appellate division shall be final, subject to an appeal to the Supreme Court. Appeals to the Supreme Court may be taken only:

(1) In capital cases and cases involving a constitutional question, which appeals shall be taken directly to the Supreme Court and shall be preferred as to argument and disposition;

(2) In the event of a dissenting opinion in an appellate division;

(3) On certification of an appellate division; or,

(4) On certification by the Supreme Court to any court.

4. The appellate courts, in addition to considering questions of law, may also set aside judgments, wholly or in part, where the finding of fact is against the weight of the evidence, or the verdict is excessive or inadequate. The appellate courts may exercise such original jurisdiction as may be incident to the complete determination of the controversy.

4. The Secretary of State shall be the register of the Prerogative Court, and shall perform the duties required of him by law in that respect. (Art. VI, Sec. IV, Par. 4.)

1. The Supreme Court shall consist of a Chief Justice and four associate justices. The number of associate justices may be increased or decreased by law, but shall never be less than two. (Art. VI, Sec. V, Par. 1.)

2. The Circuit Courts shall be held in every county of this State, by one or more of the justices of the Supreme Court, or a judge appointed for that purpose; and shall in all cases within the county, except in those of a criminal nature, have common law jurisdiction, concurrent with the Supreme Court; And any final judgment of a Circuit Court may be docketed in the Supreme Court and shall operate as a judgment obtained in the Supreme Court from the time of such docketing. (Art. VI, Sec. V, Par. 2.)

3. Final judgments in any Circuit Court may be brought by writ of error into the Supreme Court, or directly into the Court of Errors and Appeals. (Art. VI, Sec. V, Par. 3.)

1. There shall be no more than five judges of the Inferior Court of Common Pleas in each of the counties in this State after the terms of the judges of said court now in office shall terminate. One judge for each county shall be appointed every year, and no more, except to fill vacancies which shall be for the unexpired term only. (Art. VI, Sec. VI, Par. 1.)

2. The commissions for the first appointments of judges of said court shall bear date and take effect on the first day of April next; and all subsequent commissions for judges of said court shall bear date and take effect on the first day of April in every successive year, except commissions to fill vacancies which shall bear date and take effect when issued. (Art. VI, Sec. VI, Par. 2.)

Art. V, Sec. V, Pars. 1-5

SECTION V

Judicial Officers

1. The Governor shall nominate and appoint, by and with the advice and consent of the Senate, the Chief Justice and associate justices of the Supreme Court, the justices of the Superior Court, and the judges of any inferior court with jurisdiction extending to more than one municipality. The Legislature shall provide by law for a uniform method of appointment of all other judges.

2. Each justice of the Supreme Court shall, prior to his appointment, have been a justice of the Superior Court for at least one year. Justices of the Superior Court shall, prior to their appointment have been counsellors at law in good standing for at least ten years.

3. The Chief Justice and associate justices of the Supreme Court shall be appointed to hold office during good behavior. Justices of the Superior Court shall hold office for a term of seven years and if reappointed shall thereafter hold office during good behavior. The issue of good behavior shall, with respect to justices of the Supreme Court, be triable by the Senate, and with respect to all other justices or judges of any court shall be triable by the Supreme Court. No justice or judge of any court shall continue in office after he has attained the age of seventy years.

4. Justices and judges of every court shall, at stated times, receive for their services such salary as may be provided by law, which shall not be diminished during the term of their appointment. They shall hold no other office or position of profit in the government of this State, or of the United States, nor of any instrumentality or political subdivision of either of them.

5. Any judge or justice of any court in this State who shall become a candidate for an elective office under authority of this State or of the United States shall thereby vacate his judicial office. The justices of the Supreme Court, of the Superior Court and such other judicial officers as may be provided by law shall not during their continuance in office engage in the practice of law or other gainful occupation.

cf. V-V-1
cf. V-V-3
cf. V-V-4
cf. V-V-5

1. Justices of the Supreme Court, Chancellor, judges of the Court of Errors and Appeals, and judges of the inferior court of common pleas, shall be nominated by the Governor, and appointed by him, with the advice and consent of the Senate. The justices of the Supreme Court and Chancellor shall hold their offices for the term of seven years; shall at stated times receive for their services a compensation which shall not be diminished during the term of their appointment; and they shall hold no other office under the government of this State or of the United States.

(2). Judges of the courts of common pleas shall be appointed by the Senate and General Assembly, in joint meeting. They shall hold their offices for five years;—but when appointed to fill vacancies they shall hold for the unexpired term only. (Art. VII, Sec. II, Par. 1.)

Art. V, Sec. V, Par. 6
Art. V, Sec. VI, Pars. 1-4

6. A justice of the Superior Court may exercise the powers of a judge of any court established by law in the county or counties to which he may be assigned, and may hold any such court with like jurisdiction, powers and duties as a judge thereof.

SECTION VI

Administration

1. The Chief Justice of the Supreme Court shall be the administrative head of all the courts, and shall supervise their work. He shall appoint an executive director of the courts to serve at his pleasure. The executive director shall:

(1) Assist the Chief Justice in all matters related to the administration, finance and personnel of the courts;

(2) Publish annually a statistical record of the judicial services of all the courts, justices and judges in the State, and of the costs thereof;

(3) Prescribe records, reports and audits for the inferior courts;

(4) Have such other duties as may be delegated by the Chief Justice.

2. The Supreme Court shall appoint a court reporter and a clerk of the court, each of whom shall hold office at the pleasure of the court. Within each county, respectively, the county clerks and, as to probate matters, the surrogates, shall be clerks of the Superior Court.

3. The Chief Justice of the Supreme Court shall annually assign justices of the Superior Court to counties, divisions, sections or parts thereof, and may from time to time transfer justices from one assignment to another as need appears.

4. Whenever the Supreme Court fails to hear any case within two months after an appeal therein is perfected or fails to decide any case within two months after it has been argued or submitted, the Chief Justice shall certify that fact to the Governor. The Governor may thereupon appoint a special term of the Supreme Court, from among the justices of the Superior Court, to exercise concurrently the jurisdiction of the court until the delay is cured.

---

cf. V.VI-2

3. The Attorney-General, Prosecutors of the Pleas, Clerk of the Supreme Court, Clerk of the Court of Chancery, Secretary of State, and the Keeper of the State Prison, shall be nominated by the Governor and appointed by him with the advice and consent of the Senate. They shall hold their offices for five years. (Art. VII, Sec. II, Par. 3.)

cf. V-VI-2

4. The law reporter shall be appointed by the justices of the Supreme Court or a majority of them; And the Chancery reporter shall be appointed by the Chancellor. They shall hold their offices for five years. (Art. VII, Sec. II, Par. 4.)

---

5. Special judges may, upon request of the Chief Justice, be nominated and appointed by the Governor, by and with the advice and consent of the Senate, for temporary service not exceeding one year whenever and so long as any court fails to try or hear any case within two months after notice of trial has been filed or an appeal therein perfected, or fails to decide any case within two months after it has been argued or submitted. Such special judges may exercise all the powers and shall have all of the duties of a justice or judge of the court to which they are appointed.

6. On or before December first in each year the Chief Justice shall file with the Governor and the Legislature a report of the work of the courts during the year ending September first next preceding.

No counterpart

No counterpart

No counterpart

1. There may be elected under this Constitution, two, and not more than five, justices of the peace in each of the townships of the several counties of this State, and in each of the wards, in cities that may vote in wards. When a township or ward contains two thousand inhabitants or less, it may have two justices: when it contains more than two thousand inhabitants, and not more than four thousand, it may have four justices: and when it contains more than four thousand inhabitants, it may have five justices: provided, that whenever any township not voting in wards contains more than seven thousand inhabitants, such township may have an additional justice for each additional three thousand inhabitants above four thousand. (Art. VI, Sec. VII, Par. 1.)

---

2. The population of the townships in the several counties of the State and of the several wards shall be ascertained by the last preceding census of the United States, until the Legislature shall provide, by law, some other mode of ascertaining it. (Art. VI, Sec. VII, Par. 2.)

---

7. Justices of the peace shall be elected by ballot at the annual meetings of the townships in the several counties of the State, and of the wards in cities that may vote in wards, in such manner and under such regulations as may be hereafter provided by law. They shall be commissioned for the county, and their commissions, shall bear date and take effect on the first day of May next after their election. They shall hold their offices for five years;—but when elected to fill vacancies, they shall hold for the unexpired term only; provided, that the commission of any justice of the peace shall become vacant upon his ceasing to reside in the township in which he was elected. The first election for justices of the peace, shall take place at the next annual town-meetings of the townships in the several counties of the State, and of the wards in cities, that may vote in wards. (Art. VII, Sec. II, Par. 7.)

ARTICLE VI
PUBLIC OFFICERS
SECTION I
Generally

1. Every appointive officer of the State government shall, before entering upon the duties of his office, take and subscribe an oath or affirmation to support the Constitution of this State and of the United States and faithfully, impartially and justly to perform the duties of his office to the best of his ability.

2. In the civil service of the State and all of its civil divisions, all offices and positions shall be classified according to duties and responsibilities, salary ranges shall be established for the various classes, and all appointments and promotions shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive.

3. The Legislature or either house thereof may by resolution constitute and empower a committee thereof or any public officer or agency to investigate any and all phases of State and local government, or any part thereof, the fidelity of any public officer or employee, or the performance of any public office, employment or trust. No person shall be privileged from testifying in relation to any such matters and upon so testifying he shall be immune from criminal prosecution with respect to any matter to which such testimony may relate. Any public officer or employee who shall refuse or willfully fail to obey any subpoena lawfully issued by such investigating committee, officer or agency, or who shall refuse to testify or to answer any questions relating to any matter properly under investigation, or who shall refuse to waive immunity from prosecution with respect to any matter upon which he may testify, shall thereby become disqualified to continue in his office, position or employment, which shall forthwith be deemed vacant. Any such person shall not thereafter be eligible for any public office, position or employment.

New

New

New

4. County clerks and surrogates shall be elected by the people of their respective counties at a general election. They shall hold office for a term of five years. Whenever a vacancy occurs in the office of clerk or surrogate of any county, the Governor shall fill such vacancy by appointment for a term to expire when a successor is elected and qualified.

5. Sheriffs and coroners shall be elected by the people of their respective counties at a general election. They shall hold office for a term of three years.

cf. VI-I-4

5. Clerks and surrogates of counties shall be elected by the people of their respective counties, at the annual elections for members of the General Assembly. They shall hold their offices for five years. (Art. VII, Sec. II, Par. 5.)

[cf. IV-I-6] [supra]

12. In case of the death, resignation, or removal from office of the Governor, the powers, duties, and emoluments of the office, shall devolve upon the President of the Senate, and in case of his death, resignation or removal, then upon the Speaker of the House of Assembly, for the time being, until another Governor shall be elected and qualified; but in such case another Governor shall be chosen at the next election for members of the Legislature unless such death, resignation, or removal, shall occur within thirty days immediately preceding such next election, in which case a Governor shall be chosen at the second succeeding election for members of the Legislature.

[cf. IV-II-2] [supra]

When a vacancy happens, during the recess of the Legislature in any office which is to be filled by the Governor and Senate, or by the Legislature in joint meeting, the Governor shall fill such vacancy, and the commission shall expire at the end of the next session of the Legislature, unless a successor shall be sooner appointed:

cf. VI-I-4

when a vacancy happens in the office of the clerk or surrogate of any county, the Governor shall fill such vacancy, and the commission shall expire when a successor is elected and qualified.

[cf. IV-II-2] [supra]

No person who shall have been nominated to the Senate by the Governor for any office of trust or profit under the government of this State, and shall not have been confirmed before the recess of the Legislature shall be eligible for appointment to such office during the continuance of such recess. (Art. V, Par. 12.)

cf. VI-I-5

6. Sheriffs and coroners shall be elected by the people of their respective counties at the elections for members of the General Assembly, and they shall hold their offices for three years, after which, three years must elapse before they can be again capable of serving. Sheriffs shall annually renew their bonds. (Art. VII, Sec. II, Par. 6.)

6. After July first, one thousand nine hundred and forty-three, benefits payable by virtue of membership in any State pension or retirement system shall constitute a contractual relationship and shall not be diminished or impaired.

7. All civil officers elected or appointed pursuant to the provisions of this Constitution shall be commissioned by the Governor.

8. The term of office of all officers elected or appointed pursuant to the provisions of this Constitution, except when herein otherwise directed, shall commence on the day of the date of their respective commissions; but no commission for any office shall bear date prior to the expiration of the term of the incumbent of said office.

New

cf. VI-I-7

9. All civil officers elected or appointed, pursuant to the provisions of this Constitution shall be commissioned by the Governor. (Art. VII, Sec. II, Par. 9.)

No change (Art. VII, Sec. II, Par. 10)

Art. VI, Sec. II, Para. 1-3

SECTION II

Impeachments

1. The Governor and all other civil officers of the State government shall be liable to impeachment for misdemeanor in office during their continuance in office and for two years thereafter.

2. The House of Assembly shall have the sole power of impeaching by a vote of a majority of all the members. Except as otherwise provided by this Constitution with respect to judicial officers, all such impeachments shall be tried by the Senate, and members, when sitting for that purpose, shall be on oath or affirmation "truly and impartially to try and determine the charge in question according to evidence;" and no person shall be convicted without the concurrence of two-thirds of all the members of the Senate. The presiding officer, respectively, of each house of the Legislature may call it into session for the purpose of impeachment proceedings.

No counterpart

3. Judgment in cases of impeachment shall not extend farther than to removal from office, and to disqualification to hold and enjoy any office of honor, profit or trust under this State; but the party convicted shall nevertheless be liable to indictment, trial and punishment according to law.

No counterpart

cf. VI-II-1

11. The Governor and all other civil officers under this State shall be liable to impeachment for misdemeanor in office during their continuance in office and for two years thereafter. (Art. V, Par. 11.)

cf. VI-II-2

1. The House of Assembly shall have the sole power of inpeaching by a vote of a majority of all the members; and all impeachments shall be tried by the Senate: The members, when sitting for that purpose, to be on oath or affirmation "truly and impartially to try and determine the charge in question according to evidence:" and no person shall be convicted without the concurrence of two-thirds of all the members of the Senate. (Art. VI, Sec. III, Par. 1.)

2. Any judicial officer impeached shall be suspended from exercising his office until his acquittal. (Art. VI, Sec. III, Par. 2.)

cf. VI-II-3

3. Judgment in cases of impeachment shall not extend farther than to removal from office, and to disqualification to hold and enjoy any office of honor, profit or trust under this State: but the party convicted shall nevertheless be liable to indictment, trial and punishment according to law. (Art. VI, Sec. III, Par. 3.)

4. The Secretary of State shall be the clerk of this court. (Art. VI, Sec. III, Par. 4.)

ARTICLE VII
FINANCE

1. The credit of the State shall not be directly or indirectly loaned in any case.

2. No political subdivision or special district shall give any money or property, or loan its money or credit, to or in aid of any individual association or corporation, or become security for or be directly or indirectly the owner of any stock or bonds of any association or corporation.

3. Neither the State nor any municipal corporation shall make any donation of land or appropriation of money to or for the use of any society, association or corporation.

4. All revenues of the State government from whatever source derived, including revenues of all departments, agencies and offices, except the income of the fund for the support of free schools, shall be paid into a single fund, to be known as the General State Fund, subject to appropriation for any public purpose, except that separate funds may be maintained for revenues realized from any tax levied specifically for the purpose of maintaining free public schools, for the proceeds of bond issues, earnings of self-liquidating public improvements, revenues of restricted use under or in compliance with Federal law, and revenues held in trust for retirement of the public debt, for the benefit of State or local public officers or employees or for a specific public purpose required by a private donation.

No change (Art. IV, Sec. VI, Par. 3)

cf. VII-2

19. No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual association or corporation, or become security for or be directly or indirectly the owner of any stock or bonds of any association or corporation. (Art. I, Par. 19.)

cf. VII-3

20. No donation of land or appropriation of money shall be made by the State or any municipal corporation to or for the use of any society, association or corporation whatever. (Art. I, Par. 20.)

New

5. No money shall be drawn from the State treasury but for appropriations made by law.

All appropriations for the support of the State government, and for the several public purposes for which appropriations are made, shall be contained in one general appropriation bill enacted for each biennium and indicating the amounts appropriated for each fiscal period in the biennium. No other bill appropriating public money for any purpose shall be enacted unless it shall (1) provide for some single object or purpose, (2) receive the affirmative votes of two-thirds of the membership of each house of the Legislature, and (3) together with all prior appropriations for the same fiscal period, shall not exceed the total amount of revenue available therefor.

6. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value.

7. Except for purposes of war, or to repel invasion or to suppress insurrection, no debt or liability shall be contracted by or on behalf of the State in an amount which, singly or in the aggregate with any previous debts or liabilities, shall at any time exceed one hundred thousand dollars, unless authorized by a law which shall, at a general election, have been submitted to the people, and have received the sanction of a majority of all the votes cast for and against it.

8. Any such law shall provide for some single object or work, to be distinctly specified therein, and for the payment of the debt or liability thereby authorized in equal annual installments, the first of which shall be payable not more than one year, and the last of which shall be payable not more than thirty-five years after such debt or liability, or any portion thereof, shall have been contracted. In contracting any debt or liability, however, the privilege of paying all or any part thereof prior to maturity may be reserved to the State in such manner and upon such terms as may be provided by law.

cf. VII-5 2. No money shall be drawn from the treasury but for appropriations made by law. (Art. IV, Sec. VI, Par. 2.)

No change (Art. IV, Sec. VII, Par. 12)

---

cf. VII-7 4. The Legislature shall not, in any manner, create any debt or debts, liability or liabilities, of the State, which shall singly or in the aggregate with any previous debts or liabilities at any time exceed one hundred thousand dollars, except for purposes of war, or to repel invasion, or to suppress insurrection,

cf. VII-8 unless the same shall be authorized by a law for some single object or work, to be distinctly specified therein;

cf. VII-9 which law shall provide the ways and means, exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within thirty-five years from the time of the contracting thereof, and shall be irrepealable until such debt or liability, and the interest thereon, are fully paid and discharged:

cf. VII-7 And no such law shall take effect until it shall, at a general election, have been submitted to the people, and have received the sanction of a majority of all the votes cast for and against it at such election:

(*Continued on page 1041*)

Art. VII, Par. 9
Art. VIII, Pars. 1-3

9. All money to be raised by authority of any law authorizing the contracting of a debt or liability by or on behalf of the State shall be applied only to the specific object or work stated therein or to the payment of such debt or liability. Such law shall provide the ways and means, exclusive of loans, to pay and discharge the principal and interest of the debt or liability thereby authorized. If such law should be repealed prior to such payment and discharge, the Legislature shall make adequate provision for payment of the remaining annual installments of principal and interest, and upon failure thereof a sufficient sum shall be set apart by the State Treasurer from the first revenues received and shall be applied to such purpose.

ARTICLE VIII

ELECTIONS AND SUFFRAGE

1. General elections shall be held annually on the first Tuesday after the first Monday in November. The Governor, members of the Legislature and such local officers as may be provided by law shall be chosen at a general election.

2. All questions which may be subject to a vote of the people shall be submitted at a general election, or, in the case of local propositions, at a regular county or municipal election.

3. Every citizen of the United States who shall have attained the age of twenty-one years, been a resident of this State one year and of the county in which the vote is claimed five months, next before an election, and who shall have been duly registered as a voter pursuant to law, shall be entitled to vote therein for all officers that are now or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people.

cf. VII-9

And all money to be raised by the authority of such law shall be applied only to the specific object stated therein, and to the payment of the debt thereby created. This section shall not be construed to refer to any money that has been, or may be, deposited with this State by the government of the United States. (Art. IV, Sec. VI, Par. 4.)

cf. VII-9

(*See also page 1039*)

---

cf. VIII-1
[cf. III-II-3]
[supra]

3. Members of the Senate and General Assembly shall be elected yearly and every year, on the first Tuesday after the first Monday in November;

[cf. III-I-3]
[supra]

and the two houses shall meet separately on the second Tuesday in January next after the said day of election, at which time of meeting, the legislative year shall commence;

cf. VIII-1

but the time of holding such election may be altered by the Legislature. (Art. IV, Sec. I, Par. 3.)

New

---

cf. VIII-3

1. Every male citizen of the United States, of the age of twenty-one years, who shall have been a resident of this State one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are, or hereafter may be elective by the people;

(*Continued on page 1043*)

4. No pauper, idiot, insane person, or person convicted of a crime which at common law would have excluded him from being a witness, unless pardoned or restored by law to the right of suffrage, shall enjoy the right of an elector. Persons convicted of bribery may be deprived by law of the right of suffrage.

5. No person shall, for the purpose of the suffrage, be deemed to have become a resident of, nor to have abandoned prior residence in this State or any county thereof by reason of his presence in or absence therefrom during active service in the military or naval service of this State or of the United States.

6. The Legislature shall provide by law the manner in which, and the time and place at which ballots may be cast by electors absent in the actual service of the military or naval forces of this State or of the United States, and for the return and canvass of such absentee votes in the election district in which the voters respectively reside. The Legislature may also provide for voting by other absent electors and for the like return and canvass of their votes.

7. Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the privilege of the suffrage and for the registration of all qualified voters. Registration shall be upon personal application in the case of the first registration of any voter, and shall remain effective for such period as the Legislature may prescribe.

(*Continued from page 1041*)

cf. VIII-5 provided, that no person in the military, naval, or marine service of the United States shall be considered a resident in this State, by being stationed in any garrison, barrack, or military or naval place or station within this State;

cf. VIII-4 and no pauper, idiot, insane person, or person convicted of a crime which now excludes him from being a witness unless pardoned or restored by law to the right of suffrage, shall enjoy the right of an elector.

cf. VIII-5 And provided further, that in time of war no elector in the actual military service of the State, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such election district;

cf. VIII-6 and the Legislature shall have power to provide the manner in which, and the time and place at which, such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside. (Art. II, Par. 1.)

cf. VIII-4 2. The Legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of bribery. (Art. II, Par. 2.)

New

ARTICLE IX
AMENDMENTS

1. Any specific amendment or amendments to the Constitution may be proposed in the Senate or General Assembly, and if the same shall be approved by two-thirds of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon.

2. The Legislature shall publish any approved amendment once in at least one newspaper of each county, if any be published therein, not less than three months prior to its submission to the people.

3. Approved amendments which have been published as required by this section shall be submitted to the people at a general election held not more than four months after the date of publication thereof. Submission shall be in such manner as the Legislature may prescribe.

4. If a majority of the qualified voters who vote thereon shall approve and ratify any amendment, it shall become part of the Constitution.

5. If more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly. The same amendment or one effecting the same change in the Constitution shall not be submitted to the people more often than once in five years.

cf. IX-1 Any specific amendment or amendments, to the Constitution may be proposed in the Senate or General Assembly, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays being taken thereon, and referred to the Legislature then next to be chosen,

cf. IX-2 and shall be published for three months previous to making such choice, in at least one newspaper of each county, if any be published therein;

cf. IX-3 and if in the Legislature, next chosen, as aforesaid, such proposed amendment, or amendments, or any of them, shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendmena or amendments, or such of them as may have been agreed to as aforesaid by the two Legislatures, to the people, in such manner and at such time, at least four months after the adjournment of the Legislature, as the Legislature shall prescribe;

cf. IX-4 And if the people at a special election to be held for that purpose only, shall approve and ratify such amendment or amendments, or any of them by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments so approved and ratified shall become part of the Constitution:

cf. IX-5 provided that if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for, or against each amendment separately and distinctly; but no amendment or amendments shall be submitted to the people by the Legislature oftener than once in five years. (Art. IX.)

ARTICLE X

GENERAL PROVISIONS

1. The provisions of this Constitution shall be self-executing, to the fullest extent that their respective natures permit. Legislation shall be enacted in furtherance of their purposes and to facilitate their operation.

2. Any recital of specific functions, powers or duties in this Constitution shall not be construed in any manner to restrict by implication any general functions, powers or duties of government not inconsistent therewith.

3. The seal of the State shall be kept by the Governor or person administering the government, and used by him officially, and shall be called the great seal of the State of New Jersey.

4. All grants and commissions shall be in the name and by the authority of the State of New Jersey, sealed with the great seal, signed by the Governor or person administering the government, and countersigned by the Secretary of State, and shall run thus: "The State of New Jersey, to ....., Greeting." All writs shall be in the name of the State; and all indictments shall conclude in the following manner, viz.: "against the peace of this State the government and dignity of the same."

5. This Constitution shall take effect on the first day of January, one thousand nine hundred and forty-three, subject to the provisions of the schedule hereinafter set forth.

No counterpart

New

New

No change (Art. VIII, Par. 2)

No change (Art. VIII, Par. 3)

4. This Constitution shall take effect and go into operation on the second day of September in the year of our Lord one thousand eight hundred and forty-four. (Art. VIII, Par. 4.)

1. The Secretary of State shall be ex officio an auditor of the accounts of the Treasurer, and as such, it shall be his duty to assist the Legislature in the annual examination and settlement of said accounts, until otherwise provided by law. (Art. VIII, Par. 1.)

ARTICLE XI

SCHEDULE

SECTION I

General

1. This Constitution shall supersede the Constitution of 1844 as amended, and the Legislature shall enact all laws necessary to make this Constitution fully effective.

2. No office, position or employment existing on the effective date of this Constitution shall be altered or abolished by virtue of the adoption hereof, except as otherwise provided herein.

3. All persons holding office upon the effective date of this Constitution shall continue in office and to exercise their respective powers and duties except as otherwise provided herein. The adoption of this Constitution shall not cause the term of office of any incumbent to be either extended or reduced, except as otherwise provided herein.

4. All the statutory and common law in force on the effective date hereof, which is not inconsistent with this Constitution, shall remain in full force and effect until it expires by its own limitation or is altered or repealed by law. All causes of action, indictments, prosecutions, rights, claims, demands, duties and obligations, of individuals and of bodies corporate, and of the State, and all charters and franchises shall continue unabated by the adoption of this Constitution. All indictments heretofore or hereafter found for any crime or offense committed before the adoption of this Constitution may be proceeded upon as if no change had taken place.

Schedule

That no inconvenience may arise from the change in the Constitution of this State, and in order to carry the same into complete operation, it is hereby declared and ordained, that—

1. The common law and statute laws now in force not repugnant to this Constitution, shall remain in force until they expire by their own limitation, or be altered or repealed by the Legislature; and all writs, actions, causes of action, prosecutions, contracts, claims and rights of individuals and of bodies corporate, and of the State, and all charters of incorporation, shall continue, and all indictments, which shall have been found, or which may hereafter be found, for any crime or offense committed before the adoption of this Constitution, may be proceeded upon as if no change had taken place. The several courts of law and equity, except as herein otherwise provided, shall continue with the like powers and jurisdiction as if this Constitution had not been adopted. (Art. X, Par. 1.)

2. All officers now filling any office or appointment, shall continue in the exercise of the duties thereof, according to their respective commissions or appointments, unless, by this Constitution it is otherwise directed. (Art. X, Par. 2.)

3. The present Governor, Chancellor and Ordinary or Surrogate-General, and Treasurer shall continue in office until successors elected or appointed under this Constitution shall be sworn or affirmed into office. (Art. X, Par. 3.)

4. In case of death, resignation, or disability of the present Governor, the person who may be Vice-President of Council at the time of the adoption of this Constitution shall continue in office and administer the government until a Governor shall have been elected and sworn or affirmed into office under this Constitution. (Art. X, Par. 4.)

SECTION II

Legislative

1. The first biennial session of the Legislature under this Constitution shall be held in the year one thousand nine hundred and forty-four.

2. Members of the Legislature shall be elected for the term of office provided in this Constitution at the election held in one thousand nine hundred and forty-three and at each biennial election thereafter, except as otherwise provided in this schedule.

3. The two classes of Senators required to be elected under the Constitution shall be first established as follows:

Seats in the Senate that, had this Constitution not been adopted would have been filled by election in the years one thousand nine hundred and forty-three and one thousand nine hundred and forty-five, respectively, shall remain elective in those years. The terms of the incumbents of those seats in the Senate that would have become elective in the year one thousand nine hundred and forty-four, had this Constitution not been adopted, shall be extended for an additional year. Three of the seats thereby made elective in the year one thousand nine hundred and forty-five shall be chosen by the Senate to be filled in that year for a term of two years and thereafter for the four-year term provided by this Constitution.

4. The compensation for members of the Legislature provided by this Constitution shall be paid from and after the effective date hereof.

5. The present Governor, or in case of his death or inability to act, the Vice-President of Council, together, with the present members of the Legislative Council and Secretary of State shall constitute a board of State canvassers, in the manner now provided by law, for the purpose of ascertaining and declaring the result of the next ensuing election for Governor, members of the House of Representatives and electors of President and Vice-President. (Art. X, Par. 5.)

6. The returns of the votes for Governor, at the said next ensuing election shall be transmitted to the Secretary of State, the votes counted, and the election declared, in the manner now provided by law in the case of the election of electors of President and Vice-President. (Art. X, Par. 6.)

7. The election of clerks and surrogates, in those counties where the term of office of the present incumbent shall expire previous to the general election of eighteen hundred and forty-five, shall be held at the general election next ensuing the adoption of this Constitution; the result of which election shall be ascertained in the manner now provided by law for the election of sheriffs. (Art. X, Par. 7.)

8. The elections for the year eighteen hundred and forty-four shall take place as now provided by law. (Art. X, Par. 8.)

9. It shall be the duty of the Governor to fill all vacancies in office happening between the adoption of this Constitution and the first session of the Senate, and not otherwise provided for and the commission shall expire at the end of the first session of the Senate or when successors shall be elected or appointed and qualified. (Art. X, Par. 9.)

SECTION III

Executive

1. On or before July first, one thousand nine hundred and forty-three, the Governor shall complete the first allocation of executive and administrative agencies, offices and instrumentalities of the State government within and among the departments and offices required by this Constitution. Prior to such allocation, each agency, office, and instrumentality shall continue to function as heretofore, except as may be otherwise provided by law.

2. Appropriation balances, personnel, property and records may be transferred as need appears by provision in any executive order allocating executive or administrative agencies, offices or instrumentalities, or their functions, powers and duties.

3. In case of death, resignation, removal or disability of the Governor or of his absence from the State prior to his appointment of the heads of civil departments required by this Constitution, all the powers, duties and emoluments of the office shall, as heretofore, devolve upon the President of the Senate and the Speaker of the House of Assembly, in that order.

SECTION IV

Judicial

1. Immediately after the adoption of this Constitution, the Governor shall nominate and appoint, by and with the advice and consent of the Senate, from the persons then holding the offices of Chancellor, Chief Justice, justices of the Supreme Court, such judges of the Court of Errors and Appeals as are counsellors at law of ten years' standing, vice chancellors and Circuit Court judges, a Chief Justice and six associate justices of the new Supreme Court.

The remaining judicial officers above enumerated and the judges of the courts of common pleas shall constitute the justices of the new Superior Court, each for the unexpired period of his original term. If reappointed thereafter,

10. The restriction of the pay of members of the Legislature, after forty days from the commencement of the session, shall not be applied to the first Legislature convened under this Constitution. (Art. X, Par. 10.)

11. Clerks of counties shall be clerks of the inferior courts of common pleas and quarter sessions of the several counties, and perform the duties, and be subject to the regulations now required of them by law until otherwise ordained by the Legislature. (Art. X, Par. 11.)

12. The Legislature shall pass all laws necessary to carry into effect the provisions of this Constitution. (Art. X, Par. 12.)

any such justice shall have tenure during good behavior as provided in this Constitution. Nothing in this section shall be construed, however, to permit any justice to continue in office after attaining the age of seventy years.

2. The compensation of any judicial officer as fixed by law immediately prior to his transfer by this Constitution to either the new Supreme or Superior Courts shall not be increased or diminished during the term for which he was orginally appointed. Common pleas judges shall be justices of the Superior Court for the remainder of the term for which they were originally appointed, at the same salary, with the same privileges, and assigned to the county from which they were appointed, and shall be eligible for reappointment on the same basis as all other Superior Court justices.

3. All causes pending in the Court of Errors and Appeals shall be transferred to the new Supreme Court. All other causes pending on appeal and all pending causes involving prerogative writs shall be transferred to the appellate division of the Superior Court. All causes pending in any other county or State courts, which are superseded, shall be transferred to the Superior Court.

4. All property, funds, records, files, books, papers and documents of the Court of Errors and Appeals, of the Prerogative Court, of the Court of Chancery and of the Supreme Court or in custody of any of these courts, shall be turned over by their respective clerks to the clerk of the new Supreme Court, who shall dispose of them as the court may by rule direct.

5. The circuit courts, courts of common pleas, oyer and terminer, quarter sessions, special sessions and the orphans' courts are superseded, and all their jurisdiction, functions, powers and duties are transferred to the Superior Court. Causes pending in such superseded courts shall be heard in the Superior Court sitting in the same county. All property, funds, records, files,

books, papers and documents of the orphans' courts, or in custody thereof, shall be turned over by their respective clerks to the clerk of the Superior Court in their respective counties.

6. All the functions, powers and duties conferred by statute or rule upon justices and judges of courts superseded by this Constitution, to the extent that such functions, powers and duties are not inconsistent herewith, are hereby transferred to and may be exercised by justices of the Superior Court until otherwise provided by law or rule of court.

7. Appropriations made by law for judicial expenditures during the fiscal year 1942-1943 may be transferred to similar objects and purposes required by the judicial article. Restrictions upon supplemental appropriations contained in this Constitution shall not apply to any appropriations which may be required to finance the new judicial system prior to the fiscal year 1943-1944.

8. Article V shall take effect on the first day of July, one thousand nine hundred and forty-three, except that any provision of this Constitution which may require any act to be done prior thereto or in preparation therefor shall take effect immediately upon its adoption.

APPENDIX V

Commission on Revision of the New Jersey Constitution

Report On the Constitutional Courts of the State of New Jersey

Submitted to the Commission by

Ralph R. Temple, J.D., Ph.D.
Judicial Administration Consultant
Trenton, New Jersey

July, 1942

Foreword

Scope of Report

This report is devoted to a survey of the following courts of New Jersey: The Court of Errors and Appeals, the Supreme Court, Court of Chancery, and Prerogative Court. Of necessity, any discussion of these courts involves some reference to some of the other tribunals of the State and accordingly this will be done. However, because of the limited time necessarily imposed upon the staff, it has been impossible to make any other than a cursory reference to the inferior courts. Yet it is to be stressed that a true picture of the administration of justice in this State can be presented only by making a thorough-going survey of all of the courts of the State from the highest to the very lowest.

The material which forms the basis for both the descriptive and analytical statements in this report consists of pertinent constitutional and statutory provisions, published reports of the New Jersey Judicial Council, the Annual Budgets, the Annual Comptroller's Reports, answers to questionnaires which were distributed among the county clerks, Vice-Chancellors and Advisory Masters, printed lists of causes and other published data furnished by the county clerks, articles in Law Reviews and other professional journals, miscellaneous records, dockets, files, reports, books and cases, interviews with various court clerks, members of the judiciary and lawyers, and finally, personal observations.

Although instances occurred when there was an obvious attempt to impede this survey, for the most part however, the utmost cooperation was accorded the staff in the work it had to perform. In all of the courts it was found that recourse to the actual

dockets had to be had because there were no published reports dealing with the business of the courts available. In only the Chancery Court was it observed that any attempt had been made to keep any record of the work of the court by the clerk and the Chancellor. However, even in this case, no effort had been made to make it public. The Chancellor indicated that his present system of reports was started in July, 1940, so that consequently, no comparative data was available in so far as his records were concerned. The failure to compile adequate records is open to criticism. It is an elementary principle of administration that control of any organization must be based upon the availability of data of a statistical and other informative nature showing among other things, the condition of business. In various places in this report examples will be shown of the result of this failure to keep adequate records.

The purpose of this survey is to present an administrative and financial picture of the upper courts. The textual material on each court is divided into five parts: (1) general background (structure, organization, and jurisdiction); (2) business; (3) financial aspects; (4) administration and (5) findings and conclusions. All of the statistical data, most of which cover ten-year periods, are also contained in the tables placed at the end of the discussion of each court. Although interpretations showing trends, interstate comparisons, etc., have been made, reference to the tables is suggested for other observations not mentioned in the text. No attempt is made to advance structural recommendations. However, situations which require some remedial action are pointed out. Conclusions are drawn, where possible, from the data presented.

General Conclusions

Although conclusions concerning each of the courts reported in this survey are made at the appropriate places, several over-all statements should be made at this point. The outstanding observation, as a result of this survey, is the startling decrease in the business of all of the courts since 1932; second, the decrease in the revenue of the courts; third, the relatively steady course which expenditures and number of personnel have taken over the ten-year period; fourth, the retention of inadequate judicial and administrative procedures; fifth, the absence of work control records; sixth, the presence of an unusually large court of last resort containing both lay judges and members of courts of lower levels; seventh, the manifold duties of the judges, and finally the lack of co-ordination in the administration of the business of all the courts.

SUMMARY

This survey of the Court of Errors and Appeals, Court of Chancery, Supreme Court and Prerogative Court, demonstrates that the organization and administration of the business of the

courts are completely inadequate. The evidence collected indicates:

1. A costly and inefficient organization of the court system resulting largely from a complete lack of any co-ordination between the several separate courts in the State.
2. A part-time and unusually large court of last resort, whose judges have unfortunate combinations of duties, and whose contribution to the sound administration of justice is therefore largely ineffective.
3. An uneven distribution of the volume of litigation amongst the judges within each court.
4. A lack of adequate control and management of available court facilities, which seriously impairs the judicial standards of service to the public.
5. A wasteful and very uneven use of judicial manpower.
6. A complete lack of a responsible and accountable head of the judicial system.
7. A marked and serious failure within the judicial system to record and report, even in the most elementary fashion, the work data necessary for intelligent public review and control of the judicial services of government.
8. Inflexible expenditures by the court system which do not reflect pronounced decreases in court business.
9. Unsound practices in budgeting, accounting and fiscal procedure prevalent throughout the system.
10. A striking reduction in volume of the business of the courts over the past ten years.

The number of cases in the courts in 1940 was about one-half of the number in 1931. This falling off in the volume of litigation is particularly significant when considered in connection with other findings. In particular, the cost of maintaining the judicial system during the same period has tended to increase, and the average work load of judicial personnel in New Jersey has become constantly lighter.

Courts of New Jersey have been tested, in this survey, to determine whether or not they meet accepted standards of organization and administration. The quality of public service rendered by the courts, the cost of that service to citizens who find occasion to use the courts and the individual capacities of the judicial personnel to render justice are, of course, equally important, but are unfortunately not measurable by any scientific standards presently available. Nor would the time and resources of this survey permit any analysis of the courts beyond the test sample here presented.

COURT OF ERRORS AND APPEALS

The Court of Errors and Appeals, with sixteen judges, is so

large as to impair the usefulness of oral argument. This is a serious weakness as full justice to the clients and to the court is not apt to be done without effective oral argument. Although only 120 motions are presented annually, the court has found it necessary to require, by rule of the court, that all motions in civil cases shall be submitted on briefs alone and not be argued at the bar, except by express leave of court for reasons satisfactory to the court. All oral arguments are discouraged.

A glaring fault in the organization of the Court of Errors and Appeals is its predication upon the notion that the office of judge of the highest court in the State is a part-time job, and that, given a large enough court, the duties of the court can be disposed of between other judicial duties or gainful occupations. Nor can the court's unwieldy size be justified either by the volume of its work or the quantity of its output in any given period of time, both of which are not more than half, per judge, of the same measures in the neighboring States of Connecticut, New York and Pennsylvania.

The volume of cases that the Court of Errors and Appeals has been called upon to decide was in 1941 about one-fourth of the 885 cases in 1932. The six "lay" or special judges of the court (five of whom are lawyers) apparently devoted more time to their judicial duties in 1941 than in 1932, notwithstanding the remarkable decrease in the court's business. Their compensation of $40.00 per day amounted to $43,920 in 1932, but increased to $50,160 in 1941. The whole court averaged only 240 opinions per year, of which almost one-half were "per curiam" opinions, which are brief statements affirming what a lower court has written. In the distribution of the remaining half, the special judges hardly justified their position on the court.

One of the special judges, it was stated, has never been assigned the writing of an opinion since he has been on the court. No opinion written by him was found in the reports of 1939 to 1941 which were examined. An average of about five opinons a year were written by each of the special judges from 1939 to 1941. This does not seem to be a productive output for judges receiving approximately $9,000 a year. It will be noted that judge "M," who wrote no opinions, received about the same compensation as those who wrote several. In 1941, "P," who wrote two opinions, received $9,360 as his yearly compensation, whereas "N," who wrote seven, received $8,600. Cases vary in difficulty and time consumed, of course, but the aver- e case, which is the basis of comparison, resolves these differences. It is pertinent, in any event, to review the activity of the special judges if for no other reason than that their compensation is supposedly based upon the actual work they do.

The Chancellor is, under the Constitution, the presiding judge

of the Court of Errors and Appeals. As such, his position is unique in that he is automatically disqualified from even considering one-half of the cases that come before the court over which he presides. This peculiar situation results from the fact that as one of his multiple capacities he *is* the Court of Chancery. This means that Vice-Chancellors according to Chancery theory never decide any cases; they merely advise a decree in the name of the Chancellor which, by another antiquated fiction, is rendered by him. It follows, that in all appeals in Chancery cases, the Chancellor, as a judge of the appellate court, would be sitting in review of his own decrees and he is therefore disqualified. Since the work of the Court of Errors and Appeals is about evenly divided in number of law and equity cases, this leaves the Chancellor entirely out of one-half of the court's business. Not more than four opinions a year by the Chancellor appear in the published reports for the years which were investigated. The division of labor amongst the other judges of the court ranges from the writing of two opinions to the writing of seventeen opinions a year. Table IV, on page 25, of the full survey report, (p. 1077), which follows this summary, gives the data in detail.

The system of self-disqualification also usually excludes one or three of the Supreme Court justices who sit on the court from consideration of cases appealed to it from the Supreme Court. Under the Constitution, the Supreme Court could sit *en banc* in its trial or intermediate appellate work and thereby cause all the justices to be disqualified from considering the case in the Court of Errors and Appeals. This would mean that the Supreme Court, instead of the Court of Errors and Appeals, could become the court of last resort because disqualification of all of its justices would leave the theoretical court of last resort without a quorum. The right of appeal could and has been defeated in this way.

Not only does the whole court rarely pass upon appeals before it, but of those appeals it does decide, one-half in number are handed down with "per curiam" opinions which most often means without any opinion. There are also an excessively large number of decisions from which one or more judges dissent without any supporting opinion to inform the bar and the public of the nature of their reasoning. These faults are in part attributable to the fallacious basis of the judicial office, in the case of this court, as a part-time job.

Even mediocre standards of public service will not be achieved so long as trial, intermediate appellate and highest appellate functions are combined in the Supreme Court justices; trial, administrative and highest appellate functions are combined in the office of Chancellor; and pardoning power, gainful occupations and the highest appellate functions are combined in the special judges of the court.

COURT OF CHANCERY

The Chancellor, as already mentioned, is, under the Constitution, the Court of Chancery. Investigation fails to disclose, however, any appreciable evidence of his judicial output in that capacity during the years examined. The present system is designed to facilitate delegation by the Chancellor of practically all of his judicial duties as the Court of Chancery. Pursuant to statute, he appoints ten Vice-Chancellors, at $18,000 per annum each, and twelve Advisory Masters, at about $16,000 per annum each. Two of the Advisory Masters, designated as "Standing Advisory Masters," sit at Trenton. One of them hears ex parte (non-contested) matters solely, while the other performs administrative services as well as hearing matrimonial matters. The first receives a salary of $10,000 from the State, whereas the second receives $7,000 plus fees for handling matrimonial cases, bringing his yearly compensation up to $16,000. One other Advisory Master acts as a liaison officer between the court and the clerk's office and is carried on the clerk's budget with the title of Chief Agent at a salary of $3,500. The balance of his yearly compensation, which averages in total about $16,000, is also made up from matrimonial fees. The other nine Advisory Masters devote their entire time to the handling of matrimonial causes. An Advisory Master's fee of $50.00 for each matrimonial cause disposed of, $.75 of which goes back to the clerk, is paid by the litigants. This is in addition to the stenographer's fee of $10.00 and the clerk's fee of $25.00 which litigants are also required to pay in this type of case.

In addition to these judicial officers, the Chancellor appoints from amongst members of the Bar an unlimited number of Special Masters. At the present time, there are several hundred Special Masters who are paid by the litigants for their services in matters referred to them from time to time by the court. To these officers of the court, namely the Vice-Chancellors, Advisory Masters, Special Masters and Masters, are in fact delegated the judicial duties of the Chancellor in his capacity as the Court of Chancery.

Only about 8% to 15% of the cases filed in the Court of Chancery are handled by the Vice-Chancellors, the rest being farmed out to Advisory Masters, Special Masters and Masters. The information furnished by the Chancellor shows that there were approximately 308 references made to the Vice-Chancellors from July 1, 1940, to December 31, 1940, of which 232 were disposed of after hearing. In 1941, there were 553 references to the Vice-Chancellors, whereas 605 causes were disposed of. This seeming discrepancy is due to the overlap of matters which might have been referred late in one year and carried over to the succeeding year. The data furnished by the Vice-Chancellors indicate that there was an average of about 65 cases referred to each Vice-Chancellor each year during 1940 and 1941. Most of the Vice-Chancellors stated that they had disposed of almost all of the matters referred to them. Some of them furnished information on the number of motions heard, but the majority of them stated that motions were quite numerous but that no records were kept.

It was the Chancellor's opinion that from 10% to 15% of the cases fall by the way between reference and final hearing. He also indicated that a large part of the work of both Vice-Chancellors and Advisory Masters comes from motions and causes not requiring specific references. It was his belief that this comprises "an amount equal to or more than the work specifically referred."

The office of Chancellor, it appears, is in fact if not in law largely administrative rather than judicial. One of the important administrative powers of the office is found in the Chancellor's control of Advisory Masters' fees. A ceiling of $16,000 per annum has been set by the Chancellor for each Advisory Master's compensation. Accordingly, the clerk, who handles the receipt and disbursement of the fees, will not send a check to an Advisory Master when the latter's compensation for the year has reached the stipulated sum of $16,000. Instead, the surplus is turned over to the clerk in charge of the Chancery Trust Funds who thereupon deposits it in a separate account. The amount held in reserve is turned over to the Chancellor each year for the most part. As indicated, it is held by him in safe-keeping, and by law is subject to his disposition in any way he desires. In 1941, he saw fit to return the greater part of the accumulated surplus to the General State Fund.

Several comments might be made concerning the Advisory Masters' fees system. First, although an attempt is made to place the work of the Advisory Masters on a salary basis, it would seem to be better fiscal practice to place the fees collected from litigants into the total receipts of the clerk's office and have the Advisory Masters budgeted on a yearly salary basis. This, however, assumes the desirability of retaining the system of having Advisory Masters hear matrimonial matters. Secondly, there is serious question as to the justification of keeping the Advisory Masters' fees for matrimonial causes at the present high level from the standpoint of the litigants.

Another important administrative function of the Chancellor is the custody and investment of trust funds of the court. Approximately one-half million dollars are received and disbursed each year. On December 31, 1941, the total balance of the trust funds amounted to $2,574,105. The clerk in charge has stated that only about $25,000 to $50,000 in cash is available in the banks at any particular time, and that, when it is necessary to pay out larger sums, sufficient securities are sold in the market in order to make up the difference required. A list of the investments made each year and a valuation of the assets of the trust fund was

not obtained. An inadequate system of public accounting for the trust funds exists.

General administration of the court is adversely affected by the organization of the office of Chancellor with a multitude of duties. This is plain without attempting to evaluate the administration of any incumbent of the office. For example, the court still retains the ancient system of having persons called "enrollers" laboriously copy or "enroll" into large bound books the various papers in each cause in which a decree is rendered. This device costs the litigants 7 cents per folio of one hundred words, of which 5 cents is used to pay the enrollers, who number fifteen at present. Whether the copying is necessary at all is open to question, and certainly the method could be replaced by one of the many modern facilities for reproduction.

Work controls, similarly, are not adequate for administrative supervision of the court by the Chancellor. Since 1940, the Vice-Chancellors submit reports to the Chancellor through the Standing Advisory Master, thereby enabling the Chancellor to make reassignments in case any particular Vice-Chancellor is incapacitated for any reason. However, there does not seem to be any sufficient development of control of assignments according to the volume of cases, motions and other work.

An adequate system of control could not be developed unless the existing methods were replaced by comprehensive statistical reporting of all of the business of the Vice-Chancellors and other judicial personnel of the court, to include not only the number of matters referred but the manner of their disposition. The Chancellor recently inaugurated the beginnings of a reporting system, but criticism should be made of the failure to have previously embarked upon a basic system of supervision.

Finally, there has been an almost 50% decrease in the business of the court from 1932, when 26,635 cases were started, to 1941, when only 13,872 cases were started. While the majority of the cases used to be mortgage foreclosures, by 1941 these had fallen to 25.2% of the court's business. Tax foreclosures, on the other hand, jumped from 11% of the total in 1933 to 19.5% in 1941. Divorce and other matrimonial matters made up the largest share of the court's work in 1941, amounting to 37% of the total. This raises a serious question as to whether the system of disposing of matrimonial cases through Advisory Masters who are paid by the litigants, is in the best interests of the public.

Prerogative Court

Closely allied to the Court of Chancery is the Prerogative Court. The Chancellor is, by Constitutional provision, Ordinary or Surrogate-General of this court, and the Vice-Chancellors act as the Vice-Ordinaries of the court by reference of the Ordinary in a manner similar to that of the Court of Chancery. In the

Prerogative Court, also like Chancery, it is a regular practice of the Vice-Ordinaries to refer actually litigated matters to a Special Master. About 50% of the business of the court is handled as routine.

Rule 81 provides for special reference of the final hearing of causes in the Prerogative Court, including appeals from the Orphans' Courts, to the Vice-Ordinaries at the discretion of the Ordinary. As a practical matter, the clerk in the office of Secretary of State, who acts as clerk of the court, makes the designations to the various Vice-Ordinaries seriatim as the matters come in. No attempt is made by him to ascertain whether the Vice-Ordinary is overburdened with Chancery matters. No report is made by him for the Chancellor. The control of assignments is automatic and any change apparently must be based upon vociferous complaint of overburdening work by the Vice-Ordinaries to the Ordinary. This system of control is administratively poor.

There is a lack of co-ordination between the activities of this court and the Court of Chancery although the judicial personnel of both tribunals is the same. Assuming the desirability of retaining a separate Prerogative Court, of which there is serious doubt, it would seem more feasible to have the clerk of the Chancery Court also handle the work of the Prerogative Court. The same criticism concerning the lack of available compiled reports on the activity of this court that was made concerning the other courts is appropriate here.

Supreme Court

The Supreme Court consists of an entirely separate, independent judicial organization from that of the Court of Chancery. The Supreme Court is composed of a Chief Justice and eight Associate Justices, and is a court of Statewide jurisdiction. Its justices have trial, intermediate appellate and highest appellate functions. In addition, they are supposed to exercise some supervision of the circuit and common pleas courts in judicial districts to which they are assigned. The latter function only makes for divided responsibility.

The volume of business of the Supreme Court in 1941 has declined to about 45% of what is was in 1932. There has been a progressive decrease in appeals from 1931, when there were 423, to 1941, when there were 236. For the first four months of 1942, 62 appeals were filed.

Inasmuch as the cases at law filed in the Supreme Court are tried by the Circuit Court judges, a grouping of cases started both in the Circuit Courts and in the Supreme Court is desirable for informational purposes. Taking the published figures of the Judicial Council on their face value, it will be seen that the total number of Circuit and Supreme Court cases listed for trial at the fall term has decreased from 13,686 in 1931 to 5,879 in 1939. The

number of cases listed for trial in the Courts of Common Pleas has also decreased from 3,514 in 1931 to 1,932 in 1939.

In other words, there were less than half the number of Supreme, Circuit, and Common Pleas cases listed for trial in 1939 than there were in 1931, the figures being 7,811 and 17,200, respectively. The data for the years 1940 and 1941 apparently were not compiled by the Judicial Council. There are no published reports for those years available, and no data has been forthcoming although duly requested from the chairman of the Judicial Council. Questionnaires were sent to each of the county clerks requesting information, and, at the writing of this report, insufficient responses had been made to warrant any intelligent compilation.

The number of actually litigated cases tried is about from one-fourth to one-half the total number disposed of. For example: in 1939, 670 cases were actually tried out of a total of 2,318 disposed. A large proportion of cases is discontinued by the parties as well as marked off the term, in 1939 the number being 1,385. This is about 60% of the total number disposed of. There is reason to believe that the present delay in the disposition of Supreme Court cases at law (delay in Essex County being over two years in tort cases) will be reduced because of the decrease in the number of new cases filed.

With the understanding that any comparison of judicial activities between one State and another is subject to much qualification, an attempt has been made to compare the appellate work of the Supreme Court of New Jersey with that of the four Appellate Divisions of the Supreme Court of New York State. It was found that in 1938 each justice in the Appellate Divisions of New York disposed of an average of 134.3 cases, whereas each New Jersey Supreme Court justice disposed of 50.5. In 1940, each New York justice handled 130.8 appeals while each New Jersey justice handled 28.3. There is a trend downward in the number of appeals handled by each justice in New Jersey because of the decline in the total number of appeals.

Much criticism can be made concerning the administration of the business of the Supreme Court. There is little or no supervision by the Supreme Court justices over the activities of the various circuits. The functions of the Supreme Court justices in the circuits seem to be confined to the charging of the grand jury and the hearing of motions subsequent to judgment. Generally, the Supreme Court justices are occupied principally with their appellate work on the Supreme Court and on the Court of Errors and Appeals. Comment has already been made (see section of report on Court of Errors and Appeals) concerning the undesirability of having the same justices sit on two separate levels of appellate courts.

At Trenton no records are compiled by the clerk concerning the activities of the court. It was only by dint of laborious digging that the material herein presented was assembled. It would be belaboring the point to emphasize the fact that intelligent supervision and control of any organization, be it judicial or executive, must be predicated on a knowledge of the work of the organization. No knowledge as to the activities of the judicial organization can be acquired in the absence of a simple reporting system.

Delegation by the Supreme Court justices of their judicial duties in the trying of cases at law to the Circuit Court judges, along with a division of duties between the Clerk of the Supreme Court at Trenton and the County Clerks, gives rise to poor organization and control of business without a similar delegation of responsibility for reporting the business. For example, cases may be dismissed or discontinued, notice thereof being filed in Trenton. The only way the County Clerks are apprised of these facts is by making inquiry of the Supreme Court Clerk at Trenton since the latter does not formally notify them. The County Clerks of Hudson and Essex have established the commendable device of leaving several hundred printed self-addressed post cards at the Trenton office. When an order of discontinuance is filed at Trenton, a clerk there fills out one of the cards which is in turn mailed back to the County Clerk. The latter then makes a proper notation on his List of Causes and does not include the discontinued case in the subsequent list. Apparently any relief which an overburdened circuit might obtain is dependent upon the strength of complaints by the Circuit Court judges, since no work records are compiled.

Confusion and delay result because each of the three terms of the Supreme Court is held a mere two weeks before each of the respective three terms of the Court of Errors and Appeals meets. Consequently, a case argued at the October term of the Supreme Court is not decided in time for presentation at the October and sometimes even the February term of the Court of Errors and Appeals.

In conclusion, it appears that the courts under examination suffer seriously from lack of any unified administrative authority, from the lack of adequate public reporting of the work of the courts and from the lack of an organization susceptible to the application of effective administrative controls. Detailed findings and conclusions appear in the full survey report which follows.

Chapter I

New Jersey Court of Errors and Appeals

I. General Background

Structure and Organization

The Court of Errors and Appeals, is composed of sixteen members, namely: the Chancellor, the Chief Justice, the eight Associate Justices of the Supreme Court, and six judges specially appointed for terms of six years by the Governor with the advice and consent of the Senate.

The special judges are the only ones who receive separate compensation for their duties on this court, their salaries being on a per diem basis of $40.00, averaging between $8,000 and $10,000 yearly for each judge. As indicated in Table I, the total salaries for the special judges from 1931 to 1941 ranged from $43,920 to $54,000. In 1941, they received a total of $50,160.

The regular judges do not receive any extra compensation for their duties on this court. They receive salaries in connection with their work on the courts with which they are primarily associated, the Chancellor and the Chief Justice receiving $19,000 each and the eight Associate Justices of the Supreme Court receiving $18,000 each.

Jurisdiction

The Court of Errors and Appeals is the highest court in the State. There is no appeal from its decisions except in proper cases, to the Supreme Court of the United States.

Its jurisdiction is wholly appellate. It reviews the adjudications of the Court of Chancery, the Prerogative Court, the Circuit Court, and the Supreme Court in civil cases by appeal; and reviews decisions of the Supreme Court in criminal cases, and of the Court of Oyer and Terminer, in certain cases punishable by death, by writ of error. The Chancellor is the President Judge of the Court of Errors and Appeals.[1] He is not competent to sit in the court on the hearing of an appeal from the Court of Chancery or the Prerogative Court. Similarly, neither the Chief Justice nor any of the Supreme Court Associate Justices are competent to sit in this court on the hearing of any case in which they have rendered or participated in the rendering of the decision appealed from. The court is required to hold at least three stated terms annually; in February, May and October of each year. The Secretary of State is the clerk of the court and maintains offices in Trenton.

II. Business of the Court of Errors and Appeals

Table II indicates the cases contained in the Lists of Causes for the years 1932 to 1941, inclusive. During this span, 4,059 cases were listed for argument out of 4,452 cases which were entered into the dockets. There has been a decided decrease in the number of appeals before this court during this period. From a high of 885 in 1932, the number of cases has decreased to a low of 253 in 1940. In 1941, 273 cases were listed for argument. The table further shows the division of cases according to law and equity, the number of law cases being slightly more than equity ones. There does not seem to be any particular term during which a preponderance of cases is presented, although in some years more cases were listed for argument during the October term than in any of the other two.

[1] (*R. S.* 2:7-3; *New Jersey Constitution*, Article VI, Section II).

Unavailable data made it impossible to enumerate the number of motions heard prior to 1938. However, Table III shows that there was an average of 120 motions presented before the court annually for the years 1938 to 1941. Here, too, the distribution according to terms is quite even. In 1941, 120 motions were presented. By rule of court, motions are not argued at the bar but are submitted on briefs.

Because of the mixed nature of this court, an analysis was made of the opinions handed down by various members for the years 1939 to 1941, inclusive.[1] It should be noted, however, that those with an asterisk after their letters are the specially appointed lay judges. A total of 255, 246, and 223 opinions were delivered by the court in law and equity cases decided during 1939, 1940, and 1941, respectively. The largest proportion of the opinions are "Per Curiam" opinions which are pro forma, brief in content, and based on rulings of the court below. These rulings are either incorporated in the opinion if they have not been published, or are referred to by report volume and page number if published. The issuance of opinions by the judicial members of the court is more evenly distributed than among the special judges. One of the special judges, it was stated, has never been assigned the writing of an opinion since he has been on the court. No opinion written by him was found in the reports of 1939 to 1941 which were examined. An average of about five opinions a year were written by each of the special judges from 1939 to 1941. This does not seem to be a productive output for judges receiving approximately $9,000 a year. However, it should be pointed out that all of the judges participate in a vote on all cases including those in which a "Per Curiam" opinion is written. They also devote time to examining the law to enable them to participate in a consideration of all of the cases and motions and the vote thereon.

One observation might be made with reference to the activity of the special judges. Apparently the writing of opinions has little effect on the compensation which each receives. In this connection, reference should be made to Table V which shows the opinions written and the compensation of the special judges from

[1] See Table IV.

1939 to 1941. It will be noted that judge "M," who wrote no opinions, received about the same compensation as those who wrote several. In 1941, "P," who wrote two opinions, received $9,360 as his yearly compensation, whereas "N," who wrote seven, received $8,600. This amounts to $4,680 for each opinion delivered by "P" and $1,824 for each by "O." Again it should be pointed out that there is a certain amount of unfairness in making any comparisons of this nature since it may take longer to consider one type of case because of its complexity than to consider ten rather simple ones. Throughout this report as a matter of fact, it should be kept in mind that the statistics are only of a quantitative nature and do not represent an adequate appraisal of the activity of any judge or court without other factors of a qualitative nature being presented. Persons dealing with the courts, because of their experience, are able, in very many instances, to interpret with some reasonableness bare statistics. In any event, the foregoing discussion concerning the activity of the special judges is pertinent if for no other reason but that their compensation is based upon the actual work they do.

Table VI presents comparative statistics concerning the highest appellate courts of New Jersey, New York, Connecticut and Pennsylvania. Several observations might be made. First, the court of last resort in New Jersey contains more than twice as many members as that of New York and of Pennsylvania, and more than three times as many as that of Connecticut. Secondly, each of these courts, other than that of New Jersey, is composed of regular judges whose activities are restricted to that court[1]. Thirdly, the average number of cases handled by each judge is far less for the New Jersey court than for those of the other States. An average of sixteen cases per judge is the yearly work load for the New Jersey judges, whereas it is twenty-eight, forty-three, and ninety-two for the Connecticut, Pennsylvania, and New York judges, respectively. A comparison between the activity of the New York Court of Appeals and the New Jersey Court of Errors and Appeals with regard to the determination of motions reveals an interesting situation. In New York, each judge handled an average of over one hundred motions per year, whereas in New Jersey the average was about seven a year for each judge.

III. Financial Aspects

As was indicated in Table I, the total expenditures of the New Jersey Court of Errors and Appeals has varried from a low of $51,345 in 1932 to a high of $60,976 in 1934. In 1941, the total expenditures amounted to $57,027. The court receives no revenues. Although the expenditures of the court remained about the same for the period 1932 to 1941 and the number of personnel has not

[1] In New Jersey, the Chancellor, Chief Justice and eight Associate Justices of the Supreme Court have duties on their respective courts.

changed, the volume of business has fallen off perceptibly.

An attempt to break down the expenditures according to the number of cases is presented in Table VII. In 1932, 885 cases were listed and the expenditures were $51,345. Thus, the amount expended per case was $58.01. In 1941, the number of cases listed was 273 and the total expenditures were $57,027. Thus, the amount expended per case for that year was $208.89. In other words, there were four times as many cases listed in 1932 than in 1941, whereas the average expenditure per case was four times as much in 1941 than in 1932. It should be mentioned that the employees in the office of the Secretary of State who service this court were not included in calculating the expenditures nor were the "regular" judges who are budgeted in estimates of their own courts.

IV. Administration

It has already been pointed out that the Chancellor is the President Justice of the Court. Upon the presentation of argument before the full court, with the exception of those who have excluded themselves because of participation in the case in the court below or because of some other interest, the court divides itself into two parts for preliminary consideration of cases. The President Judge then assigns one of the members the writing of the opinion. Final consideration of the cases is heard by the full court followed by an open vote before the public.

Because of the system of having three terms of court, there is a lapse of several months between the notice of argument and the rendering of a decision. A study was made of cases presented before the court for the first half of 1940. The space of time between the filing of the notice of argument and the actual rendering of decision was noted for each of the cases during that period. An average was then struck and revealed that there is an interval of 5.6 months between the filing of notice of argument and the rendering of decision. In many instances, there was a lapse of seven to nine months, and, in two cases a lapse of over ten months was noted. It should be pointed out that, in most cases, this long period of time is explained by the fact that, although there is a three months' interval between the February and May term, there is a four months' interval between the October and February term and a five months' lapse between the May and October term. Naturally, between the May and October term, the vacation period takes place. Although there is a constant tendency for the court to render its decision on the matters heard at the prior term before the opening of a subsequent one, the very nature of the system of having three terms produces the lapse of long periods of time between the notice of argument and the rendering of decisions. The remedy here apparently would be to have ten monthly terms.

From an administrative standpoint, there is not much to be said in favor of having the Secretary of State act as Clerk of the

Court. The Clerk of the Supreme Court, it would seem, could readily handle the activities of the Court of Errors and Appeals, especially since the majority of the members of the highest court are also members of the Supreme Court.

The system of self-exclusion by members of the court who have participated in cases heard in courts below gives rise to the possibility of a situation which would make it impossible for a person to get a hearing in the Court of Errors and Appeals if the entire Supreme Court Bench had participated in the hearing in the latter court. This is because the law requires a quorum consisting of the majority of the members. If the nine Supreme Court justices excluded themselves, as occurred once, no quorum would remain in the Court of Errors and Appeals. The possibility of the foregoing situation is obviated by having the Supreme Court hear cases appealed to it with a bench of three justices. Consequently, usually only those three exclude themselves if and when the particular case is heard before the Court of Errors and Appeals. However, the fact is that, constitutionally, there is a possibility of no effective appeal from the Supreme Court.

One other fact should be pointed out, namely the presence on the court of six special judges. Although the appointment of laymen on this court has an historical basis, the passage of time and the progress and complexity of life have rendered that basis untenable today. A thorough knowledge of the law is a definite requirement for membership on any court. As a matter of fact, recognition of the last statement is had when it is seen that five of the six special judges are members of the bar. The theory of lay judges, in other words, has been nullified by the fact. A further criticism should be made concerning the carrying on of law practice and private business by the special judges in addition to their judicial duties.

V. Findings and Conclusions

The foregoing survey of the Court of Errors and Appeals points to the following findings and conclusions:

1. The court is too large in size, rendering it unwieldy.
2. The presence of special judges is an anachronism.
3. The efficiency of the court is impaired as a result of a disregard of the principle of the administration of justice, which requires the sole devotion of judges to their judicial duties without carrying on a private law practice or engaging in other gainful occupations.
4. Because of the practice of having three terms, too great a lapse of time between the notice of argument and rendering of decision takes place.
5. The volume of business of the court has decreased to about one-fourth of what it was in 1932.
6. The expenditures and the number of personnel of the court have remained about the same over the ten-year period from 1931 to 1941.
7. The largest number of decisions are handed down per curiam which is in effect without opinion.
8. There are a large number of cases in which one or more judges dissent without any supporting opinion.

TABLE I

New Jersey Court of Errors and Appeals

Expenditures, Revenue, Personnel and Judicial Business (a)

1931-1941

ITEM	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941
SALARIES:											
Lay Judges of Court of Errors and Appeals at $40.00 per diem	$50,000.00	$43,920.00	$45,300.00	$54,460.00	$47,200.00	$52,360.00	$54,000.00	$47,920.00	$49,360.00	$50,000.00	$50,160.00
Officers	3,500.00	3,500.00	3,500.00	3,348.68	3,500.00	3,500.00	3,500.00	3,500.00	3,500.00	3,573.52	3,500.00
Total Salaries	$53,500.00	$47,420.00	$48,800.00	$57,808.68	$50,700.00	$55,860.00	$57,500.00	$51,420.00	$52,860.00	$53,573.52	$53,660.00
IMPERSONAL SERVICES:											
Printed or Typewritten Copies of Draft of Opinions of the Lay Judges	$1,649.25	$2,142.08	$3,709.20	$1,937.00	$2,442.45	$1,381.70	$1,527.[illegible]	$1,237.98	$1,220.10	$1,598.10	$1,940.50
Binding State of Cases, Briefs, and Printing Lists of Causes	1,093.26	1,783.45	1,461.50	1,234.22	1,478.17	1,531.25	1,139.21	1,493.72	1,281.56	1,202.37	1,426.86
Total Impersonal Services	$2,742.51	$3,925.53	$5,170.70	$3,171.22	$3,920.62	$2,912.95	$2,667.01	$2,731.70	$2,501.66	$2,800.47	$3,367.36
Grand Total Expended	$56,242.51	$51,345.53	$53,970.70	$60,979.90	$54,620.62	$58,772.95	$60,167.01	$54,151.70	$55,361.66	$56,373.99	$57,027.36
REVENUES	None	None	None	None	None	None	None	None	None	None	None
NUMBER OF PERSONNEL*	8	8	8	8	8	8	8	8	8	8	8
CASES LISTED		885	621	400	357	351	319	295	305	253	273
MOTIONS LISTED								138	102	113	120

(a) *Source*: Annual Budgets, Lists of Causes, List of Motions and Dockets.

* Employees in office of Secretary of State not included.

TABLE II

New Jersey Court of Errors and Appeals

List of Causes Presented

1932-1941

Year	Term of Court	Law	Equity	Total
1932	February	160	111	271
	May			295
	October			319
1933	February			260
	May			193
	October			168
1934	February			98
	May			143
	October			158
1935	February			100
	May			193
	October			157
1936	February			101
	May			139
	October			151
1937	February			103
	May			124
	October			112
1938	February			94
	May			117
	October			114
1939	February			84
	May			106
	October			115
1940	February			73
	May			111
	October			69
1941	February			68
	May			88
	October			44
Cases filed, entered in Dockets— From February, 1932, to April, 1942				4,452
Cases Listed for Argument, 1932-1942				4,069

TABLE III

New Jersey Court of Errors and Appeals

List of Motions Presented

1938-41

Year	Term of Court	Number of Motions
1938	February	44
	May	48
	October	46
	Total	138
1939	February	37
	May	30
	October	35
	Total	102
1940	February	37
	May	37
	October	39
	Total	113
1941	February	40
	May	50
	October	30
	Total	120

TABLE IV

New Jersey Court of Errors and Appeals

Number of Published Opinions Delivered by Various Members of Court in Law and Equity Cases Decided

1939-1941 (a)

Member of the Court	1939 Law	1939 Equity	1939 Total	1940 Law	1940 Equity	1940 Total	1941 Law	1941 Equity	1941 Total
A	4	0	4	4	0	4	3	0	3
B	8	1	9	7	3	10	7(b)	5	12
C	2	1	3	1	1	2	..	..	..
D	5	8	13	10	3	13	8	6	14
E	6	1	7	8	4	12	8(c)	8	16
F	10	3	13	11(c)	3	14	8	8	16
G	6	4	10	7(c)	3(c)	10	6	5	11
H	7	2	9	11	4	15	7(c)	10	17
I	5	2	7	8	4	12	4	4	8
J	5	6	11	10	2	12	6	2	8
K	..	..	..	..	..	..	0	5	5
L*	3	2	5	0	2	2	..	..	..
M*	0	0	0	0	0	0	0	0	0
N*	7	1	8	5	3	8	5	2	7
O*	4	2	6	3	5	8	3	2	5
P*	3	4	7	2	3	5	1	1	2
Q*	3	1	4	8	0	8	7	1	8
R*	3	1	4	..	..	..	..	..	..
S*	..	..	..	..	..	..	0	4	4
Per Curiam (d)	76	59	135	58	53	111	45	42	87
Grand Total	157	98	255	153	93	246	118	105	223

* Special Judges.

(a) Data compiled from New Jersey Law Reports and New Jersey Equity Reports. Opinion is listed in year when handed down although case may have been argued during previous year. Dashes indicate that the member of the court was not serving.

(b) Two dissenting opinions included.

(c) One dissenting opinion included.

(d) Brief pro forma opinions based on rulings of court below.

TABLE V

New Jersey Court of Errors and Appeals

Opinions Written and Compensation of Lay Judges (a)
1939-1941

Name of Judge	1939 Salary	1939 No. of Opinions	1939 Compensation Per Opinion	1940 Salary	1940 No. of Opinions	1940 Compensation Per Opinion	1941 Salary	1941 No. of Opinions	1941 Compensation Per Opinion
L	$8,840	5	$1,768	$8,400	2	$4,200	.....	..	.....
M	7,920	0	.....	8,040	0	.....	$6,320	0	.....
N	8,120	8	1,015	8,200	8	1,025	8,600	7	$1,228
O	8,720	6	1,453	8,600	8	1,075	9,120	5	1,824
P	8,960	7	1,280	8,360	5	1,672	9,360	2	4,680
Q	3,120	4	780	8,400	8	1,050	9,120	8	1,140
R	3,600	4	900	.....	..	.....	.....	..	.....
S	.....	..	.....	.....	..	.....	3,400	4	850

(a) Data compiled from published equity and law reports and State Comptroller's records.

TABLE VI

New Jersey Court of Errors and Appeals

Comparative Statistics Regarding Selected Highest State Appellate Courts (a)
1938-1941

State	Population	Name of Court	No. of Judges	Salaries	Cases Disposed (c) 1938	1939	1940	1941	No. Cases per Judge 1938	1939	1940	1941	Motions Determined 1938	1939	1940	1941	No. of Motions per Judge 1938	1939	1940	1941
New Jersey	4,160,165	Ct. of Errors & Appeals	16	R-$18,000 L- 9,000 (b)	295	305	253	273	18.4	19.1	15.2	18.2	138	102	113	120	8.6	6.4	7.0	7.5
New York	13,479,142	Ct. of Appeals	7	25,000	677	623	616	.....	96.7	89.0	88.0	.....	747	760	681	.....	106.7	108.6	97.3	.....
Conn.	1,709,242	Supreme Court of Errors	5	12,000	152	127	134	.....	30.4	25.4	26.8	.....	.....	.....	.....	.....	.....	.....	.....	.....
Penn.	9,900,180	Supreme Court	7	19,500	.....	.....	.....	306	.....	.....	.....	43.7	.....	.....	.....	.....	.....	.....	.....	.....

(a) Data concerning New York and Connecticut from reports of the Judicial Councils of those States; New Jersey data from dockets, printed lists and reported decisions. Pennsylvania data tabulated by A. S. Faught, Esq., Philadelphia, from published reports. Blank spaces indicate lack of data.

(b) The regular judges (R) receive no extra compensation for their duties on the Court of Errors and Appeals. They are the Chancellor ($19,000), the Chief Justice ($19,000) and eight Associate Justices of the Supreme Court ($18,000 each). The six specially appointed lay judges (L) receive a per diem fee of $40 (fees amounting to $8,000-$10,000 yearly).

(c) In New York these are "entered on the register and disposed of in regular order"; in Connecticut these were "total decided"; in New Jersey these were the number in the printed Lists of Causes but varied in the number of decided cases contained in the published reports—which were 255, 246, and 223 in 1939, 1940 and 1941, respectively; in Pennsylvania these were the number of opinions filed.

TABLE VII

New Jersey Court of Errors and Appeals

Average Expenditures Per Case
1932-1941

YEAR	NO. OF CASES LISTED	TOTAL EXPENDITURES	AVERAGE EXPENDITURES PER CASE	YEAR	NO. OF CASES LISTED	TOTAL EXPENDITURES	AVERAGE EXPENDITURES PER CASE
1932	885	$51,345	$58.01	1937	319	60,167	188.61
1933	621	53,970	86.90	1938	295	54,151	183.56
1934	400	60,976	152.44	1939	305	55,361	181.51
1935	357	54,620	152.99	1940	253	56,373	222.81
1936	351	58,772	167.44	1941	273	57,027	208.89

Chapter II

New Jersey Court of Chancery

I. General Background

Structure and Organization

The Court of Chancery consists of a Chancellor appointed by the Governor with the advice and consent of the Senate for a term of seven years. The statute fixes his salary at $19,000 per annum.

By law the Chancellor appoints not more than ten Vice-Chancellors for terms of seven years. Their salaries, fixed by statute, are $18,000 each per annum. In addition, the Chancellor appoints the Masters in Chancery, whose number is not limited, and also designates certain of the Masters to be Special Masters in Chancery and to be Advisory Masters of the Court. At the present time there are several hundred Special Masters. There are twelve Advisory Masters, two of whom are designated as Standing Advisory Masters and are stationed at Trenton. One of them hears *ex parte* (non-contested) matters solely, while the other performs administrative services as well as hearing matrimonial matters. The first receives a salary of $10,000 from the State, whereas the second receives $7,000 plus fees for handling matrimonial cases, bringing his yearly compensation up to $16,000. One other Advisory Master acts as a liaison officer between the court and the clerk's office and is carried on the clerk's budget with the title of Chief Agent and a salary of $3,500. The balance of his yearly compensation, which averages about $16,000, is also made up from matrimonial fees. The other ten Advisory Masters devote their entire time to the handling of matrimonial causes. Each receives a fee of $50.00 for each case disposed of, $.75 of which goes back to the clerk.[1] Special Masters receive compensation from the litigants depending upon the nature of the case handled and their work.

The clerk of the court maintains offices at Trenton in the State House Annex.

Jurisdiction

The Court of Chancery is a court of State-wide general equity jurisdiction.[2] The writ of habeas corpus may issue from this court. It also has jurisdiction in matrimonial causes and in the determination of the custody of children.

Cases pending in the court are usually referred by the Chancellor to one of the Vice-Chancellors or to a Master for hearing and report. Matrimonial causes are referred to Advisory Masters for hearing. Preliminary applications, motions addressed to the

[1] See *Rules* 284, 285, 177 f of *Rules of Court of Chancery*; also *R. S.* 2:2-12, 2:2-14.
[2] *New Jersey Constitution*, Article VI, Section IV.

pleadings and other similar matters are usually heard before a Vice-Chancellor or an Advisory Master, depending upon the subject matter, by general order of reference by the Chancellor by rule.

Business of the Court of Chancery

There has been a decided decline in the volume of business handled in the Court of Chancery. Table I indicates that the number of cases declined from the high of 26,635 in 1932 to 13,872 in 1941—a decrease of 50%.

Table II shows the percentage of cases filed by types for the years 1929, 1933 and 1941. It indicates a shift in the bulk of cases from foreclosure in 1928 and 1933 to divorce in 1941. In 1928, 57% of the cases were foreclosure, 19% were divorce and 2% were tax foreclosure. In 1933, foreclosures had jumped to 70%, divorce suits had declined to 11% and tax foreclosure cases had increased to 4%. In 1941, another shift occurred. In that year, foreclosures had declined to 25.2%, tax foreclosures had increased to 19.5%, while divorce cases increased to 37%. These three types of cases, plus maintenance cases which lie in the matrimonial field, constituted 83.6% of all the cases filed in the Court of Chancery for 1941.

Some explanation should be made concerning the handling of these matters by the various personnel in the court. It has been mentioned that the Advisory Masters handled matrimonial causes. In other words, in 1941 they handled 38.9% of the total number of cases filed. The matters listed as "Set Aside Conveyance," "Partition," "Lunacy," and "Quiet Title," representing 2.2% of the cases filed in 1941, are handled by the Standing Advisory Master. Masters handle tax foreclosure cases for the most part, this work constituting 19.5% of all the cases filed in 1941. Of the other miscellaneous matters, which in 1941 amounted to 7.6% of all of the cases filed (a total of 1,034), some are handled by the Vice-Chancellors, some by the Advisory Masters, and some by the Special Masters. Relief, receivership injunction and tax receivership cases are handled by the Vice-Chancellors. This group constituted 6.6% of the total number of cases filed for 1941. The tax receivership cases are routine matters and are disposed of with dispatch. There were 445 of such cases in 1941 comprising 3.2% of the total. In summary, it would appear that only about 8% to 15% of the cases filed in the Court of Chancery are handled by the Vice-Chancellors, the rest being farmed out to Advisory Masters, Special Masters and Masters.

So far as actual numbers of cases are concerned, reference to Table I indicates that since 1936 there was a decrease of 8,000 foreclosure cases, an increase of 1,000 divorce cases, and an increase of about 150 tax foreclosure cases. All of the other types of cases, with the exception of lunacy, decreased, the largest de-

crease being in the case of tax receiverships which fell off from 743 in 1936 to 445 in 1941.

The total number of final decrees that were filed in 1941 was 19,672, an increase of about 8,000 over 1940 and a decrease of about 319 over 1932. However, this has little reflection on the volume of work inasmuch as the rapidity of enrollment of final decrees is dependent on the number of enrollers and the length of the material that has to be enrolled. More comment on this will be made later in this report.

The information furnished by the Chancellor shows that there were approximately 308 references made to the Vice-Chancellors from July 1, 1940, to December 31, 1940, of which 232 were disposed of after hearing. In 1941, there were 553 references to the Vice-Chancellors, whereas 605 causes were disposed of. This seeming discrepancy is due to the overlap of matters which might have been referred late in one year and carried over to the succeeding year. The data furnished by the Vice-Chancellors indicate that there was an average of about 65 cases referred to each Vice-Chancellor each year during 1940 and 1941.[1] Most of the Vice-Chancellors stated that almost all of the matters referred to them have been disposed of. Some of them furnished information on the number of motions heard, the majority of them stating that they were quite numerous but that no records were kept.

It was the Chancellor's opinion that from 10% to 15% of cases fall by the way between reference and final hearing. He also indicated that the large part of the work of both Vice-Chancellors and Advisory Masters come from motions and causes not requiring specific references. It was his belief that this comprises "an amount equal to or more than the work specifically referred."

An analysis was made of the opinions handed down by the Vice-Chancellors and published in the New Jersey Equity Reports for the years 1939 to 1941, inclusive. Table III shows this breakdown according to Chancery and Prerogative cases, the names of the Vice-Chancelors being substituted by letters of the alphabet. There were 133, 123, and 111 printed opinions for the years 1939, 1940 and 1941, respectively. The unevenness in the distribution may not necessarily indicate that some of the Vice-Chancellors are performing more work than the others, but may very well reflect the intricacy and complexity of the cases decided. There are many opinions which are not published but which are incorporated in the opinions handed down by the Court of Errors and Appeals.

III. Financial Aspects

Tables IV, V and VI deal with the expenditures and income of the Court of Chancery and the clerk's office, the last table being a recapitulation of the first two. Over the eleven-year

[1] See Table XIII.

period from 1930 to 1941 the total expenditures of the court and the clerk's office have risen about $45,000, the expenses for 1930 being $451,426, while those for 1941 being $498,251. The expenditures of the court alone have remained substantially the same during this period. In 1941, $361,710 was expended. The increase in the clerk's disbursements is explained in part by the fact that the clerk's budget now includes the payments for office equipment, whereas heretofore this expense was borne by the State House Commission. In 1941, the clerk's office expended $136,540. Expenditures for personnel rose slightly in the clerk's office over the ten-year period from 1931 to 1941. In 1941, this disbursement amounted to $110,708. There have been slight increases and decreases in personnel charges in the Court of Chancery, the expenditure in 1941 for this purpose being $354,509. The number of persons budgeted in the Court of Chancery is now 56, a rise of five since 1937. In the clerk's office there have been about sixty employees over the ten-year period from 1931 to 1941. The clerk has stated that his office is operating at the present time with 57 regular employees not including enrollers.

The fees taken in by the clerk's office rose from $321,841 in 1931 to $370,146 in 1940. In 1941, the receipts reached a total of $481,803, but this includes $132,383 which was part of the surplus in the Advisory Masters' Fees Account returned to the State General Fund. Deducting that sum from the total receipts, the clerk actually collected $349,420.

Comment must be made concerning three other types of funds: the Enrollment Fund, Advisory Masters' Fees Account, and Chancery Trust Funds. The Enrollment Fund consists of moneys collected from litigants for the enrollment of selected pertinent papers in a suit. A fee of 7 cents per folio of one hundred words is collected of which 2 cents is retained by the clerk and 5 cents is paid to enrollers who are compensated on a piecework basis per folio. The clerk has stated that at the present time there are fifteen enrollers on his staff. The enrollment of papers is done in long hand and consists of the copying of papers into large dockets. Reference should be made to Table VI which shows the disposition of the receipts and disbursements of that fund. It will be noted that during some years, particularly 1933, 1934 and 1935, over $160,000 was collected annually. In the fiscal year 1934-1935, $182,726 was received and $155,590 was disbursed from this fund. During that year there were over 140 enrollers on the staff who received their compensation according to the amount of work they did. In the fiscal year 1940-1941, $39,766 was received into this fund and $38,637 was disbursed. There is no justification for the present procedure of accounting for these funds other than a statutory one.[1] Assuming that the present method of enrollment should be retained, of which there is great doubt, it would seem to

[1] See *R. S.* 22:2-16 and 22:2-17.2

be better practice to include the receipts into the general income of the clerk's office and pay the enrollers a straight salary. Further comment concerning enrollment will be made in the next section of this report.

The system of handling Advisory Masters' fees is based upon statute and Rules of the Chancery Court.[1] The sum of $50 is collected from a litigant in uncontested matrimonial causes and $60.00 in contested cases. In the latter event, $10.00 is segregated as compensation for a stenographer. Each Advisory Master receives the sum of $49.25 (75 cents of each $50.00 fee goes to the clerk pursuant to Rule 177 f) for each case disposed of. A ceiling of $16,000 per annum has been set for each Advisory Master's compensation. Accordingly, the clerk, who handles the receipt and disbursement of the fees, will not send a check to the Advisory Master when the latter's compensation for the year has reached the stipulated sum of $16,000. Instead, the surplus is turned over to the clerk in charge of the Chancery Trust Funds who thereupon deposits it in a separate account. On April 28, 1942, there was $20,000 on deposit, constituting a surplus in the Advisory Masters' Fees Account. The remaining funds for the fiscal year ending March 31, 1942, had not been turned over to the Chancellor by the court clerk as yet. In July, 1941, the Chancellor deposited the sum of $132,383, taken from the accumulated surplus, with the Clerk in Chancery who placed it in the receipts which went to the State Fund. The compensation which each Advisory Master received for the fiscal years 1940 and 1941 is indicated in Table VII. It should be noted that some of the Advisory Masters disposed of slightly more cases than the others, but all were given the same annual compensation of about $16,000. The amount held in reserve is turned over to the Chancellor each year for the most part. As indicated, it is held by him in safe-keeping, and by law is subject to his disposition in any way he desires. In 1941, he saw fit to return the greater part of the accumulated surplus to the General State Fund.

Table VIII indicates the receipts of Advisory Masters' fees by the clerk, the disbursements to the Advisory Masters as their compensation, the number of cases heard, and the amount held in reserve. During the year from April 1, 1940, to March 31, 1941, $221,880 was received by the clerk from litigants as Advisory Masters' fees. During the same year, $168,200 was paid out to the Advisory Masters as their compensation for hearing a total of 3,943 cases. It should be noted that the Advisory Masters were actually paid for disposing of 3,364 cases in order not to exceed the ceiling of $16,000 which was fixed by the Chancellor. Moreover, the receipts taken in by the clerk include the clerk's commissions, rebates and refunds.

[1] See *R. S.* 2:2-12; 2:2-14; *Chancery Court Rules* Nos. 284, 285.

Several comments might be made concerning the Advisory Masters' fees system. First, although an attempt is made to place the work of the Advisory Masters on a salary basis, it would seem to be better fiscal practice to place the fees collected from litigants into the total receipts of the clerk's office and have the Advisory Masters budgeted on a yearly salary basis. This, however, assumes the desirability of retaining the system of having Advisory Masters hear matrimonial matters. Secondly, there is serious question as to the justification of keeping the Advisory Masters' fees for matrimonial causes at the present level from the standpoint of the litigants.

The statutes authorize the Chancellor to supervise the handling of trust funds, that is, moneys placed in the Chancery Court by parties pending the disposition of the case and the determination of the ownership of the moneys.[1] Pursuant to statute, Rules 238 and 239 have been promulgated to govern the handling of moneys deposited in court. The Chancellor has the right to invest the trust funds in government bonds and other legally authorized securities, and to supervise the funds, their investment and their disbursement. The clerk in charge of the funds for the Chancellor has indicated that over 90% of the trust funds are placed in government bonds, the rest being invested in real estate mortgages and other securities. The income of the trust is prorated among the owners of the principal proportionately at the rate of interest decreed by the Chancellor after expenses have been deducted. At the present time the interest amounts to about 2%.

There are four employees in the unit set up by the Chancellor to actually handle the funds, total salaries being about $13,000, according to the clerk in charge. Other expenditures are for the auditing of the funds by a private accounting firm twice a year.

Table IX presents a statement of the trust receipts and disbursements from January 1, 1934, to December 31, 1941. On January 1, 1934, the total amount of the trust funds on hand was $2,977,637. For the period 1934 to 1941, a total of $4,606,784 was received consisting of $3,988,706 in principal and $618,078 in income. The disbursements during that period amounted to $5,010,316 comprised of $4,486,927 in principal and $523,388 in income. The net disbursements of principal for this period were $498,221 while the net income receipts were $94,690. Approximately one-half million dollars are taken in and expended each year. On December 31, 1941, the total balance of the trust funds amounted to $2,574,105. The clerk in charge has stated that only about $25,000 to $50,000 in cash is available in the banks at any particular time, and that, when it is necessary to pay out larger sums, sufficient securities are sold in the market in order to make up the difference required.

[1] See *R. S.* 2:29-81, 2:29-82.

For the purposes of comparison of the differences in fees charged in the clerk's office before and after 1937, Table X and XI are included in this report. Under the present system, a flat fee is charged for the various types of actions based upon a cost accounting analysis made in 1937 by the clerk. As may be noted in Table XI, the flat charges approximate the average total statutory charges prior to July 1, 1937. No attempt is made in this report to analyze the merits and demerits of the fees charged in this office. Such a study might be made to advantage not only for this court but for all the other courts in the State.

In attempting a breakdown of the expenditures and the income per case in the Chancery Court, various factors have to be considered. It is to be noted from Table VI that, with the exception of the fiscal year 1937-1938 when there was a profit of $103,886, the court has been running at a deficit of expenditures over receipts. In 1940, this deficit was $114,425. Although Table VI shows a deficit of only $16,448 for 1941, if the surplus of the Advisory Masters' fees which amounted to $132,383 was deducted from the total receipts of the clerk, the deficit would amount to $148,831 for that year. If the receipts and disbursements of the Advisory Masters' fees were included in the total receipts and expenditures of the court, the same deficit would remain for each year, and consequently the deficit per case would be the same. This is true although adding in this money would make the average expenditure and average income per case higher. Similarly, proper fiscal practice might require the inclusion of the enrollment fund receipts and disbursements. But here too, since approximately the same money is paid out, the effect on the deficit would be insignificant although total costs and receipts would be higher if included. Accordingly, Table XII presents a breakdown of the average net expenditure, net income and deficit per case without the inclusion of the Advisory Masters' fees and the enrollment fees. It will be noted that, since the number of cases started in 1941 was approximately half of that of 1932, and since the expenditures have increased slightly, the average expenditure per case was about twice as high in 1941 than it was in 1932. The 1941 receipts per case were also about half of what they were in 1932. Consequently the deficit per case has risen. No attempt is made here to discuss the many fiscal problems raised by the foregoing material.

IV. Administration

Constitutionally, the Chancellor is the Court of Chancery.[2] The Chancellor has provided by Rule 128 for the reference of cases to Vice-Chancellors and Advisory Masters according to vicinages and types of matters. The actual reference is handled through the office of one of the Standing Advisory Masters at Trenton. There

[1] See *R. S.* 22:2-14.
[2] *New Jersey Constitution*, Article VI, Section IV.

are six vicinages for Vice-Chancellors and four for the Advisory Masters. Since 1940, the Vice-Chancellors submit reports to the Chancellor through the Standing Advisory Master, thereby enabling the Chancellor to make reassignments in case any particular Vice-Chancellor is incapacitated for any reason. However, there does not seem to be any sufficient development of control of assignments according to the volume of work. The basis of a flexible system of administration should be developed to include not only the reassignment of the Vice-Chancellors according to the number of cases referred to them but also according to the number of motions and other work they have to consider. An adequate system of control should be developed by making provision for more comprehensive statistical reporting of all of the business of the Vice-Chancellors to include not only the number of matters referred but the ways by which they are disposed. The Chancellor recently inaugurated the beginnings of a reporting system, but criticism should be made of the failure to have embarked upon a basic system of supervision theretofore.

The entire question of administration of any court system is one which merits much consideration. We have seen how several years ago the Administrative Office of the United States Courts was created as a means to handle this problem. Without attempting to evaluate the time spent by the Chancellor in his administrative duties in the Chancery Court and his other work, some attention should be paid to some of the chief duties assigned him by the Constitution and statutes. The following might be mentioned:

1. Is the Court of Chancery. (*New Jersey Constitution*, Article VI, Section IV.)
2. Is President Judge of Court of Errors and Appeals. (*New Jersey Constitution*, Article VI, Section II; *R. S.* 2:1-3.)
3. Is Ordinary or Surrogate-General—Head of Prerogative Court. (*New Jersey Constitution*, Article VI, Section IV.)
4. Is Member of Court of Pardons. (*New Jersey Constitution*, Article IV, Paragraph 10; *R. S.* 2:10-1.)
5. Appoints Vice-Chancellors, Advisory Masters, Special Masters and Masters. (*R. S.* 2:2-3; 2:2-9.)
6. Appoints his secretary. (*R. S.* 2:2-23.)
7. Appoints stenographic reporter. (*R. S.* 2:2-24.)
8. Appoints additional office stenographer. (*R. S.* 2:2-27.)
9. Appoints a confidential agent. (*R. S.* 2:2-27.)
10. Designates a Vice-Chancellor as a member of the Judicial Council. (*R. S.* 2:17-2.)
11. Appoints guardians of estates of patients committed to State institutions. (*R. S.* 30:4-65.)

12. Appoints receivers or trustees of insolvent corporations. (*R. S.* 14:14-4.)
13. Appoints sergeants-at-arms of court. (*R. S.* 2:2-21.)
14. Ex-officio member of the Board of Commissioners of State Library. (*R. S.* 52:26-1.)
15. Certificates of incorporation of diocesan conventions of Protestant Episcopal Church executed in his presence. (Or of Supreme Court Judge.) (*R. S.* 16:12-18.)
16. Approves compensation of special assistant deputy commissioners of banking and insurance. (*R. S.* 17:4-107; 17:12-73.)
17. Determines, upon refusal of Board of Public Utility Commissioners, the compensation payable by street railways laying tracks across municipally owned bridges.
18. Deposits and invests funds brought into Chancery Court. (*R. S.* 2:29-81, 2:29-82.)
19. Fixes payment to Chancery reporter for volumes of chancery reports printed. (*R. S.* 2:18-4.)
20. Power to make general rules to carry out Chapter 2. (*R. S.* 2:2-1.)
21. Power to make rules for Court of Chancery. (*R. S.* 2:29-16.)
22. Writs of error out of Supreme Court in criminal cases punishable with death issued only on order of the Chancellor. (*R. S.* 2:195-1.)

This multitude of duties to perform raises serious question as to whether the organization of this office is inherently good.

With reference to the system of enrolling the following observations might be made. The device of having persons copy in long hand lengthy records is antiquated in this modern age when other more efficient techniques might be used. Serious consideration should be given to the possibility of installing a system of photographing pertinent papers.

V. Findings and Conclusions

A survey of the Court of Chancery and of the clerk's office points to the following findings and conclusions:

1. There has been an increase in the deficit per case over the ten-year period, 1931-1941.
2. There has been almost a 50% decrease in the volume of business.
3. Expenditures have risen slightly.
4. About 10% of the total business is handled by Vice-Chancellors, the rest being farmed out to Advisory Masters, Special Masters and Masters.
5. Inadequate reporting records are compiled.
6. The system of work assignment and control is not fully developed, although the beginnings have been made.
7. From a fiscal point of view, the accounting of Advisory Masters' fees and enrollment fees is bad.
8. An inadequate system of public accounting for trust funds exists.
9. The Chancellor's duties are multitudinous and embrace too many levels of courts.
10. An inadequate administrative system of the court exists.

TABLE I

COURT OF CHANCERY

Analysis of Cases Started: Selected Years 1924-1941

TYPE	1924	1928	1932	1936	1937	1940	1941
Foreclosure	3,057	11,539	18,159	11,496	9,123	4,538	3,463
Divorce	3,351	3,927	3,422	4,249	4,829	4,554	5,127
Tax Foreclosure	148	388	1,077	2,556	2,758	3,031	2,708
Relief	671	799	894	195	65	6	.....
Receivership	284	480	747	274	372	229	213
Injunction	369	350	417	272	410	272	255
Maintenance	312	353	345	304	317	263	263
Set Aside Conveyance	29	205	177	134	112	50	49
Partition	259	226	152	121	137	98	98
Lunacy	104	109	83	90	95	99	110
Quiet Title	201	257	103	93	100	84	91
Tax Receivership	.....	.....	.....	743	439	255	445
Miscellaneous	1,231	1,350	1,059	1,120	1,164	1,242	1,034
Total	10,014	19,983	26,635	21,647	19,921	14,571	13,872
Number of Decrees Filed[a]	4,457	9,142	20,053	16,872	16,015	11,791	19,872

[a] Does not include orders of dismissal. Last dismissal order number on April 17, 1942, was 24,016 in series begun in 1938.

TABLE II

COURT OF CHANCERY

Percentage of Cases Filed by Types

Selected Years 1928-1941

Type	1928 %	1933 %	1941 %
Foreclosure	57.0	70.0	25.2
Divorce	19.0	11.0	37.0
Tax Foreclosure	2.0	4.0	19.5
Relief	4.0	3.3	0.1
Receivership	2.4	2.0	1.5
Injunction	1.7	1.3	1.8
Maintenance	1.7	1.1	1.9
Set Aside Conveyance	1.0	0.9	0.3
Partition	1.1	0.5	0.6
Lunacy	0.5	0.4	0.7
Quiet Title	1.2	0.3	0.6
Tax Receivership		0.3	3.2
Miscellaneous	8.4	4.9	7.6
Total	100.0	100.0	100.0

TABLE III

COURT OF CHANCERY

Printed Opinions Handed Down by Vice-Chancellors

1939-1941

Vice-Chancellor	1939 Chancery	1939 Prerogative	1940 Chancery	1940 Prerogative	1941 Chancery	1941 Prerogative
A	20	1	20	....	16	5
B	6	4	3	5	1	3
C	7	....	6	....	5	....
D	8	1	10	....	4	....
E	22	1	17	2	14	1
F	4	....	3	....	....	....
G	15	2	19	....	12	1
H	11	....	10	1	10	....
I	15	3	15	2	21	2
J	13	....	10	....	7	....
K	....	....	....	....	9	....
Total	121	12	113	10	99	12

TABLE IV

NEW JERSEY COURT OF CHANCERY

Expenditures 1931-1941—(Fiscal Years)

ITEM	1931	1932	1933	1934
SALARIES:				
Chancellor	$19,000.00	$19,000.00	$18,923.34	$19,000.00
Vice-Chancellors (10)	180,000.00	177,000.00	177,856.45	180,000.00
Secretaries to Vice-Chancellors	18,693.56	19,666.60	20,000.00	19,999.93
Secretary to Chancellor	2,000.00	2,000.00	2,000.00	2,000.00
Sergeants-at-Arms (10) (a)	24,755.00	24,056.24	26,447.09	31,920.00
Advisory Masters and Stenogs. (b)	58,032.20	79,980.10	91,718.21	39,450.70
Stenographic and other services (c)	45,265.98	45,262.11	44,866.26	45,000.00
Law Assistants to Vice-Chancellors	.....	.....	.....	.....
Total Salaries	$347,746.74	$366,965.05	$381,811.35	$337,370.63
MATERIALS AND SUPPLIES:				
Stationery and Office Equipment	$3,197.52	$2,998.94	$3,819.07	$3,901.03
Vehicular Transportation Supplies	.....	.....	.....	.....
Library Supplies	.....	.....	.....	.....
Postage and Miscellaneous	1,500.00	1,500.00	2,250.00	386.00
Rent, etc. of Chambers	22,703.00	1,692.39	.....	1,000.00
Total Materials	$27,400.52	$6,191.33	$6,069.07	$5,287.03
IMPERSONAL SERVICES:				
Repairs to Equipment	.....	.....	.....	.....
Travel Expenses for Casual Court Attendants and Sgts-at-Arms	.....	.....	.....	.....
Miscellaneous	.....	.....	.....	.....
Total Impersonal Services	.....	.....	.....	.....
EXTRAORDINARY EXPENDITURE:				
(Chancery Investigation)	.....	.....	.....	.....
Grand Total Expended	$375,147.26	$373,156.38	$387,880.42	$342,657.66
Number of Personnel	.....	.....	.....	.....

* Dr. 1,000.

(a) Includes casual sergeants-at-arms and court attendants.

(b) Does not include compensation of advisory masters paid out of fees.

(c) Pursuant to R. S. 2:2-25 and 2:2-28. Does not include compensation to enrollment clerks paid out of Enrollment Fund (R. S. 22:2-16; 22:2-17.2).

TABLE IV—Continued

NEW JERSEY COURT OF CHANCERY

Expenditures 1931-1941—(Fiscal Years)

1935	1936	1937	1938	1939	1940	1941
$19,000.00	$19,000.00	$19,000.00	$19,000.00	$19,000.00	$19,000.00	$19,000.00
179,600.00	180,000.00	180,000.00	180,000.00	180,000.00	180,000.00	179,564.53
20,000.00	19,999.98	19,999.91	22,299.95	22,400.00	22,399.93	22,399.96
2,000.00	2,000.00	2,000.00	2,500.00	2,500.00	2,499.88	2,500.00
34,965.00	34,997.93	34,997.93	41,152.00	40,240.00	40,240.00	38,115.00
28,185.00	22,000.00	22,000.00	22,980.00	22,980.00	22,980.00	22,980.00
45,000.00	50,666.67	53,000.00	54,500.00	54,500.00	55,333.34	55,500.00
.....	.....	.....	12,611.75	15,800.00	15,050.00	14,450.00
$363,750.00	$330,664.58	$330,955.07	$355,043.70	$357,420.00	$357,503.15	$354,509.49
$2,982.67	$3,324.00	$3,772.90	$4,736.32	$3,785.98	$4,724.29	$4,941.51
.....	.....	.....	.....	.....	.....	453.61
.....	.....	.....	2,665.75	1,370.50	1,487.12	1,492.48
1,000.00	1,000.00*	600.00	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
$3,892.67	$4,324.01	$4,372.90	$7,402.07	$5,156.48	$6,271.41	$6,887.60
.....	.....	.....	$85.56	$88.86	$28.00	$26.68
.....	.....	.....	.....	.....	1,454.45	108.85
.....	.....	.....	133.44	220.00	.....	177.96
.....	.....	.....	$219.00	$308.86	$1,482.45	$313.49
$35,000.00	.....	.....	.....	.....	.....	.....
$402,732.67	$333,988.59	$335,327.97	$362,664.77	$362,885.34	$365,257.01	$361,710.58
.....	52	51	55	56	56	56

TABLE V

CLERK IN CHANCERY

Expenditures by Fiscal Years

1931-1941

ITEM	1930-1931	1931-1932	1932-1933	1933-1934
Clerk in Chancery	$6,000.00	$6,000.00	$6,000.00	$6,000.00
Chief Clerk	5,500.00	5,500.00	5,500.00	5,500.00
Law Clerks (2)	7,100.00	7,100.00	7,100.00	7,100.00
Compensation of Assistants	77,800.00	83,840.00	76,334.44	74,915.98
Stationery and Supplies	8,452.46	10,000.00	4,970.40	6,187.52
Other Materials and Supplies	815.34	475.00	716.51	.....
Bookkeeping Equipment	.....	4,000.00	.....	.....
Telephone and Telegraph	505.47	358.78	150.70	.....
Premium on Surety Bonds	300.00	475.00	250.00	460.00
Miscellaneous Expenses	.....	.....	.....	.....
Total Expenses of Clerk	$106,473.07	$117,748.78	$101,022.05	$100,163.50
Number of Employees**	78	78	103	206

* Includes items that were heretofore furnished by State House Commission for furniture, etc.; also items necessary for equipment and supplies used for the conduct of WPA projects. Actually general supplies are the same or less than heretofore.

** Figures from 1930 to 1934 include enrollers. Actual number of employees from 1920 to 1941 was about 60; in 1942, it was 57.

TABLE V—Continued

CLERK IN CHANCERY

Expenditures by Fiscal Years

1931-1941

1934-1935	1935-1936	1936-1937	1937-1938	1938-1939	1939-1940	1940-1941
$6,000.00	$6,000.00	$6,000.00	$6,000.00	$6,000.00	$6,000.00	$6,000.00
5,500.00	5,500.00	5,500.00	5,740.00	5,500.00	5,500.00	5,500.00
7,100.00	7,100.00	6,446.77	7,340.00	7,100.00	7,100.00	7,100.00
74,840.00	75,275.52	75,625.00	89,971.20	89,392.22	90,054.51	92,108.00
6,122.14	7,197.42	6,691.39*	9,904.84*	10,211.14*	9,438.32*	7,601.73
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
210.00	460.00	460.00	460.00	460.00	460.00	460.00
.....	.....	.....	.....	789.87	763.33	795.22
$99,772.14	$101,532.94	$100,723.16	$119,416.04	$119,453.28	$119,316.26	$136,540.94
61	59	59	59	59	59	60

TABLE VI

Court and Clerk in Chancery (a)

Budget Appropriations, Expenditures, Receipts, Cases Started, Final Decrees, Enrollment Fund
Fiscal Year July 1st to June 30th
1930-1941

ITEM	1929-1930	1930-1931	1931-1932	1932-1933	1933-1934	1934-1935
BUDGET (Original Approp.):						
Court of Chancery	$361,566.86	$368,700.00	$377,[illegible].00	$356,500.00	$3[illegible]3,000.00	$329,500.00
Clerk in Chancery	102,088.00	1[illegible],210.00	114,140.00	105,360.00	105,[illegible]75.00	105,600.00
Total	$463,6[illegible].86	$47[illegible],910.00	$4[illegible]0.00	$4[illegible]1,[illegible]60.00	$448,17[illegible].00	$435,100.00
EXPENDITURES (Actual):						
Court of Chancery	$351,922.31	$375,[illegible]47.26	$373,156.38	$387,880.[illegible]2	$342,657.[illegible]	$367,732.67
Clerk in Chancery	[illegible]9,50[illegible]	106,47[illegible]	[illegible]7,74[illegible]78	101,022.05	100,16[illegible]	99,772.14
Total	$45[illegible],426.29	$481,620.53	$4[illegible]0,905.16	$488,902.47	$442,821.1[illegible]	$467,504.81
RECEIPTS:						
Fees	$253,885.18	$321,[illegible]1.68	$3[illegible]8,716.56	$3[illegible],212.10	$355,1[illegible]3.50	$362,091.71
Deficit	$197,541.11	[illegible]	$17[illegible],188.60	$129,690.37	$[illegible]7,687.66	$105,413.10
ENROLLMENT FUND:						
Receipts	.....	$100,639.81	$126,096.19	$166,301.45	$191,409.53	$182,726.62
Disbursements	.....	23,358.50	20,754.95	29,466.52	75,012.31	155,590.06
Balance	.....	$77,281.31	$105,341.24	$136,834.93	$116,397.22	$27,136.56
(Calendar Years)	1929	1930	1931	1932	1933	1934
Total Number of Cases Started	23,622	24,368	23,856	26,635	26,029	24,829
Total Number of Final Decrees	14,924	16,704	16,320	20,053	19,585	19,683

* New Fee System started.

** Includes part of surplus in Advisory Masters' Fees Account (about $100,000) returned to State General Fund.

(a) Source: Comptroller's Annual Reports, Annual Budgets and Case Dockets.

TABLE VI—Continued

Court and Clerk in Chancery (a)

Budget Appropriations, Expenditures, Receipts, Cases Started, Final Decrees, Enrollment Fund
Fiscal Year July 1st to June 30th
1930-1941

ITEM	1935-1936	1936-1937	1937-1938	1938-1939	1939-1940	1940-1941	1941-1942	1942-1943
BUDGET (Original Approp.):								
Court of Chancery	$335,000.00	$335,500.00	$368,403.44	$362,920.00	$365,370.00	$365,956.00	$365,420.00	$365,420.00
Clerk in Chancery	101,700.00	102,660.00	119,580.00	119,610.00	119,720.00	122,240.00	121,160.00	.....
Total	$436,700.00	$438,160.00	$487,983.44	$482,530.00	$485,090.00	$488,196.00	$486,580.00	$365,420.00
EXPENDITURES (Actual):								
Court of Chancery	$333,988.59	$335,327.97	$362,664.77	$362,885.34	$365,257.01	$361,710.58	.....	.....
Clerk in Chancery	101,532.94	100,723.16	119,416.04	119,453.23	119,316.26	136,540.94	.....	.....
Total	$435,521.53	$436,051.13	$482,080.81	$482,338.57	$484,573.27	$498,251.52	.....	.....
RECEIPTS:								
Fees	$325,549.94	$307,322.62	$585,967.55*	$391,543.90	$370,147.58	$481,803.17**	.....	.....
Deficit	$109,971.59	$128,728.51	$103,886.74 (Profit)	$90,794.67	$114,425.69	$16,448.35	.....	.....
ENROLLMENT FUND:								
Receipts	$84,818.36	$49,558.72	$60,123.31	$45,840.21	$41,161.07	$39,766.35	.....	.....
Disbursements	78,099.85	46,491.35	58,435.45	45,073.10	39,605.80	38,637.50	.....	.....
Balance	$6,718.51	$3,067.37	$1,687.86	$767.11	$1,555.27	$1,128.85	.....	.....
(Calendar Years)	1935	1936	1937	1938	1939	1940	1941	
Total Number of Cases Started	23,836	21,647	19,921	16,459	15,631	14,571	13,872	
Total Number of Final Decrees	19,300	16,872	10,015	14,444	12,500	11,791	19,672	

TABLE VII

Advisory Masters' Fees

Disposition in Fiscal Years 1940 and 1941

Advisory Master	Cases Heard: No. of Cases	Cases Heard: Amount	Checks Sent: No. of Cases	Checks Sent: Amount	Held in Reserve: No. of Cases	Held in Reserve: Amount
April 1, 1939, to March 31, 1940						
A	377	$18,552.00	326	$16,048.15	51	$2,510.85
B	367	18,066.50	326	16,047.70	41	2,018.80
C	386	19,001.70	325	15,998.45	61	3,003.25
D	382	18,805.10	325	15,999.80	57	2,805.30
E	365	17,964.55	323	15,898.30	42	2,066.25
F	338	16,636.60	326	16,046.20	12	590.40
G	393	19,344.30	325	15,997.70	68	3,346.60
H	383	18,861.70	325	16,005.20	58	2,856.50
I	314	15,458.50	314	15,458.50	....	.....
J (a)	194	9,551.95	186	9,157.95	8	394.00
K (b)	256	12,603.80	253	12,456.05	3	147.75
Totals	3,755	$184,853.70	3,354	$165,114.00	401	$19,739.70
April 1, 1940, to March 31, 1941						
A	333	$16,643.85	325	$16,250.00	8	$393.85
B	345	17,236.20	327	16,350.00	18	886.20
C	398	19,843.30	325	16,250.00	73	3,593.30
D	377	19,304.55	329	16,450.00	48	2,854.55
E	418	21,369.75	326	16,300.00	92	5,069.75
F	445	22,600.90	326	16,300.00	119	6,300.90
G	466	23,189.60	325	16,250.00	141	6,939.60
H	397	19,795.40	325	16,250.00	72	3,545.40
I	325	16,250.00	325	16,250.00	....	.....
J (a)	195	9,743.70	187	9,350.00	8	393.70
K (b)	253	12,650.00	253	12,650.00	....	.....
Totals	3,943	$198,177.25	3,364	$168,200.00	579	$29,977.25

(a) Receives $7,000 in addition from State Fund.
(b) Receives $3,500 in addition from State Fund.

TABLE VIII

Court of Chancery

Advisory Masters' Fees Account, 1939-1941 (a)

Period	Receipts by Clerk in Chancery (b)	Disbursements as Compensation to Advisory Masters (c)	No. of Cases Heard	Amount Held in Reserve (d)
April 1, 1939, to March 31, 1940	$204,941.95	$165,114.00	3,755	$19,739.70
April 1, 1940, to March 31, 1941	221,880.37	168,200.00	3,948	29,977.25

(a) *Source*: Clerk's Records.
(b) Includes clerk's commissions, rebates and refunds.
(c) The sum of $50.00 is fixed by the Chancellor as the compensation of the Advisory Master for hearing and disposing of each matrimonial case. However, a ceiling of $16,000 per annum has been set for each Advisory Master. *R. S.* 2:2-12; 2:2-14; *Chancery Court Rules* 284, 285.
(d) Turned over to the Chancellor for safe-keeping. In July, 1941, the Chancellor deposited the sum of $132,383.47, taken from the accumulated surplus, with the Clerk in Chancery who placed it in the receipts which went to the State Fund. On April 28, 1942, the Chancellor had $20,001 on deposit as surplus in the Advisory Masters' Fees Account. The remaining funds for the fiscal year ending March 31, 1942, had not been turned over to him by the clerk as yet.

TABLE IX

In Chancery of New Jersey Trust Funds

Statement of Trust Receipts and Disbursements (a)

January 1, 1934 to December 31, 1941

Year	Receipts: Principal of Trust	Receipts: Income of Trust	Disbursements: Principal of Trust	Disbursements: Income of Trust	Annual Total of Trust	Cumulative Balance of Trust
Balance on January 1, 1934	$2,657,967.71	$319,669.60			$558,679.02	$2,888,656.83
1934	354,887.72	114,810.82	$467,906.45	$90,772.57	755,832.87	2,855,538.87
1935	628,737.05	98,977.86	676,080.95	79,751.92	522,189.89	2,806,853.67
1936	389,794.93	83,709.76	455,304.38	66,885.51	420,572.66	2,724,162.23
1937	262,600.85	75,280.42	366,641.15	53,931.51	647,077.83	2,653,299.23
1938	506,468.02	74,746.76	568,832.80	78,245.03	479,039.05	3,135,505.02
1939	891,898.39	64,846.45	426,053.62	52,985.43	1,190,384.72	2,722,283.67
1940	719,148.82	58,014.55	1,131,939.46	58,395.36	436,540.33	2,574,105.86
1941	235,670.22	52,692.30	394,118.87	42,421.46	.....	.....
Totals for Period 1934-1941	$3,988,706.00	$618,078.92	$4,486,927.58	$523,388.79	$5,010,316.37	$2,574,105.86
Grand Total	$6,646,673.71	$937,748.52	$4,486,927.58	$523,388.79	$5,010,316.37	$2,574,105.86
Net Principal Disbursements for Period 1934-1941						$468,221.58
Net Income Receipts for Period 1934-1941						94,690.13
Balance of Trust Funds on December 31, 1941						2,574,105.86

(a) Data furnished by Chancery Trust Fund Clerk.

TABLE X

FEES AND COSTS OF COURT OF CHANCERY*

(Prior to July 1, 1937, and thereafter)

Type of Case	*Filing Fees and Misc. Costs*	*Enrollment*	*Taxing Costs*	*Copies of Pleadings*	*Total*	*Changes Under New System (R.S.22:2-14)*
Foreclosure	$17.85	$5.22	$0.40	$0.90	$24.37	$25.00
Divorce	16.75	2.65	1.50	2.20	23.10	25.00
Tax Foreclosures	18.10	4.90	1.50	1.90	26.40	25.00
Relief	16.19	7.52	1.50	1.60	26.81	25.00
Receivership	23.75	8.75	1.50	2.40	36.40	35.00
Injunction	15.06	8.00	1.50	1.90	26.46	25.00
Maintenance	16.75	2.60	1.50	2.20	23.05	25.00
Set Aside Conveyance	15.15	5.55	1.50	1.50	23.70	25.00
Partition	25.41	7.70	1.50	1.00	36.61	35.00
Lunacy	15.63	3.40	1.50	1.00	21.53	25.00
Quiet Title	15.14	4.30	1.50	1.00	21.94	25.00
Tax Receivership	No Charge					
Miscellaneous	16.00	4.00	1.50	1.50	23.00	25.00

* All figures are approximate based upon average cases, calculated on a basis of 1,000 cases of each class on fees paid to the clerk for the use of the State.

NOTES: The charges for filing fees and miscellaneous costs in some instances may run from 10 to 30 cents less for some cases and in many instances will run to 50 cents to one dollar more.

The enrollment costs in each case are practically a minimum. The average case in the court will run from 55 to 60 folios which at a charge of 7 cents a folio, will cost the solicitors from $3.85 to $4.20. In very few cases will the enrollment shown go down more than 25 cents to 35 cents but in many cases it will go from $1.00 to $4.00 higher, with wide savings in special cases to $40.00 or $50.00.

Taxing costs are made on application. In some instances, no requests are made and therefore there are no charges. It is presumed that the charge is as stated.

Charges for certified copies of bills, petitions, orders, final decrees and other pleadings are approximate. In many instances, first copies of orders and decrees are furnished free, where the solicitor furnishes the clerk with the copy. In other cases a charge is made of 25 cents to 50 cents for certification. In many cases, copies of pleadings are not a necessity; in others the charges run considerably higher than shown. The figures in this column represent average charges for cases investigated.

TABLE XI

CLERK IN CHANCERY

Breakdown of Filing Fees and Miscellaneous Costs

(Prior to July 1, 1937)

Type of Case	*Petition or Bill*	*Final Decree*	*Postage and Misc.*	*Total*
Foreclosure	$5.00	$12.50	$0.35	$17.85
Divorce	5.00	11.40	.35	16.75
Tax Foreclosure	5.00	12.50	.60	18.10
Relief	5.00	9.75	1.44	16.19
Receivership	10.00	12.50	1.25	23.75
Injunction	5.00	9.75	.31	15.06
Maintenance	5.00	11.40	.35	16.75
Set Aside Conveyance	5.00	9.75	.40	15.15
Partition	10.00	14.50	.91	25.41
Lunacy	5.00	10.25	.38	15.63
Quiet Title	5.00	9.75	.39	15.14
Tax Receivership	No Charge	No Charge	No Charge	
Miscellaneous	5.00	10.00	1.00	16.00

TABLE XII

NEW JERSEY COURT OF CHANCERY

Income, Expenditures and Deficits Per Case*

1931-1941

Year	*No. of Cases Started*	*Total Net Income*	*Average Net Income Per Case*	*Total Net Expenditures*	*Average Net Expenditures Per Case*	*Total Net Deficit*	*Average Net Deficit Per Case*
1931	23,856	$318,716	$13.35	$490,905	$20.57	$172,188	$7.22
1932	26,635	359,212	13.48	488,902	18.78	139,690	5.30
1933	26,029	355,133	13.64	442,821	17.01	87,687	3.37
1934	24,829	362,091	14.58	467,504	18.82	105,413	4.24
1935	23,836	325,549	13.65	435,521	18.27	109,971	4.62
1936	21,647	307,322	14.19	436,051	20.14	128,728	5.95
1937	19,921	585,967	29.41	482,080	24.19	103,886(b)	5.22(b)
1938	16,459	391,543	23.78	482,338	29.30	90,794	5.52
1939	15,631	370,147	23.68	484,573	31.00	114,425	7.32
1940	14,571	349,420(a)	23.98	498,251	34.19	148,831	10.21
1941	13,872	.....	.....	486,580(c)	35.07	.....	.....

* Income, expenditures and deficits according to fiscal years; number of cases according to calendar years; Advisory Masters' fees, and enrollment fees not included.

(a) Does not include $132,383 of surplus of Advisory Masters' fees turned over by Chancellor to State Fund.

(b) Profit.

(c) Original budget appropriation.

TABLE XIII

New Jersey Court of Chancery

References to Vice-Chancellors (a)

1940-1941

Vice Chancellor	1940 Total References	1940 Total Disposed	1941 Total References	1941 Total Disposed	1941 Total Pending
A	47	38(b)	41	35	9
B	62	48(d)	64	48(d)	25
C	62	....(e)	71	....(e)	....(e)
D	81	81	79	74	5(fa)
E	57	57	45	36	9
F	86	70	59	89	8
G(g)	....	....	81	81	21(b)
H(i)	....	....	....	....	....
I	81	67	72	79	15
J	80	....(e)	72	....(e)	....(e)
Totals	556	361	584	442	92
Average No.	69.5	60.1	64.8	63.1	13.1

(a) Information supplied by Vice-Chancellors—Include Prerogative Court matters in several instances.
(b) Final hearings.
(c) Awaiting final hearing—April 25, 1942.
(d) Approximation—Of a total of 191 cases referred in 1939, 1940 and 1941, 146 were disposed.
(e) Information not supplied.
(f) Number of 1941 cases tried but awaiting decision.
(g) Appointed in 1941.
(h) Final hearings held in many of these.
(i) Appointed in 1942.

Chapter III

New Jersey Supreme Court

I. General Background

Structure and Organization

The Supreme Court is composed of a Chief Justice and eight Associate Justices appointed by the Governor with the advice and consent of the Senate for terms of seven years. Their salaries, which are fixed by statute are $19,000 for the Chief Justice, and $18,000 for each of the Associate Justices.

The court may be held by the Chief Justice or any of the Associate Justices, and, in some instances, jurisdiction over certain matters is vested in the Chief Justice and the various Associate Justices in their official capacities as such and not as representatives of the court. In the exercise of its original jurisdiction the court usually sits in circuits in the various counties, there being one circuit for each county. By statute, the court is required to divide the State into nine judicial districts each consisting of one or more counties, and the Chief Justice or one of the Associate Justices is assigned to each of these districts and presides over the circuit or circuits comprising the specific judicial district.

Cases at the circuits have for many years been tried before a judge of the Circuit Court or a judge of the Court of Common Pleas sitting in the Supreme Court by reference of the justice presiding over the circuit.

The Chief Justice and the Associate Justices are ex-officio judges of the Courts of Common Pleas, the Orphans' Courts, the Courts of Oyer and Terminer, the Courts of Quarter Sessions, and the Circuit Courts of the various counties.

In the exercise of its appellate jurisdiction the court sits *en banc* at Trenton usually in three parts, that is, it divides itself into three sections of three justices each, all of which sit concurrently for the expedition of the transaction of business.[1] Three stated terms of the Supreme Court are required to be held annually. None of these terms extends beyond three or four days after the opening of the term. Motion days are set each year by each justice—usually Saturdays of each month excepting during July and August. The places for the hearing of motions are designated in the various counties.

The Clerk of the Supreme Court is appointed by the Governor with the advice and consent of the Senate. His salary of $6,000 is fixed by statute. The clerk's office is maintained in Trenton.

[1] *Supreme Court Rule* No. 150.

Jurisdiction

The Supreme Court is a court of State-wide jurisdiction. Its processes issue to any county in the State and its judgments are liens upon lands in any part of the State. It has original jurisdiction in all real, personal and mixed actions at the common law as well as in criminal cases. It has appellate jurisdiction in cases of the inferior courts of civil and criminal jurisdiction, that is, the Circuit Courts, the Courts of Common Pleas, the Courts of Oyer and Terminer, the Courts of Quarter Sessions, the Courts of Special Sessions, and the District Courts. The Supreme Court also has extraordinary jurisdiction exercised through the prerogative writs including the writs of certiorari, mandamus, and quo warranto through which it regulates and supervises the proceedings of inferior tribunals and others and superintends civil corporations. The writ of habeas corpus may issue out of this court. It also has other important statutory jurisdiction, both original and appellate, in various matters. Errors in this court are reviewable in civil cases by appeal to the Court of Errors and Appeals, and in criminal cases by writ of error from the Court of Errors and Appeals.

The Court has power to make general rules for the Supreme Court, the Circuit Courts, and the Courts of Common Pleas, and also to regulate the pleading and practice in such courts.

The members of the Supreme Court also sit on the Court of Errors and Appeals.

II. Business of the Supreme Court

The volume of business of the Supreme Court in 1941 has declined to about 45% of what it was in 1932. Table I shows the cases appealed from the lower courts. There has been a progressive decrease in appeals from 1931, when there were 423, to 1941, when there were 236. For the first four months of 1942, 67 appeals were filed.

Table II shows a breakdown of appeals from lower courts according to the court from which appealed for the year 1941. Of the 235 cases filed, 108 were appealed from the District Courts, 39 from the Common Pleas Courts; 20 from the Court of Quarter Sessions, and 15 from the Circuit Courts. Twenty-two cases were appealed from the Workmen's Compensation Bureau.

Table III indicates the proceedings in certiorari, mandamus, disbarment, quo warranto, etc., filed in the Supreme Court for the years 1931 to 1942. There has been a relative evenness in the distribution of these matters over the period of three years although 1941 showed a decrease of 55 over 1940. There were 332 proceedings filed in 1940 and 277 in 1941. For the first four months of 1942, 62 matters were filed.

Table IV shows the number of cases at law filed during the years 1932 to 1942. It is to be noted that these cases are rarely tried by the Supreme Court Justices; they are usually tried by the Circuit Court judges. Here, too, is evidence of a tremendous decline of business. In 1932, 12,013 cases were filed whereas in 1941, 4,653 were filed. For the first three and half months of 1942, 1,365 cases were filed. Table V is a recapitulation of the material found in Tables I, III, and IV. It shows very conclusively the downward trend from 1932, when the total litigation of all types consisted of 12,800 cases, to 1941 when it was 5,166 cases. In 1942, up to April 14 thereof, a total of 1,494 matters of all types were filed.

Inasmuch as the cases at law filed in the Supreme Court are tried by the Circuit Court judges a grouping of cases started both in the Circuit Courts and in the Supreme Court is desirable for informational purposes. This is shown in Table VI which also indicates the number of Common Pleas cases listed for trial at the fall term. A word of caution is necessary in analyzing the statistics. The figures were taken from Lists of Causes by the Judicial Council for the years 1900 to 1939, inclusive. There is the possibility that, in some of the counties, cases are listed in the printed books term after term although they might have been dismissed or abandoned without the clerk being informed about it. Consequently, there may be a great deal of duplication. Whether this situation is true of all of the counties can be ascertained only after observation of their practices. Taking the figures on their face value, however, it will be seen that the total number of Circuit and Supreme Court cases listed for trial at the fall term have decreased from 13,686 in 1931 to 5,879 in 1939. The number of cases listed for trial in the Courts of Common Pleas has also decreased from 3,514 in 1931 to 1,932 in 1939. In other words, there were less than half the number of Supreme, Circuit and Common Pleas cases listed for trial in 1939 than there were in 1931, the figures being 7,811 and 17,200, respectively. The data for the years 1940 and 1941 apparently were not compiled by the Judicial Council. There are no published reports for those years available, and no data has been forthcoming although duly requested from the chairman of the Judicial Council. Questionnaires were sent to each of the county clerks requesting information, and, at the writing of this report, insufficient responses had been made to warrant any intelligent compilation. However, some index as to the continuance of the downward trend is evidenced by the number of cases listed for trial in Essex County in 1941. In that year there were 633 Circuit Court cases and 647 Supreme Court cases listed for trial, a total of 1,280. Since Essex County usually gets about one-fourth of the business of the entire State, a rough calculation would indicate there were slightly more than 5,000 Circuit and Supreme Court cases listed for trial during 1941.

Table VII is a compilation of data taken from the statistics

contained in the Judicial Council reports for 1932 to 1939. It shows the disposition of Supreme Court cases at law for selected years within that period. It is interesting to note that there has been a slight decrease in the total number of cases disposed of during 1939 from those in 1932, the numbers being 2,318 and 2,861, respectively. The table also indicates the method of disposition of the cases. The number of actually litigated cases tried is about from one-fourth to one-half of the total number disposed of. For example: in 1939, 670 cases were actually tried out of a total of 2,318 disposed. A large proportion of cases is discontinued by the parties as well as marked off the term, in 1939 the number being 1,385. This is about 60% of the total number disposed of.

There is reason to believe that the present delay in the disposition of Supreme Court cases at law (delay in Essex County being over two years in tort cases) will be reduced because of the decrease in the number of new cases filed.

With the understanding that any comparison of judicial activities between one State and another is fraught with dangers, an attempt, however, is made in Table VIII to compare the appellate work of the Supreme Court of New Jersey with that of the four Appellate Divisions of the Supreme Court of New York State. In 1938, there were 3,761 appeals decided in New York, whereas in New Jersey 455 were decided. In 1940, the figures for New York were 3,665 and for New Jersey 253. Inasmuch as there were 28 justices sitting in the four Appellate Divisions in New York and only nine in New Jersey, a breakdown was then attempted to ascertain the average number of appeals handled by each justice. It was found that in 1938 each justice in the Appellate Divisions of New York disposed of an average of 134.3 cases, whereas each New Jersey Supreme Court justice disposed of 50.5. In 1940, each New York justice handled 130.8 appeals while each New Jersey justice handled 28.3. Figures for 1941 in New York were not available at the time of the writing of this report. However, it was ascertained that each justice of the New Jersey Supreme Court during that year handled an average of 26.2 appeals.[1] There is a trend downward in the number of appeals handled by each justice in New Jersey because of the decline in the total number of appeals.

The greater volume of work handled per New York justice in other proceedings of an appellate nature is also noticeable. For New Jersey, the matters listed under "other proceedings" include certiorari, mandamus, disbarment, and quo warranto, etc., but not motions heard in the various counties. For New York, this category includes motions of an appellate nature and disciplinary proceedings. In New York there was a total of 4,649, 4,647, and 4,528 matters handled during the years 1938, 1939 and 1940, respectively. In New Jersey, the number of proceedings were 458, 348, 332 and 277 for the respective years 1938, 1939, 1940 and 1941. Dividing these numbers by the number of justices, it was found that each New York justice handled about four times more matters than the New Jersey justices. In 1940, each justice of the Appellate Division in New York disposed of 161.7 proceedings other than appeals, while each New Jersey justice of the Supreme Court disposed of 36.8. In 1941, each New Jersey justice handled 30.7 proceedings.

[1] Reference should be made to the section of this report dealing with the Court of Errors and Appeals, and especially to Tables IV and VI therein where the work of the Supreme Court Justices on the Court of Errors and Appeals is outlined. Table IV showed that the number of opinions delivered by each Supreme Court Justice averaged 8.2, 10, and 10.7 for 1939, 1940 and 1941, respectively.

Tables IX and X deal with the opinions of the New Jersey Supreme Court. In Table IX is listed the number of opinions filed for the years 1931 to 1941. Over one-third are written by lower court justices and filed in the Supreme Court. The number of opinions written has remained fairly constant from 1931, when it was 557, to 1941, when it was 598. There is an overlapping in the issuance of these opinions which accounts for discrepancies in Table X. In that table an attempt is made to break down the opinions filed in the Supreme Court Clerk's office for 1941. Of the 408 opinions actually filed, 133 were memorandum opinions, almost all of which were written by lower court justices, and 58 were per curiam opinions which were generally brief and consisted of an affirmation of the lower court's ruling. The distribution of opinions among the justices is fairly even.

III. Financial Aspects

The expenditures for the administration of the Supreme Court remained fairly constant over the period from 1931 to 1941, whereas the receipts declined in 1941 to about one-third of what they were in 1931. Tables XI, XII and XIII deal with the expenditures and receipts of the court, the last one being a recapitulation of the first two. Table XI shows that the expenditures of the clerk's office have remained about the same level for the ten-year period 1931-1941. In 1941, there was a total of $58,264 expended in the clerk's office, whereas in 1931, $58,709 was spent. The number of personnel increased in 1932 to 26 from 23 in 1931. Since 1932, it has remained at 26.

Table XII shows the expenditures of the Supreme Court. Here, too, the expenditures have remained about the same although there has been a slight increase in personnel. In 1931, the sum of $424,402 was expended for a personnel of 33, whereas in 1941, $426,606 was spent for a total of 40. It is to be noted that among the expenditures for salaries are included those for the Circuit Court judges and the Board of Bar Examiners. This is a proper inclusion because the personnel constituting these groups handle Supreme Court business.

Table XIII indicates very clearly the trend in expenditures, receipts, personnel and litigation for the years 1931 to 1941. There is not included in this table as receipts the sum which is turned into the State Fund by the County Clerks from Circuit Court revenues and labeled as "judicial fees" in the State Comptroller's reports. However, they are included in Table XIV. In 1941, this source amounted to about $15,000, a decline from $38,950 in 1932. It should be noted in Table XIII that the receipts listed are comprised of those from searches, litigation and copies, and bar examination fees. The first and third comprise about one-fourth of the total. In 1931, the sum of $227,078 was taken in as receipts which steadily declined to $91,094 in 1941. The court has been running at a deficit of expenditures over receipts for many years. During the ten-year period, 1931 to 1941, the deficit increased from $256,033 to $393,777. The decline in revenue is, of course, a reflection in the decrease in the volume of business, and naturally, the rise in the deficit is a consequence of the decrease in receipts and slight increase in expenditures. In trying to arrive at a breakdown of income expenditures and deficits per case, it was deemed advisable to include as income the moneys turned over to the State from Circuit Court fees inasmuch as, theoretically, this is done to compensate the State in part for salaries paid to the Circuit Court judges. It should be observed, of course, that the figures are only rough ones since the Supreme Court judges perform service on the Court of Errors and Appeals and the Circuit Court judges try Supreme Court issues as well as Circuit Court cases. This overlapping of duties and varied ways of budgeting make these calculations susceptible of criticism. With these qualifications in mind, a breakdown is made in Table XIV. It shows that the average net expenditures per case rose from $37.66 in 1932 to $93.86 in 1941; the average net income per case remained about the same during this ten-year period, being $20.22 in 1931 and $20.57 in 1941; and the average net deficit per case increased from $17.44 in 1931 to $73.32 in 1941. No attempt is made here to discuss the problems engendered by this data.

IV. Administration

Much criticism can be made concerning the administration of the business of the Supreme Court. There is little or no supervision by the Supreme Court justices over the activities of the various circuits. The duties of the Supreme Court justices in the circuits seem to be confined to the charging of the grand jury and the hearing of motions subsequent to judgment. To all intents and purposes, the Circuit Court judges perform all of the work essential in the trial of Supreme Court issues, even hearing motions addressed to the pleadings. Generally, the Supreme Court justices are occupied principally with their appellate work on the

Supreme Court and on the Court of Errors and Appeals. Comment has already been made (see section of report on Court of Errors and Appeals) concerning the undesirability of having the same justices sit on two separate levels of appellate courts. At Trenton no records are compiled by the clerk concerning the activities of the court. It was only by dint of old-fashioned digging that the material herein presented was assembled. It would be belaboring the point to emphasize the fact that intelligent supervision and control of any organization, be it judicial or executive, must be predicated on a knowledge of the work of the organization. Any knowledge as to the activities of the organization can be readily compiled by setting up a simple reporting system.

Delegation by the Supreme Court justices of their judicial duties in the trying of cases at law to the Circuit Court judges, along with a division of duties between the Clerk of the Supreme Court at Trenton and the County Clerks, give rise to poor organization and control of business without a similar delegation of responsibility for reporting the business. For example, cases may be dismissed or discontinued, notice thereof being filed in Trenton. The only way the County Clerks are apprised of these facts is by making inquiry of the Supreme Court Clerk at Trenton since the latter does not formally notify them. The County Clerks of Hudson and Essex have established the commendable device of leaving several hundred printed self-addressed post cards at the Trenton office. When an order of discontinuance is filed at Trenton, a clerk there fills out one of the cards which is in turn mailed back to the County Clerk. The latter then makes a proper notation on his List of Causes and does not include the discontinued case in the subsequent list. Apparently any relief which an overburdened circuit gets is dependent upon the vociferousness of complaint by the Circuit Court judges—no work records being compiled.

Confusion and delay result because each of the three terms of the Supreme Court is held a mere two weeks before each of the respective three terms of the Court of Errors and Appeals meets. Consequently, a case argued at the October term of the Supreme Court is not decided in time for presentation at the October and sometimes even the February term of the Court of Errors and Appeals.

V. Findings and Conclusions

On the basis of the foregoing survey of the Supreme Court, the following findings and conclusions may be made:

1. The volume of business of the Supreme Court, both cases at law and appellate work, has declined more than 50% over the ten-year period of 1931 to 1941.
2. The system of having three terms prevents the more rapid disposition of cases on appeal.

3. No reporting system exists at the clerk's office to apprise both the Chief Justice, the Legislature, and the public, as to the administration of the court.
4. The expenditures of the court have remained the same over the ten-year period of 1931 to 1941, whereas the revenues have declined, thereby resulting in an increase of the deficit of expenditures over revenues.
5. Cases at law are not tried by the Supreme Court justices but by Circuit Court judges.
6. Inadequate supervision of the activities of the lower courts by the Supreme Court justices exists.
7. There is a division of administrative responsibility inherent in the organization of the Supreme Court.
8. The appellate duties of the Supreme Court justices in both the Supreme Court and the Court of Errors and Appeals makes for a complicated structure and the possibility of making the Supreme Court the tribunal of last resort. This is due to the possibility of the Supreme Court justices excluding themselves in the Court of Errors and Appeals because of participation in a case at the lower level.

TABLE I

SUPREME COURT OF NEW JERSEY

Cases Appealed from Lower Courts *

1931-1942

Year	No. of Appeals
1931	423
1932	465
1933	444
1934	403
1935	328
1936	326
1937	244
1938	455
1939	327
1940	253
1941	236
1942 (April 14th)	67

* Including certiorari from lower courts.

TABLE II

SUPREME COURT OF NEW JERSEY

Number of Appeals Filed According to Courts

1941

Name of Lower Court	No. of Cases
District Courts	108
Common Pleas Courts	39
Circuit Courts	15
Juvenile & Domestic Relations Courts	7
Recorder's Courts	15
Quarter Sessions Courts	20
Justices' Courts	2
Prerogative Court	2
Oyer and Terminer Courts	6
Workmen's Compensation Bureau	22
Total	236

TABLE III

SUPREME COURT OF NEW JERSEY

Proceedings in Certiorari, Mandamus, Disbarment, Quo Warranto, Etc.

1931-1942

Year	Number
1931	335
1932	322
1933	367
1934	389
1935	313
1936	305
1937	304
1938	458
1939	348
1940	332
1941	277
1942 (April 14th)	62

TABLE IV

SUPREME COURT OF NEW JERSEY

Cases at Law Filed

1932-1942

Year	No. of Cases
1932	12,013
1933	9,754
1934	7,270
1935	7,634
1936	6,215
1937	6,441
1938	4,073
1939	5,421
1940	4,347
1941	4,653
1942 (April 14th)	1,365

TABLE V

Supreme Court of New Jersey

Cases at Law, Appeals and Other Proceedings Filed. (a)
1932-1942

Year	*Cases At Law*	*Appeals*	*Various Proceedings*	*Totals*
1932	12,013	465	322	12,800
1933	9,754	444	367	10,565
1934	7,270	403	389	8,062
1935	7,634	328	313	8,275
1936	6,215	326	305	6,846
1937	6,441	244	304	6,989
1938	4,073	455	458	4,986
1939	5,421	327	348	6,096
1940	4,347	253	332	4,932
1941	4,653	236	277	5,166
1942*	1,365	67	62	1,494

* To April 14th.

(a) *Source*: Case Dockets.

TABLE VI

Number of Supreme Circuit, Circuit and Common Pleas Cases Listed for Trial

Fall Term, Selected Years, 1900-1939 (a)

Year	*Supreme Circuits*	*Circuit*	*Total Circuit and Supreme*	*Common Pleas*	*Grand Totals*
1900 (b)	553	626	1,179	172	1,351
1910 (c)	735	832	1,567	107	1,674
1920	1,747	1,520	3,267	422	3,689
1930	7,669	4,518	12,187	2,408	14,595
1931	8,749	4,937	13,686	3,514	17,200
1932	8,926	4,822	13,748	3,505	17,253
1933*	10,294	2,212	12,506	3,689	16,195
1934	5,894	1,482	7,376	2,837	10,213
1935	4,930	1,092	6,022	2,015	8,037
1936	4,440	1,077	5,517	1,752	7,269
1937	4,495	1,310	5,805	1,959	7,764
1938 (d)	3,806	936	4,742	1,969	6,711
1939 (e)	5,089	790	5,879	1,932	7,811

* Supreme and Circuit Court issues grouped together in Middlesex County for 1933 only, and in Essex County from 1933 to 1939, inclusive.

(a) *Source*: New Jersey Judicial Council Reports.

(b) Cumberland, Hunterdon, Middlesex, Sussex and Warren Counties not listed.

(c) Cumberland and Hunterdon Counties not listed.

(d) Atlantic, Middlesex and Monmouth Counties not listed.

(e) Middlesex County not listed.

TABLE VII

Supreme Court Circuit Cases Listed for Trial and Disposed (a)
Selected Years, 1932-1939 (b)

Year	No. of actually litigated cases tried excluding items 2, 3, and 4 (1)	No. of uncontested cases tried excluding items 3 and 4 (2)	No. of cases involving infant plaintiffs submitted upon agreed settlement (3)	No. of cases tried involving assessment of damages only (4)	No. of cases where Jury disagreed (5)	No. of cases dismissed by the court (6)	No. of cases discontinued by the parties (7)	No. of cases marked off term (8)	No. of weeks that court was held (9*)	Total number of cases disposed of (10)	No. of cases listed for trial (11)
1932	1,066	185	158	43	39	128	847	395	303	2,861	8,926
1933	979	122	107	22	16	53	521	596	257	2,416	10,294
1938 (c)	631	63	75	29	11	75	992	322	295	2,198	3,806
1939	678	51	83	24	13	84	992	393	392	2,318	5,089

* In most counties time is divided between Supreme and Circuit Court issues.

(a) *Source*: Judicial Council Reports.

(b) From fall term of prior year to August 1st of stated year.

(c) Atlantic, Middlesex and Monmouth Counties not listed.

TABLE VIII

Comparison of Intermediate Appellate Courts, 1938-1941 (a)

New York —Appellate Divisions of Supreme Court—28 justices (b)
New Jersey—Supreme Court — 9 justices

Year	*Appeals* N. Y.	N. J.	*No. of Appeals Per Justice* N. Y.	N. J.	*Other Proceedings* (c) N. Y.	N. J.	*No. of Other Proceedings Per Justice* N. Y.	N. J.
1938	3,761	455	134.3	50.5	4,649	458	166.0	50.8
1939	3,664	327	130.8	36.3	4,647	348	165.9	38.6
1940	3,665	253	130.8	28.3	4,528	332	161.7	36.8
1941		236		26.2		277		30.7

(a) Data for New York from New York Judicial Council Reports; data for New Jersey from dockets.

(b) This is the total number for the four departments of the State and include four temporarily assigned justices (1937).

(c) For New Jersey this includes proceedings in certiorari, mandamus, disbarment, quo warranto, etc., but not motions heard in the various counties. For New York this includes motions of an appellate nature and disciplinary proceedings.

TABLE IX

Supreme Court Opinions

Year	*No. of Opinions*
1931	557
1932	543
1933	581
1934	509
1935	511
1936	468
1937	444
1938	482
1939	425
1940	441
1941	598
1942 (April 15th)	129

TABLE X

Breakdown of Opinions Filed in New Jersey Supreme Court Clerk's Office—1941

Justice	*No. of Opinions*
Memorandum(a)	125
Per Curiam(b)	58
A	22
B	28
C	27
D	26
E	21
F	31
G	33
H	13
I	14
J	2
K(c)	4
L(c)	1
M(c)	2
N(c)	1
	408

(a) Almost all written by lower court judges.
(b) Affirmation of lower court ruling—generally brief.
(c) Circuit Court judges.

TABLE XI

Clerk of Supreme Court of New Jersey

Expenditures 1931—1941*

ITEM	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941
SALARIES:											
Clerk of Court	$6,000.00	$6,000.00	$6,000.00	$6,000.00	$6,000.00	$6,000.00	$6,000.00	$6,000.00	$6,000.00	$6,000.00	$6,000.00
Chief Clerk	5,500.00	5,500.00	5,500.00	5,500.00	5,499.84	5,500.00	5,499.84	5,500.00	5,500.00	5,500.00	5,500.00
Assistants	38,685.00	39,191.82	39,955.00	39,595.00	39,319.92	39,320.00	39,319.92	45,080.00	44,450.00	42,410.00	42,782.06
Total salaries	$50,185.00	$50,691.82	$51,455.00	$51,095.00	$50,819.76	$50,820.00	$50,819.76	$56,580.00	$55,950.00	$53,910.00	$54,282.06
MATERIALS AND SUPPLIES:											
Stationery and Office Supplies	$4,499.80	$4,814.12	$2,064.95	$2,729.28	$2,316.80	$2,786.31	$3,096.08	$3,389.59	$3,211.55	$3,192.39	$2,848.54
Other Materials and Equipment	2,831.66	665.31	352.00	387.26	394.05	386.20	384.15	396.34	371.29	399.91	324.16
Total Supplies	$7,331.46	$5,479.43	$2,416.95	$3,116.54	$2,710.85	$3,172.51	$3,480.23	$3,785.94	$3,582.84	$3,592.30	$3,172.70
IMPERSONAL SERVICES:											
Telephone and Telegraph	$196.45	$299.26	$75.95	.....	$845.40	$866.20	$885.02	$812.94	$797.81	$799.07	$810.00
Miscellaneous	996.99	1,000.99	869.68	$896.75	.....	.....	.....	.....	.....	.....	.....
Total Impersonal Services	$1,193.44	$1,300.25	$945.63	$896.75	$845.40	$866.20	$885.02	$812.94	$797.81	$799.07	$810.00
Grand Total Expended	$58,709.90	$57,471.50	$54,817.58	$55,108.29	$54,376.01	$54,858.71	$55,185.01	$61,178.88	$60,330.65	$58,301.37	$58,264.76
Number of Personnel	23	26	26	26	26	26	26	26	26	26	26

* Fiscal Year from July 1 to June 30.
Source: Annual Budgets.

TABLE XII

Supreme Court of New Jersey

Expenditures 1931-1941 (a)

ITEM	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941
SALARIES:											
Chief Justice	$19,000.00	$19,000.00	$16,701.45	$19,000.00	$19,000.00	$19,000.00	$19,000.00	$19,000.00	$19,000.00	$19,000.00	$19,000.00
Associate Justices (8)	144,000.00	143,453.28	142,472.63	144,000.00	144,000.00	144,000.00	144,000.00	143,372.72	144,000.00	144,000.00	143,500.58
Circuit Court Judges (14)	220,526.91	224,000.00	211,352.72	223,250.17	218,844.32	210,458.74	224,000.00	223,666.70	218,233.73	224,000.00	224,000.00
Assistants	2,000.00	2,000.00	2,000.00	1,874.86	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	1,938.76	2,000.00
Board of Bar Examiners*	17,150.00	17,150.00	17,150.00	17,150.00	17,000.00	16,941.66	17,150.00	17,150.00	17,150.00	17,150.00	17,100.00
Secretaries to Supreme Court Justices**	16,000.00	15,989.25	16,442.38	18,000.00	18,000.00	18,000.00	18,000.00	17,817.26	18,000.00	18,000.00	17,944.52
Other Personal Services	332.96	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total Salaries	$419,009.87	$421,592.48	$406,119.18	$423,275.03	$418,844.32	$410,400.40	$424,150.00	$423,006.68	$418,383.73	$424,088.76	$423,545.10
MATERIALS AND SUPPLIES:											
Stationery and Office Equipment	$500.00	$119.83	$362.99	$200.00	$392.82	184.68	$382.99	$394.96	$299.55	$264.09	$313.79
Office Equipment Replacement	.....	.....	.....	.....	.....	.....	.....	.....	506.25	128.25	201.14
Library Supplies	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	167.14
Total Supplies	$500.00	$119.83	$362.99	$200.00	$392.82	$184.68	$382.99	$394.96	$805.80	$392.34	$682.07
IMPERSONAL SERVICES:											
Board of Bar Examiners' including Disbarment Proceedings	$624.00	$2,563.72	$1,846.79	$3,428.61	$2,872.35	$3,121.75	$2,121.75	$2,708.28	$2,326.34	$2,065.17	$2,379.65
Miscellaneous Expenses	4,268.68	352.78	550.65	.....	.....	.....	.....	.....	.....	.....	.....
Total Impersonal Services	$4,892.68	$2,916.50	$2,397.44	$3,428.61	$2,872.35	$3,121.75	$2,121.75	$2,708.28	$2,326.34	$2,065.17	$2,379.65
Grand Total Expended	$424,402.55	$424,628.81	$408,879.61	$426,903.64	$422,109.49	$413,706.58	$426,654.74	$426,109.92	$421,515.87	$426,546.27	$426,606.82
Number of Personnel	33	39	40	40	40	40	40	40	40	40	40

* Salary of three members, secretary, assistant secretary and messenger.

** *R. S.* 2:4-13.

(a) *Source*: Annual Budgets. Fiscal year July 1 to June 30.

TABLE XIII

New Jersey Supreme Court and Supreme Court Clerk's Office

Budget Appropriations, Expenditures, Receipts, and Litigation (a)
(Fiscal Year—July 1 to June 30)
1931-1941

ITEM	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941
BUDGET (Original Approp.):											
Supreme Court	$429,150.00	$436,650.00	$424,550.00	$423,350.00	$427,550.00	$426,850.00	$428,050.00	$427,550.00	$426,450.00	$427,550.00	$428,150.00
Clerk of Supreme Court	58,817.00	58,601.00	56,632.00	56,480.00	56,480.00	55,120.00	55,370.00	55,870.00	60,500.00	60,550.00	58,910.00
Total	$487,967.00	$495,251.00	$481,182.00	$479,830.00	$484,030.00	$481,970.00	$483,420.00	$483,420.00	$486,950.00	$488,100.00	$487,060.00
EXPENDITURES (Actual):											
Supreme Court	$424,402.55	$424,628.81	$408,879.61	$426,903.64	$422,109.49	$413,706.58	$426,654.74	$426,109.92	$421,515.87	$426,546.27	$426,606.82
Clerk of Supreme Court	58,709.90	57,471.50	54,817.58	55,108.29	54,376.01	54,858.71	55,185.01	61,178.88	60,330.65	58,301.37	58,264.76
Total	$483,112.45	$482,100.31	$463,696.19	$482,011.93	$476,485.50	$468,565.29	$481,839.75	$487,288.80	$481,846.52	$484,847.64	$484,871.58
RECEIPTS:*											
Searches	$14,499.53	$12,245.64	$10,012.41	$7,200.66	$8,576.90	$7,308.40	$6,589.39	$5,563.22	$4,851.10	$4,153.73	$4,220.92
Litigation and Copies	180,219.42	182,011.30	174,882.62	149,023.89	130,396.01	108,629.55	99,499.03	93,916.79	85,460.36	77,700.08	73,743.24
Bar Examination Fees	32,360.00	25,600.00	24,845.00	26,360.00	23,460.00	24,505.00	23,480.01	20,240.00	20,565.00	16,035.00	13,130.00
Total	$227,078.95	$219,856.94	$209,740.03	$182,584.55	$162,432.91	$140,442.95	$129,568.42	$119,720.01	$110,876.46	$97,888.81	$91,094.16
DEFICIT	$256,033.50	$262,243.37	$253,956.16	$299,427.38	$314,052.59	$328,122.34	$352,271.33	$367,568.79	$370,970.06	$386,958.83	$393,777.42
PERSONNEL:											
Supreme Court	33	39	40	40	40	40	40	40	40	40	40
Clerk of Supreme Court	23	26	26	26	26	26	26	26	26	26	26
LITIGATION:											
All Supreme Court Cases Filed	.....	12,800	10,565	8,062	8,275	6,846	6,989	4,986	6,096	4,932	5,166
Supreme Court Cases at Law Listed for Trial	.....	8,749	10,294	5,894	4,930	4,440	4,495	3,806	5,089	.....	.....
Circuit and Supreme Court Cases at Law Listed for Trial	.....	13,748	12,506	7,376	6,022	5,517	5,805	4,742	5,879	.....	.....

(a) *Source:* Annual Budgets, Comptroller's Annual Reports, Case Dockets, Judicial Council Reports, and Clerk's Records.

* Figures from 1931 to 1938 from Clerk's Records; figures from 1939 to 1941 from Annual Budgets.

TABLE XIV

NEW JERSEY SUPREME COURT

Income, Expenditures and Deficits Per Case (a)

1932-1941

Year	No. of Supreme Court Cases Filed (b)	Total Expenditures (c)	Average Net Expenditures Per Case	Supreme Court Income	Circuit Court Income (d)	Total Income	Average Net Income Per Case	Total Deficit	Average Net Deficit Per Case
1932	12,800	$482,100	$37.66	$219,856	$38,950	$258,806.00	$20.22	$223,294	$17.44
1933	10,565	463,696	43.89	209,740	25,226	244,966.00	23.19	218,730	20.70
1934	8,062	482,011	59.79	182,584	27,520	210,104.00	26.06	271,907	33.03
1935	8,275	476,485	57.58	162,432	34,833	197,265.00	23.84	279,220	33.74
1936	6,846	468,565	68.44	140,442	26,579	167,021.00	24.40	301,544	44.04
1937	6,989	481,839	68.94	129,568	24,923	154,491.00	22.10	327,348	46.84
1938	4,986	487,288	97.73	119,720	19,423	139,143.00	27.91	348,145	69.82
1939	6,096	481,846	79.04	110,876	18,716	129,592.00	21.26	352,254	57.78
1940	4,932	484,847	98.31	97,888	18,842	116,730.00	23.67	368,117	74.64
1941	5,166	484,871	93.86	91,094	15,003	106,097.00	20.57	378,774	73.32

(a) *Source*: State Comptroller's Annual Reports, and Dockets. See Table V.
(b) Includes cases at law, appeals, and various proceedings.
(c) Includes Circuit Court Judges' salaries.
(d) Listed as "Judicial Fees" in State Comptroller's Annual Reports.

CHAPTER IV

NEW JERSEY PREROGATIVE COURT

I. GENERAL BACKGROUND

Structure and Organization

The Judge of the Prerogative Court is the Chancellor who acts as the Ordinary or Surrogate-General while sitting in that court. The Vice Chancellors act as the Vice-Ordinaries of the court by reference of the Ordinary in a manner similar to that of the Court of Chancery. The Chancellors and the Vice-Chancellors receive no extra compensation for their duties on this Court.

The adjudications of this Court are reviewable by appeal to the Court of Errors and Appeals. There are no stated terms held, the Court being open throughout the year. The rules of the Prerogative Court and of the various Orphans' Courts are made and promulgated by the Ordinary.

The Clerk of the Court is the Secretary of State, who, when so acting, is known as the Register of the Court. The clerk's office is maintained in Trenton.

Jurisdiction

The Prerogative Court is a court of State-wide original probate jurisdiction which includes the probate of wills, the granting of letters of administration and guardianship, and the hearing and final determination of all disputes arising thereon, together with any matters involved in the settlement and administration of estates. It also exercises jurisdiction conferred by statute in various matters such as the hearing of appeals from determinations of the State Tax Commissioner in transfer inheritance tax cases.

The court has appellate jurisdiction from the orders and decrees of the Orphans' Courts and from certain adjudications of the Surrogates.

II. BUSINESS OF THE PREROGATIVE COURT

There has been no appreciable change in the volume of business in the Prerogative Court since 1939. Table I indicates the number of matters filed in that court from 1932 to 1941. In 1932 there were 190 matters filed which increased to 314 in 1939. The number of matters filed in 1939, 1940 and 1941 was 314, 308, and 297, respectively.

Table II is a breakdown of the matters handled in the Prerogative Court during 1940 and 1941. Of the 297 cases handled in 1941, 82 were for letters of administration ad prosequendum which are

[1] *New Jersey Constitution*, Article VI, Section IV.

summarily granted in order to enable next of kin to bring action for wrongful death in the law courts; 63 matters involved exemplified copies of papers—a routine clerical job; 43 matters consisted of appeals from the Orphans' Courts and Surrogates; 43 were probate matters; 19 were administration matters; and 47 involved inheritance taxes. In other words, 145 matters (ad pros and exemplified copies) were more or less routine affairs. The work of the court does not appear to be too burdensome to be adequately disposed of by its personnel.

III. Financial Aspects

Inasmuch as the judicial personnel of the Prerogative Court is the same as that of the Court of Chancery, no separate enumeration of the expenditures of this court can be made. It should be noted that, similarly, it is difficult to segregate the expenditures of the office of the Secretary of State, who is the clerk of this court, from its total expenditures.

IV. Administration

Rules 80 and 81 of the Rules of the Prerogative Court provide for references to the Vice-Ordinaries. Rule 80 indicates that motions and applications in the Prerogative Court, including applications for the probate of wills and for the granting of administration or guardianship, are referred to the Vice-Ordinaries without special reference. Rule 81 provides for special reference of the final hearing of causes in the Prerogative Court, including appeals from the Orphans' Courts, to the Vice-Ordinaries at the discretion of the Ordinary. As a practical matter, the clerk in the office of Secretary of State, who acts as clerk of the court, makes the designations to the various Vice-Ordinaries seriatim as the matters come in. No attempt is made by him to ascertain whether the Vice-Ordinary is overburdened with Chancery matters. No report is made by him for the Chancellor. The control of assignments is automatic and any change apparently must be based upon vociferous complaint of overburdening work by the Vice-Ordinaries to the Ordinary. This system of control is administratively poor.

There is a lack of co-ordination between the activities of this court and the Court of Chancery although the judicial personnel of both tribunals is the same. Assuming the desirability of retaining a separate Prerogative Court, of which there is serious doubt, it would seem more feasible to have the Clerk of the Chancery Court also handle the work of the Prerogative Court.

The same criticism concerning the lack of available compiled reports on the activity of this Court that was made concerning the other courts is appropriate here. Fortunately, the volume of business is small and the number of dockets few. Consequently, the compilation of information indicated in this report did not require excessive time.

V. Findings and Conclusions

A survey of the Prerogative Court and the Clerk's office point to the following findings and conclusions:

1. There has been a slight decrease in the number of matters filed since 1939.
2. About 50% of the matters handled are routine.
3. No reports are compiled and furnished to the head of the court or the public.
4. The system of work assignment and control is inadequate.
5. There is poor co-ordination between the activities of this court and the Court of Chancery although the judicial personnel is the same.
6. The advisibility of retaining a separate Prerogative Court is questionable.

TABLE I

PREROGATIVE COURT OF NEW JERSEY

Matters Filed in 1932-1941

Year	No. of Matters
1932	190
1933	188
1934	219
1935	243
1936	258
1937	280
1938	249
1939	314
1940	308
1941	297

TABLE II

PREROGATIVE COURT OF NEW JERSEY

Breakdown of Matters Handled, 1940-1941 (a)

Year	Appeals	Administration Ad Pros.*	Administration Others	Probate	Exemplified Copies	Inheritance Tax	Total
1940	39	90	30	44	45	60	308
1941	43	82	19	43	63	47	297

* Administrators ad prosequendum bring actions for wrongful death. Letters of administration for this purpose are summarily granted.

(a) *Source*: Case Dockets.

July 30, 1942.

Honorable Robert C. Hendrickson, Chairman
Commission on Revision of the New Jersey Constitution,
State House
Trenton, New Jersey.

DEAR SIR:

I am submitting herewith the report on the constitutional courts of New Jersey, covering the following tribunals: Court of Errors and Appeals, Supreme Court, Court of Chancery, and Prerogative Court.

This survey of the business of the courts does not purport to be exhaustive—the shortness of time available prevented that, but the material assembled should be of great interest to lawyer and layman alike.

I wish to acknowledge my sincere gratitude to the staff of the Department of Governmental Research of the New Jersey State Chamber of Commerce and to the Princeton Surveys for their splendid assistance. I also desire to thank the members of the judiciary and the court clerks who co-operated with me in this study.

Sincerely yours,

RALPH R. TEMPLE, J.D., Ph.D.,
Judicial Administration Consultant.

August 3, 1942

Senator Lloyd L. Schroeder, Chairman
Joint Legislative Committee constituted by SCR No. 19 (1942)
State House
Trenton, New Jersey

Dear Senator Schroeder:

I am transmitting herewith the report of an administrative survey of the constitutional courts of New Jersey. This survey was made by Dr. Ralph R. Temple at the direction of the Commission on Revision of the New Jersey Constitution.

Dr. Temple was selected by the Commission because of his wide practical experience as a practicing lawyer and as a teacher and investigator of judicial administration in other jurisdictions. He brought to this study a comprehensive knowledge of the principles of the administration of justice and a record of successful accomplishments in this field.

The Commission afforded Dr. Temple complete independence in

the conduct of his inquiry and in the determination of his findings and conclusions. The report, therefore, represents the results of a thorough study made independently, and does not necessarily set forth the views of the Commission.

Since our Revision Commission has already made its report, I am submitting the results of Dr. Temple's work, separately printed, for the record and information of your Committee, and to the Governor, the Legislature and the public generally.

I would respectfully suggest that this impartial and scholarly report be given the careful consideration of all persons who are sincerely interested in the improvement of our constitutional courts as presently organized and administered.

Sincerely yours,

ROBERT C. HENDRICKSON, Chairman
Commission on Revison of the
New Jersey Constitution

INDEX

to

RECORD OF PROCEEDINGS

Before the Joint Committee
to Ascertain the Sentiment of the People . . . as to
Proposals . . . for Change in the . . . Constitution
as Suggested by the Commission on Revision . . .

July-September
1942

Prepared for
THE GOVERNOR'S COMMITTEE ON PREPARATORY RESEARCH
for the
NEW JERSEY CONSTITUTIONAL CONVENTION
Sidney Goldmann, Chairman

by

Dorothy F. Lucas
Division of the State Library, Archives and History
New Jersey Department of Education

State of New Jersey
Alfred E. Driscoll, Governor
April, 1947

INDEX

	PAGES
Administrative agencies	97, 98, 101, 210-211
Judicial decisions	593
Limited number	115
Separated from executive function in Constitution	229
Administrative law by government agencies	342-345
Agriculture department—Reorganization.	264, 266
Amending process	24, 107, 311, 497, 498-530, 534, 547, 549, 706, 714, 852-859
New text	536-538
Petition of voters	534, 540-542, 547
Assembly districts reorganized	see Legislature—Representation Assembly districts by population units (not counties)
Attorney-General—	
Elected, not appointed by Governor	258
Substitute during absence of Governor on Legislative Council	142, 237
Budgets	see State finances—Budget procedure
Civil service	210, 252, 254-255, 260, 369-374, 378, 379-381, 391-392, 395, 711, 713, 813-814, 860
Not to be combined with Department of Education	252, 254, 260, 711
Consumer service department	258, 261-262
Constitution—	
Amendments since 1844	517-518, 853-854
Revision methods	615-630, 662-705, 715-730, 873-877
Revision—	
Favoring submission to electorate	735-760, 764-766, 780-784, 804-812, 861-867, 883
Opposing submission to electorate	761-764, 766-771, 772-779, 784-803, 817-822, 840, 847-848, 868-869
Voted on "as a whole"	31, 226-227, 315, 341, 347, 388, 498, 706, 714-715
Courts	see Judiciary—Courts
Dedicated funds	see State finances—Abolishes dedicated funds
Discrimination—	
Civil service	90, 258, 391, 397
Militia	258

	PAGES
Education department—	
Not to be combined with Civil Service	252, 254, 257, 260, 261, 711
Elections	395, 489, 490-496
Elections, Special—	
Public questions	489-490, 492, 497, 504, 514, 517, 543
Eminent domain	see Zoning
Federal law—	
Cited by reference in N. J. Statutes	147, 157, 184, 187-188
Gerrymandering	169, 179
Governor	204-211, 213-214, 222-224, 225
Administrative reorganization of State agencies	207, 210, 215-216, 219, 221, 229-234, 834-838, 849-850
Appoints and dismisses administrative officers	207, 213-214, 218, 221, 238-243, 830, 832-834, 849-850
Convenes Legislature for special session	238
Deputy to act as Executive in absence of Governor	
Director of Department of Taxation and Finance	218, 237, 256, 635
Attorney-General on legislative council	142, 237
Lieutenant-Governor (proposed)	261
Domination over legislative function	30, 228, 230-231, 828-829
Militia	209, 228, 250, 712
No U. S. official to take place of Governor during his absence	236-237
Nominated by two or more political parties	178
Pardons and paroles	228, 257, 712
Power to investigate conduct of State officials	251
Term of office	208, 217, 219, 225, 235-236, 248-249, 250, 251, 253, 256, 259, 261, 263, 311, 829-830
Veto power	116, 209, 218, 248, 252, 253, 257, 259, 261, 311, 632, 845
Grand Juries	22, 43, 587, 614, 631, 661
Highways—	
Gas and motor vehicle taxation	455-465, 467-470, 475-476
Impeachments	156-157, 386-387, 393
Initiative and referendum	169-170, 172-173, 311, 547
Judicial council	310
Judiciary	271-276, 305-311, 314-330, 332-334, 562-585, 597-601, 602-613, 852, 859-860
Chief Justice, supervisor of State courts	278, 279, 285-286, 300, 366
Delays in justice	274, 277, 278, 280, 307, 340, 359-360, 564, 609

Judiciary (cont.)	PAGES
Expense of litigation	274, 278, 280, 301
Lower courts supervised	20
Merger of Law and Equity	283-284, 285, 289, 296, 306-307, 559, 564, 572-575, 584, 637
Minor crimes tried by magistrates	20, 22
Public defender as well as prosecutor	363
State Bar Association comment on proposed text	641-645
State Bar Association plan	645-649
Appeals court—	
Absences filled by Supreme Court Justices	646
Clerk—Secretary of State	646
Members—Chancellor, Chief Justice and five Justices	645
Judges—	
Qualifications	647-648
Tenure and removal	648
(Chancellor and Justices)—	
Appointed by Governor	647
(Of Inferior courts)—	
Appointed by legislative act	648
Supreme Court—	
Clerk (Supersedes Clerk of Supreme Court, of Chancery Court and Register of Prerogative Court)	647
Chancery division	646
Law Division	646
Members—Chancellor, Chief Justice and thirty Justices	646
Temple Report	See Temple Report reviewed
Judiciary—Courts—	
Appellate Court	336-337, 351, 361, 588-589, 590-591, 594-595, 598, 635, 640, 655
Appellate Court	see also (Errors and appeals) (Supreme court (proposed))
Chancery Court	284, 289, 295, 297-298, 318, 360, 591-592, 607-608, 610-612, 655
Circuit court	288
Court of common pleas	294, 298-299, 598-599, 641
District courts	356, 362, 367
Equity courts	295, 300, 333, 360
Equity courts	see also Chancery Court
Errors and Appeals	275, 279, 282-283, 288, 294-295, 305-306, 318, 319, 336, 360, 554-561, 588, 606-607
Lay judges	360-361, 555-557
Police courts	351, 362, 367
Probate court	295, 299-300

Judiciary-Courts (cont.)	PAGES
Superior court	277, 281, 295-296, 298, 313, 321, 322-323, 324, 336, 338, 588, 591, 605-606, 636, 637, 641, 655, 656
Supreme Court (proposed)	277-278, 281, 295-296, 303, 313, 321, 322, 323, 324, 326-327, 336-337, 338, 588, 595, 598, 606, 636, 641, 655-656
Judiciary—Judges—	
Appointed	297-298, 319, 340, 353, 355, 357, 365, 571, 611, 659, 660
Elected	352-353, 364-366
Masters in chancery	584
Retirement at seventy years	279, 305, 313, 333-334, 339, 659, 712
Term of office	278, 279, 339, 571, 584, 613, 845
Juries—	
Women eligible to sit on juries	33-34
Juries	see also Grand juries
Justices of the Peace—	
Abolished as Constitutional officers	20
Labor—	
Closed shop contracts	189
Collective bargaining	116, 149-150, 189, 844
Legislative function (policy making)	163, 193
Legislature—	
Biennial sessions	106, 115, 118, 132, 135, 166, 168, 171, 192, 523, 632, 707, 845, 849
Committee procedure improved	121
Condemnation powers	34, 116, 124, 150, 169, 202
Impeachment proceedings	156-157, 386-387, 393
Investigating powers strengthened	116, 375-377, 382, 392, 393-394, 816
Judge of elections of its members	172
Legislative Council	115, 123-124, 126, 128-129, 131, 142-144, 146-148, 168-169, 172, 177-178, 192-193, 237, 634, 709, 822-823, 849
Legislative function not to be delegated	135, 162
Legislative procedure	169-170, 172
Legislative reference bureau	147, 168
Nominations confirmed—	
Senate, at open sessions by recorded vote	115, 122, 139, 169, 827, 832
Senate, within time limit	115, 122, 218, 239, 250, 827, 830-831
Patronage limitation	115
Pay increase for members	115, 118, 125, 132-133, 168, 176-177, 707, 825
Pressure group	see Lobbying
Prohibits appointing Legislators directly to public office	115, 124, 130, 138, 169, 177, 356, 825
Prohibits dual office holding	172
Prohibits legislation affecting salaries, tenure and pension rights	115-116, 370
Prohibits Legislature making appointments to office except Treasurer and Comptroller	115, 124, 148, 215, 257, 825-827

Legislature (cont.)	PAGES
Prohibits passage of laws requiring local spending	28, 184-186, 423
Representation—	
Assembly districts by population units	256, 311, 546, 845
Single member districts (not county-wide slate)	169, 172, 179, 181, 256
Representation, Proportional	169, 171, 172, 256
Residuary of unspecified powers	96, 112-120, 125, 153-155
Roll calls records	177
Senate organization and powers	158-162, 173-174, 175-176, 182, 195-202, 842
Sessions ninety days	107, 121, 132, 135, 155, 168, 173, 179, 192, 632, 707, 822, 845
Sessions, Special, fifteen days	121, 135, 137, 156, 168, 192, 708, 824, 832
Terms of office	138, 168, 707, 825
Unicameral	164-165, 170, 171-172
Vote to override Governor's veto	116, 209, 218, 248, 252, 253, 257, 259, 261, 263, 632-633
Licensing boards—	
Professional examining and licensing boards	269, 483-484, 713-714, 851
Lieutenant-Governor (proposed)	261
Lobbying	116, 123, 125, 139-142, 169, 172, 709, 827-828, 850
"Mandatory laws"	see Mandatory spending laws
Mandatory spending laws	28, 184-186, 423
Merit system	see Civil service
Motor Vehicle Department	836-840
Pardons and paroles	228
Pension systems	375, 377, 386, 393, 731-735, 814-815, 861
Police power	37, 151
Professional licensing boards	see Licensing boards
Proportional representation	169, 171-172, 256
Public officials—	
Civil service merit system	see Civil service
County clerks and surrogates to be elected	385, 394
Pension systems	see Pension systems
Recall by the people	393
Sheriffs and coroners to be elected	385, 394, 817, 844, 850
Real estate tax	404, 419-420, 424
Real estate tax	see also Tax system
Reorganization of State government agencies	28, 229-234, 254-255, 260, 261, 264, 266, 375, 711, 834-835, 849-850

	PAGES
Rights and privileges	13, 17-19
Anti-discrimination on race, color, creed	41, 90-91, 258, 391, 397
Private property rights	43-44
Religious liberty	24, 40
Right to keep and bear arms	44
Right to sue in Superior Court for violation of Constitutional provisions	21, 32-33
Rights of labor	18, 21, 25
Collective bargaining amendment	24, 41, 178
Individual's right to work	189
Women's rights	33, 38, 42, 46-89
Rules and regulations of State agencies published by Secretary of State	234
Sovereign power	99-104, 105, 106, 108, 109-111, 135, 153-156, 170, 874-876
Special elections	see Elections, Special
State finances—	
Borrowing limited to serial bonds	401, 408, 446
Budget in single appropriation bill	401, 406, 410, 417, 421, 423, 480
Budget procedure	443-445, 450
Comptroller's duties defined	418
Dedicated funds abolished (except school fund and contractual obligations)	28-29, 401, 402, 404-408, 409, 411-412, 413-415, 417-418, 421-422, 423, 430-434, 435-451
Dedicated funds retained	455-470, 472-488, 713-714, 851
Fiscal methods reorganized	28
Fiscal year uniform in State departments	401-402, 411, 421
Sinking funds	408, 410, 446
State auditor to supervise post-audits	419
Survey to determine fiscal policy	419
Suffrage	398-399, 490, 493, 496, 543-545, 546
Tax system	420, 425-430, 478-479
Taxation—	
Gross receipts and franchise tax dedicated to municipalities	430-434, 436-437, 466, 472-474, 477-478, 481-483
Motor vehicle and gasoline	see Highways
Taxation and finance	237, 256, 635, 837, 849
Temple Report reviewed	577-579, 592
Unicameral Legislature	164-165, 170, 171-172
Veto	116, 209, 218, 248, 252, 253, 257, 259, 261, 263, 311, 632-633, 845
Zoning	34, 116, 124, 150, 169, 202