



**The Philip Weinberg
Forum
The Brennan Center
Report:
The New York State
Legislative Process —
An Evaluation and
Blueprint for Reform:
Two Views**

Panelists:
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Richard P. Nathan:

This is the first time that these two important and distinguished experts have met each other in person. It's a very important subject. Let me tell you what the ground rules are going to be and then we will turn right to this very important subject. For those of you who don't know, my name is Dick Nathan and I am, as I always say, proud to be the director of the Rockefeller Institute, the public policy research arm of the State University of New York. We are making a special effort now to build a record on state government process issues looking ahead. Maybe things will happen sooner, but we're going to be in an election season pretty soon. Michael Cooper, our director of publications, David Wright, and Michele Charbonneau are having a series of forums on important issues

involving the state government of New York. This is a topic we've been looking forward to having a session on.

Let the record show, we got a snowy day and our speakers are on time and we're going to jump right in. This is a one of what we call the Weinberg Forums. We are today going to have as our ground rules that each of the people will speak for 15 minutes, then they will have five minutes to respond and I will ask them some questions after that. Then we will open it up to the audience. I do want to mention that we have a published a book on the New York State Constitution. There are some copies out there that were for the vote in 1997. We also published the *New York State Statistical Yearbook* and we just put up on our website our New Year's report on what is happening to government state and local government finances in this period. It is an unusually tough, tight period for the public sector for domestic programs.

Let me now introduce our speakers. Jeremy Creelan is going to go first to talk about the Brennan Center report and Jeffrey Stonecash is going to go second to comment. Jeffrey Creelan works on a range of subjects involving government process, what his bio says, "a full and fair participation in government, voting rights in representation, and election reform." That's a good agenda. The Brennan Center at New York University School of Law is well known to all of us here because they've put out a report, which we've all heard a lot about, and Jeffrey is going to speak about it. He was a litigation associate at Paul, Weiss, Rifkind, Wharton and Garrison and a law clerk to Judge Denise Cote. He graduated from Yale Law School. When I taught at Princeton, I told Jeremy this, I used to say to the students, "There are two kinds of law schools in America: Yale and all the others." I have always found that to be true.

Jeffrey Stonecash has his bachelor's degree in political science in economics from Muskingum College, has an MA in economics from the University of Virginia and also from Northwest University where he earned his Ph.D. He currently serves as professor in residence for the New York State Assembly for the internship program and teaches both undergraduate and graduate courses at Syracuse University's Maxwell School of Government. He's published books and been active and is well known for his work on

American government, particularly on state and local government and New York State government. We are honored to have these two speakers. They can speak from where they're sitting or from the podium, whichever is more comfortable for them. Then Michael Cooper will give everybody a high sign for 15 minutes then five minutes for back and forth.

Jeremy Creelan:

Thank you Dr. Nathan. I want to first tell you how honored I am to be here and how appreciative I am for the opportunity. I've admired your work for many, many years. Back when I was an undergraduate I read much of it. It's a real privilege to be here and it's also a privilege to be here with Jeff debating these issues. Basically, I'm not going to go into great detail what is in the report. Firstly, I don't anticipate too much what Jeff is going to address, but I think from my perspective we probably agree on much of the factual background here on the Legislature. Where we disagree is more in interpreting the implications of those facts and determining their impact. For that reason, I'll go through the factual side relatively quickly and then talk a little bit in greater depth about some the interpretive questions.

First, let me give you a little bit of background on the report. We became interested in this area in part because while many people had been criticizing the Legislature for many, many years, I had not seen really a discussion of the details of the legislative process. To unpack some of the questions that were raised by these complaints and to determine whether they were real or not and what exactly, if anything, is problematic.

The second reason why we focused on it was because in talking to advocates and business groups and folks working in all different areas, no matter what their ideological bent or their policy area, they often complained about the same process problems, the same things that stymied their progress on the given issue. To me that was a flag because it is rare, as you know, in public policy to have a consensus on what the problem is and even rarer to find a consensus on what the solution is. If you get folks from all different

perspectives and areas of work agreeing on either of those things, I think it's a good place to start to see if there is some potential for meaningful change.

Lastly, looking at just the question of there being rules for the process itself in the Legislature. Good government groups had been focused on this for many years and Barbara Bartoletti is here today from the League of Women Voters and NYPIRG, Common Cause, and a number of other groups have been focused on this issue for a long time. From my perspective, I think one of things we want to do is to look to see how this issue, which has traditionally been thought of as just a good government issue, how it affects and how it is viewed by folks outside the good government realm who may not focus on process generally in their daily work, but whose work may be greatly affected by these process issues. To try to see if we could get them informed and get them involved in this question.



So, first on the research, in brief the report really essentially identifies five areas of concern and I won't go into the statistics. The first area, committees, this was an area where we looked at the number of hearings on specific legislation, the staffing of committees, the number or extent committee reports, the

question of whether you need to be there to actual cast a vote in a committee, proxy voting or versions thereof, and the votes that are taken in committees. What we found, basically, is that with some exceptions the committee process is not as robust as it could be. There are very few hearings on specific bills. It's very hard to get a public hearing on a bill. There are hearings on issues, but they're rarely are focused on a specific bill and they often occur years before the bill that actually becomes law, if a bill does become

law, is developed or drafted. There are differences in staffing in the Senate and Assembly. The staffing for committees, particularly in the Assembly, is very much centralized and partisan in that sense. In terms of committee reports, the committees do not generally produce what are thought of in other legislatures as committee reports, documenting the full consideration that a committee has given to a piece of legislation or whether it is hearing transcripts or summaries of the full analysis that are done by the staff and by members, debate between the members, etc. The stuff that usually becomes legislative history that courts rely on. One of the things that's actually kind of a fascinating exercise, is to go on LexisNexis or Westlaw and look at state court opinions. If you compare New York State's court opinions to other states, you'll find a remarkable absence of discussions of legislative history in New York. That's basically because there really isn't legislative history in New York. There's not the kind of full record that the courts can look back to. There's a bill jacket, lobbyists' letters, some things, but not the traditional set of documents that a court would look to and so courts are pretty much left on their own.

In the Senate, in committees there is a version of proxy voting in committee where members don't need to attend to actually cast a vote on legislation. They can indicate to the chair beforehand what and sometimes even after how they would like to vote on a bill and they don't actually have to be at the committee meeting when there's a vote. That's not true in the Assembly. The Assembly votes in terms of attendance and requirements of attendance for voting is different. In addition, this is sort of a point that runs throughout all of these areas, the records that one can find on committees tell you more about what you can't know than what you can know. For example, the attendance records for committees, if you took them at face value, would suggest that all committee meetings in both chambers are attended almost 100 percent of the time. Of course, we know in the Senate that that's not true at all. So it's very hard to determine for the public whether a given legislator attended a committee meeting or not. That's one of the issues with proxy voting in the Senate.

More broadly about committees, committees can serve a tremendous function, which is to not only to develop legislation to give the public, experts, and members a chance to germinate and ruminate about legislation and incubate good legislation, but also to build public momentum for a given bill through hearings and through press coverage of those hearings. And that doesn't usually happen in New York in the committee process. Momentum is built in other ways if it is built. That is not the usual course.

The second area is in what I would call in a shorthand version a discharge, but that doesn't cover it fully. It's basically the ability of a full chamber to get a bill out of committee to the floor. New York State places more restrictions on discharge motions, which are the motions by which the full chamber can discharge a committee from its consideration of a bill than other legislatures. These restrictions are timing, number, and various other restrictions.

The third area, voting, we all know and the report goes into detail that on the floor there is usually very little debate, virtually no amendments on the floor, the "message of necessity" is used quite often to pass important bills. The "message of necessity" allow you to circumvent the state constitutional requirement that there is a three-day aging period in which legislators must have the bill before they actually vote on it so they can get a chance to read it. Empty seat voting has gotten a lot of attention. Members don't have to be in their chairs when they vote. I think from a public perspective it's a very important issue. From my perspective, I think it's probably one of the least important in terms of the actual impact. Although it is important possibly in terms of having members there so that other things happen when they're there. In other words, if they were there it would encourage a kind of culture of debate and discussion that is important. In and of itself, it may not be that important.

The fourth area, as you know, conference committees in New York State are the exception to the rule when versions of legislation by the Senate or the Assembly are entered, it is not automatic for conference committees to be triggered. It is not up to the sponsor to trigger them. In other legislatures, you have a situation where, it's both a

question again of culture and of rules, you can expect that if versions of the same bill are passed by the two chambers there will be a conference committee. There will be an open discussion and a compromise will be reached so that some legislation will get passed. It may not make everyone happy, but it will be something.

Lastly, this is an area where the report doesn't go into great depth and we didn't really include recommendations because of that. There is a strange phenomenon in New York, which is, as you know, that the number of bills that are introduced in New York is more than twice the number in the next highest state. There is an enormous number of bills introduced in New York. There is also, of course, the fact that the New York State Legislature is extremely expensive when compared to other legislatures in terms of staffing and running the Legislature. The enactment rate in New York is one of the lowest in the country, in other words, the percentage of bills that are introduced that are actually in fact enacted. One can debate the meaning of this. Clearly, there's a lot activity, a lot of staff resources devoted toward the bills that are introduced, but which everyone knows are not going to go anywhere. People introduce bills for all sorts of reasons as in every legislature. Sometimes they try to get a bill passed to show fealty to an interest group or an organization. The question really is, and its sort of an open question, are there too many resources being directed towards mountain of bills that we know aren't going to go anywhere rather than the bills that may have a chance of passage? How do you address that question?

Let me get to the interpretive side of it. In my view, after looking at this factual background, this is a problem. There are six areas that are pointed to in the report and I'll go over them very briefly. First, the question of gridlock. Are there bills that would be passed if we had a different system? Are there bills that would be passed sooner if we had a different system? If you look at the process, there are things that keep bills from moving through and coming to a successful conclusion in law. The lack of conference committees, the fact that in many ways we put all of our legislative eggs in the basket of the leadership agreeing with the governor on a bill, rather than this more public process of committee process-building momentum for a bill so that when the question arises,

should this bill get to the floor or should we make this bill a priority. In New York there is not this sort of cumulative public momentum that would have been built if you had a robust committee process, but rather that decision is based on other factors and factors that are sometimes unknowable but not always based on the public consensus.

Second, is there legislation that is passed that shouldn't have been? I think this is obviously a question that each person is going to have a different view of. There are certainly bills that are passed that did not get full discussion and debate and were passed in such a way as to make sure that there wasn't that kind of discussion and debate. We look at a few examples. The one mentioned here is the 2002 health package that raises the HICRA bill, which was passed, as you know, without the kind of full review that one might expect. One can debate whether that was a good thing or not, I'm not saying it's not a substantially good bill, but clearly and I think at the time the governor was very clear about this, that it was passed in that manner precisely because they didn't think it would have been passed if it had been presented and debated and discussed in a different manner. Clearly, it's a judgment question, is that a good thing or a bad thing?

Legislation passed with errors — the lack of review, consideration, use of the “message of necessity” produces errors. Little errors from typos to other kinds of errors and there's not the kind of full review of bills and the actual wording before a bill is passed that can catch things like this. Sometimes it is significant. It is certainly significant when courts go back and look at a bill.

The lack of transparency overall from the committees through the end of the process, again one can debate whether that is significant, but clearly if the question is “Can the public hold their individual representatives fully accountable?” transparency is critical. If you can't tell for example, whether your legislator was at a committee meeting or whether they voted by proxy. If you can't tell whether your legislator actually thought about voting on a bill or just was considered an automatic “yes” vote on a bill because of empty seat voting. If you can't tell these ,and these are just a few of the examples, then it is difficult for the public to fully hold their representatives accountable. Whatever one might think about the legislative process, I certainly believe, and the Brennan Center

believes, that it makes sense to increase transparency to maximize the ability of voters to hold their legislators accountable. Particularly since, as Jeff will probably address more fully, so much of what goes on in New York's Legislature is behind closed doors and is through an informal process of discussion. If that happened and if you are a defender of that approach, you want to make sure that the moments of public expression — whether voting or debate — are in fact accessible to the public as fully as possible so that they can at least understand the results of that informal process.

I mentioned the issue of courts acting without legislative history and without full guidance. I mentioned also this question of efficiency. Are we spending too much of our resources on this mountain of bills that everyone knows aren't going to go anywhere? Should those resources be directed more toward the discussion, review, debate, and consideration of the bills that are actually going to go somewhere? That's the overview of the report and some of our conclusions. I think I've used up my 15 minutes. I look forward to further discussion.

Jeffrey Stonecash:

Dick, thank you for inviting me. It's a good subject, one that I care a great deal about. Everybody should know, before I begin, I've been on the payroll of the Legislature for 20 years now. It's a shock to me that I've been doing this for 20 years, working for the intern program. It's probably one of the only nonpartisan positions in the Legislature, but everybody should know that I have been bought off. (Laughter) Now, I'm well paid for what I do I might say. But anyway, why are we here? Why this matters so much to me? As I was reading last night a story about the governor, I come across this line and it told me a great deal about why we're here and why this report ought to be considered. It says, regarding his claims that he was going to change things when he became governor, "Last year the issue of overhauling the way Albany operates gained new support when a report found that New York's Legislature was the most dysfunctional in the nation and that lawmakers were relegated to rubberstamping decisions made by the three leaders behind closed doors." There we have the essence of the portrayal of the Legislature. That it is dysfunctional and there are three men in a room and they run the whole show.

Now, what I want to do is deal with that issue and deal with this report. I might say I would rather explain how the Legislature works, but that's really not the issue here today. The issue is this report and what I found so interesting about that quote is that it presents the conclusions of that report as if it's just common knowledge now. We all know it. It's conventional wisdom. It's fact. It seems to me that there ought to be some dealing with whether or not that is fact. What I'm going to do here, and I'll apologize to Jeremy, I'm going to overstate my case a little bit here. I don't want to be very subtle. I don't want there to be any ambiguity about where I stand on this particular report. I think this is, as a public document, a very important commentary about the political process in New York. Now with that, let me begin.

Studies always have some sort of perspective it seems to me. With academics there is always this big anxiety about whether or not you can be neutral. Most of us realize that's a joke. Everybody has some bias. Everybody begins with some set of concerns and perspectives. This has some particular perspectives. I guess I call this report, not whatever title they gave it, but "The Return of the Progressives." It seems to me that what this really is a revival of something that has been a very strong strain in American political thought and that is the notion of the progressives. The progressives were very important in American society in the early part of the last century. They played a significant role. They had two fundamental presumptions: (1) that there is a public interest and that it's pretty clear and we ought to move forward; and (2) they had a notion that if we just get out of the way and let the process work and create a very open process then everything would be fine. I think that the progressives, as I look at them, face a lot of criticism that they really had two fundamental flaws. Both of those seem to me to emerge in this study. One of them was that they were remarkably naïve about the nature and extent of conflict in society. The second one was they were often enormously preoccupied with form and oblivious to substance. I think that occurs with this report. It ignores a lot of conflict and it is remarkably oblivious to the substance of how the process actual works.

Now with that as an overview, let me get into it. I think one of the fundamental reasons we have a democracy is that everybody recognizes that there are lots of differences of opinions. We set up a process, which is supposed to develop some review, some consideration, and everybody gets a chance to have their say. The consequence is we hope at the end there is some sort of legitimacy and that we hope that people will accept an outcome where some win and some lose. I would vigorously dispute the idea that there is some sort of public interest. Every time somebody says there is one, I say, “Give me a case where somebody doesn’t get hurt by it, somebody doesn’t lose.” It’s always been an interesting challenge about people trying to find those things. Let me give the initial quote of this report, “Six years of experience have taught me that in every case the reason for the failures of good legislation in the public interest and the passive, ineffective and abortive legislation can be traced directly to the rules.” Seems to me it tells a great deal about what’s going on here. The presumption is that we’ve got a public interest and if we would just get out of the way then everything would be okay.



Let me read you a real short quote, which was in regard to Timothy’s Law, the header is “Rules Committees Roadblocks.” It says, “Blocking treatment for the mentally ill. It is difficult to imagine a bill that on the merits would be expected to pass more quickly than

Timothy’s Law. The legislation’s namesake was a twelve-year-old boy who committed suicide. Timothy’s death might have been prevented by psychological treatment, but it was not covered by his insurance and consequently was denied to him. The legislation would require New York health insurers to cover treatment for mental illness and drug abuse.”

Now on the face of it, I cannot imagine a legislator who wants to stand up and say, “I’m against mental health for kids who are twelve years old who might commit suicide.” There’s not a legislator in the world who will stand up and say that. But the reality is, and I don’t mean to sound too sarcastic here, but I read this quote to the interns yesterday who just arrived and I said, “What’s the problem here?” It took them about 30 seconds to figure out that insurers don’t want to pay for this, that business doesn’t want the additional cost, that there is a very fundamental conflict here about the issue of adding more burdens and regulations on business.

The reality is that this is an issue of enormous consequence for business. They are fighting it tooth and nail. They don’t want it to occur and I think what pervades this whole report is the denial of the fundamental conflicts that exist in the state. It’s not that there is ever a statement in here that there is no conflict. It just never comes up. It has enormous consequences because there is sort of a denial of the probability that the Legislature might want to organize things a little differently and might proceed a little differently and might be focused on trying to manage this enormous conflict. It’s not just a little study group over there sorting things out and deciding let’s do the right thing. These are people with enormous conflicts and are really trying to figure out what to do.

But that’s really not my fundamental problem with this report. Let me tell you what I really think is a problem. It’s the assessment of the process that really troubles me here. I have absolutely no disagreement with the goals of representation, debate, accountability, and all that. Those are the essences of democracy. I think those are wonderful. They ought to occur. No disagreement there. The question is whether or not the process achieves those things. That’s the real question here. I think that much like the poor progressives, this study confuses form and substance. What happens here is we begin with a textbook model of how a political process ought to work and then we find out it doesn’t exist. This is like the studies in the 1940s when we first started polling and we asked weird questions of people and we said, “Do citizens and democracy fit the ideal of the citizen and democracy?” And everybody said, “Whoops, they don’t even come close.” The presumption was democracy was going to go to hell real quick. It was

regarded as a miracle that it goes on. Then people began to figure out that people have other ways of functioning as citizens and they have other ways of getting things done.

Now, what I find interesting about this report, this is really the guts of what my problem is here, is that you can go into the Legislature and you can ask two questions: The first is does the textbook model occur? The answer, I could have told you that and you wouldn't have had to do this study, is no. The second question is does the process achieve what we think it's supposed to achieve? What I find interesting is that was never asked. That's never asked. There is not a shred of evidence in this report about whether or not those phenomena occur. The question here is whether or not the textbook model fits. For example, let me take the 300-something bills that they pull out. They should have taken those 300 bills and followed them and tracked them and asked the question was there serious staff consideration? Did the legislators really review them? Did they really try to sort out the pros and cons of the issues, etc.? They didn't do that. What they really did was they just asked the question, "Do those particular models occur?"

I'm going to give you two contrasts. They asked the question: "Are there hearings and are there hearing discussions?" The answer is, "Gee, they don't do that very much." In fact they rarely do it. Anybody who has gone to a committee meeting knows pretty quickly, don't waste your time. The conclusion is that there is nothing going on there. What's interesting about it is there's not even a consideration of whether or not there is a process by which lobbyists, staff, legislators, and executive branch people interact daily, talking about issues, considering them, going through all the pros and cons. I was thinking last night. I've been doing this for 20 years and every year the interns have to take a bill and they have to track it. We want them to assess how well the democratic process works. They have to ask if all of the issues were considered, etc. At this point it horrifies me. I've probably read 1,500 of those papers. I have yet to come across a paper or bill where a student didn't say at the end, "You know, I really thought when I started this it was so obvious that this bill ought to be passed. Now I understand they have very reasoned arguments as to why you might not want to do it. I think I get what's going on here."

Take another matter. There's a chart in here that shows you there's a debate. I ask the question, "How long does it take from the time a bill is introduced to the time it's passed" It points out there's not a lot of debate. To be real blunt here, I think what's awful here is that in the legislative process in New York there is an enormous amount of negotiation, discussion, etc. They write the bills. Once they've reached an agreement, there isn't a lot of debate because it took place prior to that. So they ask the question about whether or not there is a lot of debate afterward. It just misses what really goes on. Whether people like that or not that's another question. I'd be quite willing to grant that some people might say, "I wish it was otherwise." The reality is that there is a lot of consideration that goes on.

It seems to me that the nature of this report is pretty clear. It assumes that a process can only occur one way and never considers the other possibility. Let me give you a real quick analogy from a friend of mine who had open-heart surgery. He had open-heart surgery because his veins were blocked going into his heart. After it was all over, they went back to the doctor and the doctor said, "We have a real problem. We opened up three of your veins and replaced them. Two of them collapsed back." We're all horrified because we said, "Oh my God, isn't this terrible?" He said, "Well yeah, the doctor said I ought to be dead." The reality was that the doctor said that over time, he had developed alternative vein flows to his heart. I might say while he was telling us this we were getting ready to go play a handball game again. He's a very good handball player and his body was functioning quite fine. After he told us that story, which we all felt so bad about, he beat us bad that day. We decided we had no sympathy for him after that. The simple reality is he had developed alternative mechanisms, his body developed. Well, this Legislature has alternative mechanisms. It's alive and well over there.

Now, one last thing I can't resist, and that is the matter of leadership. Let me go back to Timothy's Law. I can go on about this at great length. The presumption is the leadership tells the members what to do. Here we have 33 of 61 senators who want this and apparently it can't get out. Again, all you have to do is go over to the Legislature and ask somebody. Just ask them. How in the world could you have 33 in favor of this out of

61 and it doesn't go anywhere? They would all look at you and go, "Duh, don't you understand what the leadership does? The leadership's job is to kill this bill because publicly no legislator wants to come out and say I'm against health insurance for 12-year-old boys who might commit suicide. So, I'm going to come out and say I'm in favor of it but it's Joe Bruno's job is to be the bad guy and say I'm going to kill this bill." Why? Because business doesn't want it. Business doesn't want more regulation and the reality of that is that's what goes on all the time.

I'll stop with one last statement. I think, and again I could go on and on about the leadership, no leadership over there could survive unless they pay attention to the members. They do not simply call the members into a room and say, "Hey, here's what you do." They call them in and there's this endless talking. A lot of the appearance of the leadership running the thing is simply appearance. Thank you.

Richard P. Nathan:

Thank you very much. We are now going to have five minutes by Jeremy and then five minutes by Jeffrey.

Jeremy Creelan:

I have a few comments. There has been this question of overlooking the extent of conflict. I think it is fascinating because this is again a question of interpretation. In my view, it is precisely because of the extent of conflict that you need transparent accountability in the Legislature. You need, to the greatest extent possible, the ability — the voter needs, the citizen needs — to determine where his or her representative stands in that conflict. In other words, what are the considerations that legislator is including in his or her calculus? What negotiations are going on? What is that legislator getting in exchange for his or her position on a bill? You need as much as possible — with the presence of conflict — the ability to understand and to hold your representative accountable for his or her actions. If we had a Legislature where we didn't have much conflict, the kind of informal process that Jeff defends would actually probably be much

more defensible because you would not have nuances that you have in this heterogeneous state where every representative has a specific set of interests and issues that he or she needs to address.



I dispute not only that we didn't consider the question of conflict but also I think it points exactly to the opposite direction in terms of what you want in a government. I also dispute the notion that the report and that these issues that we raise are form over substance. I think all you need to do to see that's the case is to

look at how certain bills are passed. I'll raise again the health care legislation in 2002. The stated reason why that package, which included billions of dollars at a time when we had \$5 billion budget deficit, was passed in the manner that it was passed was so that it could not be stopped through the kind of debate and public comment and hesitation that it would otherwise have gotten if it had been allowed to be passed without a "message of necessity." If it had been put out there for comment. So, to suggest that form doesn't matter and has no impact on substance, I think, is just not right.

I want to address the question of Timothy's Law because the issue there is again not whether Timothy's Law is a good law or a bad law. One can dispute that. The language, I agree, suggests that we took a position on that. But the point of it was to say this is a bill that members have publicly signed on to. A majority of members in the Senate have publicly signed on to it. Why is it that the process by which that bill either comes to the floor or doesn't come to the floor is not transparent to the voters, so that they can determine whether their representatives' support is sincere or not? Whether their representative has any pull in the process? What exactly goes into the question of whether

a bill gets to the Legislature or not? And the fact that the voters can't understand why it is that a majority of the chamber signs on to a bill but it never gets to the floor for consideration, I think on its face demonstrates the problem. You need the kind of transparency to be able to say, "Well, actually my representative said he supported it but he really didn't take the steps necessary to make sure it got to floor." He or she didn't do that in New York State because those steps don't exist. That member couldn't really get that bill to the floor. There wasn't a process. There wasn't a moment, which the voter could look to — a record for example — say, "Oh, that representative tried to do a discharge motion." "That representative tried to do X, Y, and Z." That doesn't exist. So, it's sort of a black box. I think that's the problem, not whether or not Timothy's Law is a good law or should have been passed.

Lastly, on the question of whether leaders tell members what to do, there's no question that the leaders, to be good leaders and to remain a leader, have to hear from members and respond to members' concerns. That's not an issue. We don't disagree on that. The question is whether the policy considerations and even some of the political considerations that go into whether a bill should be passed or whether it's a good bill are made transparent enough so that again the public can hold their representatives accountable. I don't think there's a dispute as to whether that contact and discussion happens, but rather whether the public can hold their representatives accountable for the nature of that discussion.

Jeffrey Stonecash:

I won't repeat things I said earlier. I know that what I say is probably taken as a defense of the Legislature. That's not really my concern. My concern is that I have always been impressed that there is a remarkable lack of awareness of how it actually works. My only goal is that there be some appreciation for how it does work and that it not be an automatic presumption at the beginning of a study of "Boy, it's a disaster." What a label, "the most dysfunctional legislature in the country." I'm not even sure if you get much awareness of how it works from reading something like this. I'm trying to defend it, but I really am troubled that we begin with a presumption that there is a real serious problem.

So, like George Bush claiming we have crisis in Social Security, you can get that established, you can do lots of things. I'm not sure we have that crisis.

The second matter is the matter of openness. I would never ever disagree with Jeremy about that. As long as I have worked for the Legislature what has really puzzled me, and I've told every single legislator and every staff member I ever run across, is "Why in the hell are you guys so secretive. Why don't you open it up? You have nothing to be ashamed of. The process works fine. Why don't you open it up more?" It is pretty clear to me that there is something in the culture of the Legislature that they don't open it up as much as they could. They could make things a heck of a lot more accessible than they do. They could put voting records up on the web. They could do all sorts of things. They don't do enough of that. I do think that one of things that could be very positive about this report. On the other hand, only yesterday both Ron Canestrari and Jim Bacalles said this report could have a positive effect. I don't think they quite put it that way. They said this report really could make them pay attention to opening things up a little bit. If that happens, I think that would be good. I'm really in favor of things being more open. I think that's the essence of what a democracy is all about. My concern is just that I don't think this thing documents in the slightest or tells us the way the legislative process works. I want to make it real clear about that, there's not a marginal dispute.

Richard P. Nathan:

I'm going to make a couple comments and I'm going to ask a couple questions for the speakers to go back and forth and then I'm going to open it up to the audience. Let me say, first of all, I think this is a very important discussion. I've really been looking forward to this. I talked to both people and I've read the report. This is a subject that I've lived with a long time: How government works. How it should work. What our Madisonian system can aspire to. This is a subject I dearly love. I want to make a comment related to that. I listened hard and I took notes and we're going to have a transcript of this. I've been in the business a long time in trying to educate people. I don't agree with this young man that we can't educate people instead of always being politicians ourselves. I disagree with you about that. I see when we try to put things out

and get people to understand subjects better that unless you have a crisis nobody knows what the hell you're doing. Part of what is going on here is about how to get attention for something you care about and we have gotten attention. It is attention that is occurring at a time when it isn't just a subject of the Legislature. We had a session here recently with Faso, Brodsky, and all these other people about state government reform generally.

I want to ask two questions. My first question is can you enlarge this? The thing that people talk about, like you Jeffrey, they treat the report in the press the way you characterized it. In a way, I give you credit for that. But the other thing that others here are going to talk about is how the budget process is always delayed. Government isn't working because we don't get a budget on time. I would like both of the speakers to try to spread their canvas out more and say what this mean in terms of what people are concerned about additionally. Or maybe even more about state government in terms of the way. Now this is a hot subject in New York. There's something wrong here. You hear it all the time. All the members say it. In a close election, both candidates say they are going to reform it. First of all, Jeremy, what do you think broadly your work is telling about this large malaise in the state about needing to reform government and a lot of focus on the budget?

Jeremy Creelan:

First just to address broadly the question of reforming the government. I think Jeff and I may disagree on things and I may disagree with others besides Jeff, but I think the fact that this debate is occurring and occurring on a level and to an extent that it hasn't for at least for awhile is in and of itself a good thing. I think people may completely disagree with our report, but hopefully even those who disagree with the report will be stimulated to come up with a new or updated version of their vision of the state government. What it should be. What they should do to make it that. And even if they conclude that it is perfect the way it is, I think that process is a valuable one. I think the debate is valuable. It's been remarkable to me certainly that it's happened across the state to the extent it has. I get calls and emails every day, many of them from people across the state who've read the report. This report, I'd be the first to say, is pretty dense and not the best reading.

They've read it and feel very passionately about it. I'm hopeful that we can carry this energy over into other areas, whether it's reviewing our campaign finance laws or our lobbying laws or our districting mechanisms and have a nuanced debate about it. There are certainly positions that people have already, but I think they have been largely unexamined on all of those issues. I am hopeful that we can continue this with the same groups and individuals.

In terms of budget reform in particular, the Brennan Center has actually not taken a position in the recent budget reform debate in part because we really did not focus on the aspects of it unique to the budget itself. We really didn't want to go beyond what we focused on. But I will say that I think that part of the reason, not the entire reason, why New York has such difficulty getting an on time budget is some of the larger problems with the legislative process. There's no question that there are unique issues with respect to the budget. There are important questions as to the balance of power between the governor and the Legislature and the impact of that on the timing. The fact, for example, that conference committees do not exist in an automatic, institutionalized way, the fact that the assumption — both as a matter of culture and as a matter of rules — is not there that you will reach a compromise in a timely fashion, I think, spills over into the budget. I don't think it's right to suggest that it's an entirely distinct area. I think like all legislation, it would benefit tremendously from more openness, more accountability, more transparency, and frankly a greater, fuller culture of compromise and results. That's my view.

Jeffrey Stonecash:

Budget reform is a big topic. What I think is strange here about New York's politics and the way the press covers this is that, yeah, it's bad that it passes late and all that. What I find very strange is no one seems to want to explain or get into the issue of why is it late? I don't think it has to do with the legislative process. I'm going to do this real quickly, so pardon me because it's going to be very superficial. It's late because we have a governor who is a very erratic person politically. He was a conservative when he got in and then he wants to spend money when he's up for re-election, and then last year or so ago he vetoes

\$1.3 or \$1.4 billion. If you talk to the legislators they are trying to figure out who this guy is. What does he really stand for? He's hard to figure out. Institutionally, he clearly does not like the Legislature. That provokes an enormous amount of hostility between him and the leaders. He passed his little bill where he gets paid and they don't get paid. Can you imagine any other institution that would do that? That's very reflective of the hostility between the two of them.



The real problem in the budget, and that extenuates the problem, are these huge differences. We spend \$45 billion a year on Medicaid. The Republicans would dearly love to cut that back. They think that we gave far too generous benefits back in the 1960s and they want it cut back. The

Democrats don't want it cut back. We have this issue of school aid. It is a big, big issue. There are huge distributional issues. It is not going to get any better this session because they deducted last year as every other Legislature in the country did when it came up. It's come up in about 30 states. There is a dynamic to this, which I won't go into. Legislatures wait until they're pushed to redistribute. What are you talking about, raising taxes enormously or redistributing money? Those are big, big issues and they're not going to happen quickly. Now, you have a master who says you need \$23 billion over the next five years. I mean, hello! We're talking \$5 billion a year additional in amount of money. That is an unbelievable challenge for a state that is already the highest taxed in the United States. We have more regulations than any state in this country. Do you want to turn around and add \$5 billion? Not a prayer. Do you want to take \$5 billion from the suburbs and give them to cities? Fat chance of that happening without a battle to the death. It's just not going to happen.

These are big issues. They're of huge consequence. Dick's institution is going to screw the students this year and raise tuition because they're not going to give as much money. I know you're not going to do it personally, Dick. There's an issue about raising tuition for kids and that's going to provoke a lightning rod reaction from the electorate. These are big issues. So, you have a Democrat over there who's largely liberal. You've got a governor who flops around and then you got Joe Bruno in there with the Republican enrollment sliding every year trying to figure out, "What do I do? Do I sound like a conservative because Mike Long is beating up on me or do I go moderate because enrollment is slipping all across upstate?" All across upstate enrollment for Republicans is slipping enormously. It's a tough, tough game. The reality is that everybody plays showdown and chicken in the game because you have to. Nobody sits down at the table and says, "Okay, let's be reasonable." Nobody does that. Everybody sits down at the table and says, "Listen, I want what I want. I'm not going to give up until I do everything possible to get it." And all three of them are playing this game. So, it's a tough game. It's substance that's driving this, not rules, not the process. Though I think the governor's reaction to the Legislature could certainly be changed and help a lot.

Richard P. Nathan:

Let me ask each of you quickly and then I'll open it up. Mr. Dooley said, "Politics ain't bean bag." Underneath all of this is this churning, great American political bargaining process of people with different ideas. Do you want to comment further on how that theme comes through and how you think about government and what Jeff is saying?

Jeremy Creelan:

If I understand your question, the issue is how as a system government should handle the kind of debate and churning disputes and negotiations that goes on that has to go on in a state with great conflicts. I think the question really comes down to whether you believe in a system where you elect your representatives. They go off and then they come back to you and report on what happened. Or do you believe in a system where the process of

representation and accountability is an ongoing process where the public needs to be involved at least indirectly at each step of the process.

That I think to my mind is the crux of the disagreement between Jeff and myself. As I said, I think in New York we should place a premium on the later vision rather than the former. In redistricting, for example, this is a parallel in my mind, I think we really do need to think carefully when we look at other states and New York and compare them. If you look, for example, at redistricting, the model that is usual held up is the Iowa model where you have this independent legislative service agency that does the first two redistricting plans and gives them to the Legislature. They can reject them. The third one, the Legislature gets to say, "Sorry, three strikes you're out. We're going to do it ourselves." The fascinating thing I think about that is that if you look at the results in that state, the Legislature in over 20 years has never actually exercised the right to take the redistricting process away from the nonpartisan staff. The question, of course, you have to ask in New York is would that happen? I think we would all probably agree that the Legislature would take it the first time around and get into the debate. It does matter that New York has great conflict in this state. It does matter that New York is different than other states. But what you take from that conclusion is really the difference. I take that you need a much more capital, much more transparent government.

Richard P. Nathan:

That was a somewhat hostile question. I'm going to ask Jeff a hostile question. My favorite television channels are CSPAN. I'm a CSPAN junky. Last night I watched Arnold Schwarzenegger say that he really does want to redistrict and get rid of gerrymandering. He came out swinging. There was a newspaper article about it this morning. So, I would like to ask you this question. Where do come out on what this report keeps saying over and over again, and what Jeremy said and what I'm hearing, that we need more openness? We need more to know more about what our government is doing. Maybe they've hit the nail on the head and that's what everybody is seeing and hearing when they read this report. Do you think you should give them any credit for that?

Jeffrey Stonecash:

I really do believe in openness. I think it's one the most important things that could ever occur. I'm chair of my department and every time somebody comes in the door and they want to cut some little private deal, I say, "Sure, as long as I put it out on the Internet to show that you got this deal and that everybody else should be eligible for it." I really profoundly believe in openness. Like I said, I have told all sorts of people. I told Ron yesterday, "Why in the hell did you beat up on this reporter? Why did you let the guy sit out there and just act like it's fact?" He said, "I know, I know." I really think the more openness the Legislature has the better off we'd all be. The more openness the governor's office has the better off we'd be. What a strange thing that the governor goes in there and creates Fort Pataki on the second floor. It's the weirdest thing I've ever seen. No one seems to write about that. That's sort of weird. I think it's really strange you can't walk up on the second floor now. Sorry, a little digression. I really believe in openness.

I want to make one quick comment on reapportionment. Everybody believes that's the black hole of politics. People get in there and they can do all these things. These are crafty little people who can do this kind of thing. I would give them enormous credit for about five, six, seven districts if they can really move some people around. I'll tell you what, if we eliminated those people tomorrow and we went to your system, the conflict in this state will not go away. It isn't going to disappear. It's still there. It's fundamental. You can rearrange to save a few people and then it doesn't even work. Finally I've got to say this, do we all want to be favor of reform? You bet. Anybody who watched Nancy Lorraine Hoffman's race up in Syracuse knows you better be in favor of reform. I did polling on her race back in January. Let me tell you her numbers were dynamite. She was rock solid. Can you take an issue like that and really work somebody over? So are all the members going to pay attention? Yes.

Jeremy Creelan:

Just a quick comment on that. I think there's a larger issue with all this talk about reform. Everyone's a reformer. I think Albany has a way of making the perfect enemy of the

good. Everyone has their pet reform that they think is going to change and create a political nirvana in Albany. I think it's pretty clear that no one piece is going to do that. From my perspective, the goal is to do as many pieces of the puzzle as you can and then ultimately just increase the ability of voters to hold their legislators accountable. If they continue to do things that outrage us, if they continue to pass the budget months late, if they continue to hold secret meetings, whatever it is that is your pet peeve, if they continue to do those things then you can hold them accountable. The problem now, as I see it, is that there are lots of areas in which we could do much better in making sure that the rules of the game — whether they be redistricting or campaign finance or internal legislative rules — we don't do enough to make sure that those things increase the ability to hold our representatives accountable. Once you do that then it's really about how you can actually blame the legislators. I think, at this point, I certainly don't believe that you can say to a legislator in either chamber, "You're responsible for this system." They didn't create this system. They didn't create the problems that we are seeing. They were elected into a system. They can be part of the solution, but they certainly can't be blamed for the problem.

Richard P. Nathan:

What I'm going to do now is go about 20 minutes and open it up to the audience with the understanding that some people are going to want to just make statements. So, I won't ask the participants to comment on every statement, but if there's currently a question or something burning inside of them of course they will comment. Who would like to go first? Barbara?

Barbara Bartoletti:

I'm Barbara Bartoletti from the League of Women Voters. Both of you have talked eloquently about the need for openness, which of course the League has been talking about for years and years as long as I've been doing this. My question is: Is something like a CSPAN, which we have and I know Dick had supported, going to go a great distance in opening up this process. I wondered if you'd comment? A New York CSPAN

in every committee meeting or those committee meetings on health, codes, or judiciary and we could pick numbers to get started with and then cover the process of conference committees and debate on the floor. Would you comment about this?

Jeffrey Stonecash:

Conference committees or conferences?

Barbara Bartoletti:

Conference committees. We'd like to see a lot more of them.

Jeffrey Stonecash:

I think having a NYSCAN would be a great idea, but the reality is that if you did that, if I was a legislator I would go home and polish up in front of the mirror a little bit and work on my speaking techniques. Make sure my shirts were fine. Everybody would act a little more, but the reality is it isn't going to change any of the conflict in the negotiation that goes on. They would all show up to committee meetings because they would be terrified that their opponent would point out that they weren't there six out of seven times. Will it make a difference?

Barbara Bartoletti:

They might know the bills better. Committee meetings are sometimes where very valid debating does go on. It's not that part of the process isn't covered. I think NYSPAN would certainly attract the public attention that I think the public needs to have where debate goes on. You might not get as much debate on the floor as you would in committee. A smaller atmosphere and sometimes very interesting things happen in committee meetings.

Jeremy Creelan:

You're preaching to the choir here. I think obviously putting all this stuff on TV would be great. There is a question in my mind. If you set up the camera for the first time, is there going to actually be anyone in front of it? Over time there would be behavior that would actually have to change to actually produce an exciting hour of television. I think it would have a great effect. It's surprising to me that legislators don't jump at the chance to have television opportunities. I think it says something about how Albany works that it's not assumed that it would be a good thing both in terms of the government's function and also in terms of individual legislators' ability to interact with voters.

Richard P. Nathan:

I see my friends on CSPAN all the time. I remind you that when we started talking here about NYSPAN, we were told by CSPAN we would be sued if we used that name. Who wants to comment?

Karen Schimke:

I'm Karen Schimke with the Schuyler Center for Analysis and Advocacy. It seems to me that this is the first year that I can recall that there's been this level of attention to reform and this level of interest and engagement and so forth. Someone made the comment that this year there would be two 800-pound gorillas in the room: Medicaid and school finance. I'm interested in a comment that if there are two 800-pound gorillas in the room, is there room for anything else? Does it set in motion the very dim prospect that reform can really happen despite all this heightened interest?

Jeffrey Stonecash:

Are you asking what will happen with those two issues? Or what will happen with regard to reform?

Karen Schimke:

Reform.

Jeffrey Stonecash:

I don't know what's going to happen with reform. It is now January of 2005 and there's not another election until 2006. Every legislator over there knows that the issue of what happens in Medicaid and school aid is far more important to voters than reform. You go home and say you're in favor of reform and you blame Shelly Silver or you blame Joe Bruno. That's the way that's going to work. But there are a lot of them who do believe that they ought to open things up more. This is going to be a case where they're going to talk about reform. They have had numerous conferences about it. They've really been meeting a lot about it. But the reality is those two issues are going to overtake everything. That's what this is going to come to because some people are going to use this as bargaining to lower the Medicaid benefits. They are going to say, "You want more school aid? You've got to cut some Medicaid benefits." It's going to be a tough battle about what you do about it. But reform is very likely to get lost in the whole process.

Richard P. Nathan:

Karen's question makes me want to sharpen the question a little bit more for you, Jeremy. As you've now trotted out your five problems and your various solutions, are there any of them that you see that are going to be picked out and acted on? Do you have a priority list now so that you could tuck some things into this hot debate environment?

Jeremy Creelan:

Two points. One is, although some may disagree or find this surprising, that the recommendations we made were actually far more conservative and modest than what many, many states do if you look procedure by procedure. It was already a very much culled-down list or winnowed-down list of things and we think that they all, or any one

thing if you sort of picked it out, would make very little difference. In order to change the culture of a place, you really need to through rules changes, make it comprehensive enough so that it actually gives members the thought that, “Oh, we are in a slightly different system now. I can actually do things differently.” They are encouraged to do things differently rather than just, “Oh yeah, we changed that but everything else is the same.” I’ve always hesitated to say this one thing would be sufficient or these three things. I will say that the committee system obviously is critical and making that more robust is critical and that is probably the most important thing. But again among these things we see them as a holistic whole. I would also say that in response to Jeff’s comment, obviously those issues that you raise, Karen, are going to occupy a huge amount of time and attention. We’re not going away and in fact we’re raising money and are really trying to ramp up our efforts to focus attention on reform and to build a coalition that really will have some long-term impact. Who knows what’s going to happen and when’s it’s going to happen, but I don’t think it’s a matter of this fading away this month.

Jeffrey Stonecash:

I’d like to make one comment. I think there’s one very possible scenario, which will be very interesting. The legislators know they are up for re-election. They know this report is largely about them. They sent over a bill to the governor earlier and it’s a package they really believe in. Both Houses passed it. The problem was that Joe Bruno got a little, as I understand it, nervous because it really would take a few powers away from the governor. So, with respect for one Republican to another Republican, they pulled that back. Here’s a scenario I think you will be very interested in. George Pataki ratings aren’t very good right now. I did a lot of polling upstate and they’re pretty bad upstate. You get a lot of Republican legislators to start thinking about what is the most important here, me surviving or the governor surviving? And they start thinking about themselves and they starting thinking, “I’m going to send a package back over there. He vetoes it. That’s great. I override it. I look good. I go back, the issue’s dead.” I think they all know one thing. If they get a budget passed reasonably on time, Jeremy fades. I think that’s their

bet. If they get the budget passed and then there's not this endless litany of, "How many years? How many years?" Then all of sudden, "it seems to be working better." And that's no disrespect to what that reports means. I think you're wrong about how well written it is. I think it's very well written. It's why it's had the impact. I think that could make this issue fade. If they pass that budget reform, they can say, "We've got a budget reform processed." It kicks in and then everybody might pay less attention.

Richard P. Nathan:

Other people want to jump in?

Robert Moore:

I'm Robert Moore from Environmental Advocates of New York. Over the course of my career, I've worked in three different state legislatures: Illinois, Vermont, and just recently I've come to New York. All three of those state legislatures operate in very different ways, although it was a real eye opener for me when I arrived in New York to find how closed the democratic process is. It's very difficult to track how legislators vote in committees. How difficult it is to even be able to look behind the curtain and see what is the justification for various lawmakers' positions on issues. While I agree with the recommendations of the Brennan Center and I also agree with some of your observations as well, if we did reform would it really change? Wouldn't it just bring the conflict that's inherent in the democratic form of government out into the public eye? Would it really change the result of the decisions being made? I don't know if it would change the results of the decisions being made, but I know it would definitely change the engagement of the public and citizenry of New York State. I fail to see the wisdom in perpetuating a system of government that goes out of its way to keep the public ignorant of the decisions being made and denying them an opportunity to make informed decisions with their votes when they have that chance. I don't see the upside of that.

Jeffrey Stonecash:

That's not what I'm advocating. I'm not going to get in a position of defending everything the Legislature does. I've been very specific about how I think they ought to open it up. They ought to put the votes on the web. They ought to put a lot of stuff on the web. I think they're crazy not to do it. They would kill a lot of the criticism that's made of them by saying, "Don't worry. Look it up." I don't think they have anything to be ashamed of. Sometimes negotiations are messy and you got to make some compromises and give up on things you said you were going to try to get, but you face that all the time anyway. I agree with you. I just think there's a real problem here of understanding whether or not it's as bad as some people say.

Richard P. Nathan:

Other people want to jump in? I see people with some opinions out there. I know you have opinions.

Jo Brill:

Hi, I'm Jo Brill. I'm with the Citizens Budget Commission. I'm sorry I came in late but I just like to focus a little bit....

Jeffrey Stonecash:

All the wise stuff was said earlier.

Jo Brill:

Okay. We care about the quality of the budget traditionally, but that carried us to the budget process and then to the legislative process as we saw that those things affected the quality of the budget. I think that as Karen said, and has been said by many people, that the sense of outrage over the budget process and the lateness of the budget has helped to

set the stage for the reform conversation that we're hearing now. I also agree that if the budget started to be passed on time that much of the outrage would evaporate but I'm not sure that can happen. Especially with the incentives that we see unfolding for the legislators and the governor as the balance of powers get more well defined in the courts. My question is, do you think that the balance of power needs to be corrected? If you do, how could it be corrected? How is it likely to be corrected? Or is it likely to be corrected? I just want to get some thoughts on that. I think that some of the legislative reforms are necessary if not sufficient to help us along the way, for example, conference committees on budget process and on budget.

Richard P. Nathan:

As I said before, as a lot people came in late, we are going to have a series of these forums and the next one is going to be on the budget process. We have had previous ones. Who would like to respond?

Jeffrey Stonecash:

I think the recent court decision and the way the constitution is written gives the governor enormous power. The reality is that the Legislature has one power and that's to hold out. They have one power. They are exercising that power and they have no qualms about doing it because you can ask any legislator over there and they will say, "I have a choice between surrendering early or holding out for my district for more money because the governor always understates what he's going put in school plans. Even Cuomo did it. I'm going to hold out." They'll go to every local meeting they have in their district and they will tell people, "I got a choice. What do you want me to do?" They will all go, "Hold out." They will all say, "Pass the budget on time. But I got to have money for my school district. You're not going to screw me on the school district money are you?" Every legislator faces a very simple matter. I've got to hold out. I have one power and that's what I'm going to use. I thought it was interesting yesterday. Ron Canestrari, whom I have great respect for, said almost in the same breath, "We must do something about

reform. The pressure has crept up.” But he immediately said, “You know we could be here until the fall.”

Richard P. Nathan:

Jeremy?

Jeremy Creelan:

I agree with him.

Richard P. Nathan:

Okay. Other people? There’s just a few minutes left. Anybody want to jump in? I can’t believe we’re going to end early. We have one question left and then we will stop.

Maxine Boran:

I guess it’s sort of a comment. As someone who has not been sated with this discussion over the last six months or whatever, it seems to me that we ought to just go home and forget the whole thing. We’re doing fine. There’s been an awful lot of smoke for such a little bit of fire.

Richard P. Nathan:

Let me be the one to say, the more you talk about and have people thinking about how we govern ourselves in this amazing democratic, healthy, vibrant system that James Madison, my hero, created for us, the better. So I want more argument.

Jeffrey Stonecash:

It’s just good you didn’t say that at the beginning.

Richard P. Nathan:

I know Jeff a little bit, so I was very careful. Both of the speakers did a great job. We're going to have some more programs to create a knowledge base for this big set of subjects looking to this year but also to next year. Thank you all for coming and thank David, Michele, Michael, and others for setting this up for me. Thank you.