

P U B L I C H E A R I N G

before

SENATE JUDICIARY COMMITTEE

on

Nomination of Fred G. Burke as Commissioner of Education

Held:
April 5, 1979
State Museum Auditorium
Trenton, New Jersey

COMMITTEE MEMBERS PRESENT:

Senator Martin L. Greenberg (Chairman)
Senator William V. Musto (Vice Chairman)
Senator William J. Hamilton, Jr.
Senator Joseph A. Maressa
Senator Steven P. Perskie
Senator John F. Russo
Senator Walter N. Sheil
Senator James S. Cafiero
Senator Barry T. Parker
Senator James P. Vreeland, Jr.
Senator S. Thomas Gagliano

ALSO:

John J. Tumulty, Research Associate
Office of Legislative Services
Aide, Senate Judiciary Committee

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SENATOR MARTIN L. GREENBERG (Chairman): The Committee will reconvene and continue its consideration of the renomination of Commissioner Burke to be Commissioner of the Department of Education of the State of New Jersey.

This Committee has held four public hearings on this matter. Transcripts of the testimony have been completed and delivered to all 40 Senators. Many of the members of this Committee were present at one time or another during those four days.

During the course of the testimony, certain allegations were brought to the attention of this Committee which I, as Chairman, referred to the Attorney General's Office and requested a report from the Attorney General's Office in connection with those allegations.

I also advised the public that I would not entertain a motion for release of the nominee's name unless and until this Committee received such a report. We now have present before us Mr. Ed Stier from the Office of the Attorney General.

Mr. Stier, who is with you?

EDWIN H. STIER: Deputy Attorney General Eric Dohogne from my Division.

SENATOR GREENBERG: Mr. Stier, you are here at the invitation and request of the Judiciary Committee, which has been holding hearings in connection with the nomination of Commissioner Burke. I think I should state for the record that you have not been requested or invited to testify as to Mr. Burke's character or general performance as a Commissioner of the Department of Education, but only with regard to certain allegations received by this Committee concerning a Mr. Worthington and a vocational education contract and, more particularly, Mr. Burke's involvement, if any, with that subject.

Mr. Stier, has your office received any allegations or information concerning the letting of consulting contracts to a company operated by Robert Worthington, contracts with local boards of education, but with funds coming from the federal government and passed through the State Department of Education?

MR. STIER: Yes, we have, Senator.

SENATOR GREENBERG: Have you had occasion to examine into the matter?

MR. STIER: Yes, we have.

SENATOR GREENBERG: And in the course of looking into this matter, have you examined into the awarding and performance of that contract or those contracts specifically with regard to the activities of Commissioner Burke?

MR. STIER: Yes.

SENATOR GREENBERG: In general, what have you done to investigate this matter?

MR. STIER: We initiated our investigation at the outset based upon a referral from the State Treasury Department. But subsequent to that, we received information and referrals from a number of sources of essentially the same information. The scope of the investigation included certain projects which were performed by a company called Career Development Associates which employed Dr. Worthington. We concentrated on those projects in which Career Development Associates was the contractor; that is, was the entity that performed services directly for a governmental agency and, among those contracts, those contracts in which the State was a party in some way to the funding.

We found that there were three such projects that were handled by CDA - that is, Career Development Associates - and where the State was a party to the funding

process. Our purpose in investigating those projects was to determine how the idea for the projects was initiated, how it was approved, how the contract for that project was awarded, what process took place, and how the project was performed. That is, did whoever agreed to contract with CDA receive what was bargained for? Specifically, we were looking for evidence of criminal conduct on the part of anyone, including employees or principals of CDA and government officials with whom they dealt.

We looked for evidence of fraud; that is, were there misrepresentations made intentionally to government agencies in order to obtain funds? We looked for evidence of corruption on the part of government officials - that is, did anybody improperly influence decisions resulting in the award of contracts for personal gain - and whether what was bargained for was received - that is, did Career Associates produce that which it was contracted to produce.

In the course of the investigation, we interviewed everyone that we could identify as having some involvement in the selection of Career Development Associates at the local educational agency level in CDA, itself - that is, employees or principals of CDA - and the State Department of Education.

We also tried to identify anybody else outside of those entities that might have some relevant knowledge and interview them, looking for all possible leads to exploring the possible criminal violations that I identified a moment ago.

We have reviewed the records of the local educational agencies involved, we have reviewed the records of Career Development Associations, we have reviewed the records of the State Department of Education, in order to aid us in the investigation. We have also consulted with the United States Department of Health, Education and Welfare because these various projects were funded with block grant funds which originally came from the Department of Health, Education and Welfare, which has established guidelines and procedures which must be followed at the State and local level.

We consulted on several legal questions which have arisen in the course of the investigation with the Division of Law of the State Department of Law and Public Safety, as well as representatives of the State Treasury Department, in order to resolve some of those issues.

SENATOR GREENBERG: Thank you, Mr. Stier.

Are you in a position to advise us as to whether you have concluded your inquiry as it affects Commissioner Burke?

MR. STIER: Yes, I am, and we have reached certain conclusions which I would be prepared to disclose to the Committee.

SENATOR GREENBERG: Mr. Stier, have you found any evidence of any activity or any evidence of any non-activity on Mr. Burke's part which should be brought to the attention of this Committee and which, if having been brought to its attention, should prevent this Committee from proceeding to a conclusion in its consideration of this nomination?

MR. STIER: We have found no indication from any source that Commissioner Burke was personally involved in the selection of Career Development Associates or Dr. Worthington for any of these projects, that he influenced those decisions directly or indirectly, that he was aware of the nature of the projects or the way in which they were performed. We have no additional available leads that we can pursue to develop that information any further. So I am satisfied that we have

exhausted all the possibilities that have come to our attention for determining whether Commissioner Burke was involved, and all of the indications are that there was no involvement by Commissioner Burke in any of that decision-making.

SENATOR GREENBERG: This is not an investigatory body by nature and we do not have the ability or wherewithal to conduct such investigations. We rely in large part on testimony such as you have just given, as conclusionary in nature as it is. That perhaps is a deficiency which we will correct in the future; but in the present, which is the time in which we live and work, those are the facts. Therefore, I say that because I am now going to turn the questioning over to the other Senators, if, in fact, they have any questions, with just one admonition: The Chair will exercise its prerogative of precluding questions where there is an indication from the witness that we are in an area where we would jeopardize any matter which is presently under investigation in connection with some subject not involving Commissioner Burke, himself. Am I clear?

MR. STIER: Yes, you are.

SENATOR GREENBERG: I just want to reemphasize the answer to one question - I want to make sure I understood it. You have testified that you have concluded your inquiry as it affects Commissioner Burke, based on all the leads available to you at this point?

MR. STIER: Yes.

SENATOR GREENBERG: Fine.

Now I can go down the table or, if there are people who have questions --- I think I am going to start with Senator Parker.

SENATOR PARKER: Thank you, Mr. Chairman. It does involve my County Vocational School.

When you were telling us about the scope of your inquiry - maybe I am trying to read something into it - you indicated that you talked with representatives of the State Department of Education and representatives of CDA. Then you said you looked into the records of the local agency. Did you talk with either Dr. Ossi or the representatives or officials of the Burlington County Vocational School involved?

MR. STIER: I would prefer not to disclose the names of people who were interviewed. But if I omitted reference to the local educational agency involved, it was inadvertent. We did, indeed, talk to everyone that we could identify who we felt had some relevant knowledge at the local level.

SENATOR PARKER: Next, maybe without identifying the person, although I believe it has been in the press, can you identify for us by title and name, if you wish to, the person who did award the contract? It is my understanding that this was basically a federal LEA - not Law Enforcement Agency, but Legal Education, or whatever, agency - that did provide the funnel for the moneys in the federal contract to do the studies. Is that correct?

MR. STIER: Yes. All of the projects that we looked at were essentially funded in the same manner, although the ultimate source of federal funds came from different block grants.

Basically, the funding system as I understand it - and I don't purport to be an expert in this area - it is a highly complex, highly technical area --- As I understand it, block grant funds are provided to the State based on an action plan. The action plan contains general purposes for which those block grant funds are

intended by the State to be used. The State then has a responsibility for approving specific applications submitted to it by local educational agencies which fall within the general guidelines of that action plan. The State, if it approves the specific application, then provides the funding to the local education agency which has the responsibility for administering that project and paying the contractor for the services that are agreed upon.

At the conclusion of the project, the local education agency then reports to the Department of Education - the State Department of Education - on the completion of the grant and the Department of Education then has to satisfy itself that the procedures were followed and that the project was performed in an acceptable manner.

The extent to which the State Department of Education becomes directly involved in the project, either by way of recommending or overseeing its performance, varies, as I understand it, from project to project. But essentially the legal framework within which the projects are performed is basically as I have described it to you.

Now, with respect to approval, it is my understanding, based on everything that we could find out by way of our interviews, review of rules and regulations, guidelines, and what have you, that the agency at the State level which has the responsibility for approving those projects is the Division of Vocational Education in the Department of Education.

SENATOR PARKER: And I assume that the Division Director is the one that approved these particular three contracts. Would that be correct?

MR. STIER: That is correct.

SENATOR PARKER: And what is his relationship, if you can tell us, in the TO&E of the Department --- what is his relationship to Commissioner Burke?

MR. STIER: As I understand it, he is directly responsible to Commissioner Burke.

SENATOR PARKER: Directly responsible to him?

MR. STIER: That is correct. That is my understanding of the table of organization.

SENATOR PARKER: Now is there a Division of Auditing or Contract Compliance within the Department of Education?

MR. STIER: As we understand it, there is a unit within the Division of Vocational Education that has a responsibility for auditing these various projects. Whether there is an additional entity within the Department of Education that has some overlapping or concurrent responsibility, I don't know the precise answer to that question.

SENATOR PARKER: Can you tell me, sir, to whom the Division of Auditing or Contract Compliance reports?

MR. STIER: As I understand it, with respect to the projects of this kind, the table of organization would have whoever is auditing responsible to the Director of the Division of Vocational Education. As I say, there may be an additional unit within the Department of Education that also has an auditing responsibility, which is, in the chain of command, responsible to Commissioner Burke. I don't know that.

SENATOR PARKER: That is the point I was getting at, whether there is anybody who reviews these contracts and reports directly to him, or whether they

are in-house within the division to audit their own. I know we have our own auditing in Fiscal Affairs. But I didn't know whether there was any direct link between that and the Commissioner. I gather from what you say, none to your knowledge at this point.

MR. STIER: That is correct. Let me just add one thing to my answer. The purpose of our investigation was not to explore the organizational structure of the Department of Education or to identify any of its strengths or weaknesses. We were concentrating on these specific grants.

SENATOR PARKER: I just wondered if there was anyone else who had a direct link, as the Director of Vocational Education, to the Commissioner and whether there might have been another link going down directly from the Commissioner, because, as I understand it, you said the Commissioner did not have any personal knowledge of these contracts being awarded and/or anything to do with them. That was my understanding.

MR. STIER: That is what I said and I have no knowledge of any other link.

SENATOR PARKER: Do you know from your inquiry, after the award of these contracts, whether there was any direct link, or during the performance of them, between the Commissioner and the Superintendent of the Burlington County Vocational Schools?

MR. STIER: We have found no evidence of any such link.

SENATOR PARKER: How about between - I forget the gentleman's name in the Burlington County School who actually I think signed the documents or consented to the documents --- did he have any direct link that you know of, either prior to the award or during the performance of the duties, directly to the Commissioner?

MR. STIER: Not that we have been able to determine.

SENATOR PARKER: I assume the rest of the information as to who did what and who approved what, or how it is being done, is still under some kind of investigation.

MR. STIER: I am satisfied that we have exhausted every lead we can find to determine how this contract and the others were generated, who made decisions, who authorized the contract, and who was aware of its performance. We have been able to reconstruct that to my satisfaction. I know of no other leads that we can pursue to gather additional evidence about that.

The reason I keep hedging the way I am obviously, saying that I know of no evidence to the contrary, is because obviously if somebody has information that they haven't come forward with, I have no control over that. We have talked to everybody that has been identified to us or we can identify on our own who might have some relevant knowledge. These are the conclusions that we have reached.

SENATOR PARKER: I gather the investigation is now kind of wound down and come to a conclusion. And when you said no criminal conduct, fraud, corruption in the procedures, does that apply to everybody in this process, including the officials in Burlington County?

SENATOR GREENBERG: Excuse me. We are really interested in ---

SENATOR PARKER: I understand. You don't have to answer that.

SENATOR GREENBERG: The point I am making is: Senator Parker and I both agree that if the answer to that question would be contrary to the policy of the Department or the Division, we would understand. We are particularly interested in the nominee before us.

SENATOR PARKER: Let me just finish and maybe then you can respond. If it has been concluded, etc., because of the notoriety in the press, is your Department going to issue some kind of statement as to your findings, not like a presentment maybe, but something so that the matter can be cleared up down home?

MR. STIER: Yes, ultimately I would hope that we will have something further to say. But I think in fairness to everybody who has been involved in the investigation by way of his connection with these projects that I can make certain general statements today and ought to.

We have found no evidence of criminality on the part of anyone else connected with these projects. We have concluded the investigation to the extent that we have interviewed all of those who we believe ought to be interviewed. We have reviewed all the documents that we believe ought to be reviewed. There are certain legal issues which have yet to be resolved and there are certain questions which we are left with concerning the extent to which rules and regulations and guidelines, particularly of the Department of Health, Education and Welfare, have been complied with. We have not yet resolved those issues.

With respect to the Department of Health, Education and Welfare guidelines, it may be up to them to reach a final conclusion. I can't do that. But I think it is fair with respect to criminal violations, State criminal violations, we have found no evidence of any such violations on the part of anyone concerned with these projects.

SENATOR PARKER: That is what I wanted to clear the air for my constituents. Thank you.

SENATOR GREENBERG: Senator Gagliano.

SENATOR GAGLIANO: Mr. Stier, a couple of questions with respect to what you were just talking about: You are satisfied that the inquiry regarding Commissioner Burke is concluded in the Worthington matter, correct?

MR. STIER: Our inquiry - that is, the Division of Criminal Justice inquiry - yes.

SENATOR GAGLIANO: And with respect to any other employees of his Department, have you concluded that also?

MR. STIER: Yes.

SENATOR GAGLIANO: With respect to the so-called legal issues still to be resolved, do those issues include the question of whether or not federal funding was used appropriately by the Burlington County people and approved appropriately by the State Department of Education?

MR. STIER: Yes.

SENATOR GAGLIANO: And specifically along those lines, have you investigated whether or not there could be any violation of federal law or regulations with respect to what went on between Burlington County and the State Department of Education?

MR. STIER: I am sorry. Have we reached any conclusions about it?

SENATOR GAGLIANO: Have you investigated whether or not any federal law or regulation may have been violated by reason of the connection, shall we call it, between the Burlington County Vocational Board of Education and the State Department of Education?

MR. STIER: Yes, we have investigated that.

SENATOR GAGLIANO: Have you concluded your investigation there?

MR. STIER: We have concluded the interviews and record reviews. We have not yet reached final conclusions because, as I said in response to Senator Parker's question, the ultimate decision as to whether or not federal guidelines, rules and regulations were complied with perhaps should be made by the U. S. Department of Health, Education and Welfare.

SENATOR GAGLIANO: If there were violations, could these be criminal in nature?

SENATOR GREENBERG: Can you answer that question?

MR. STIER: I am not sure that I am competent to answer a question of whether there might be a violation of federal criminal law.

SENATOR GAGLIANO: Then the next question is: Did you refer this matter to the United States Attorney's Office?

MR. STIER: We have been in communication as recently as yesterday with the Department of Health, Education and Welfare, trying to get as much information from them on their views of the handling of these projects as possible. We have been exchanging information with them. As of this point, before our analysis is concluded, before we are in receipt of all the information we can get from the Department of Health, Education and Welfare, it would be premature to refer this for criminal investigation to anyone.

The government agency that is directly responsible for overseeing the administration of these grants and for assuring that the State is in compliance with federal guidelines, as I understand it, is the U. S. Department of Health, Education and Welfare.

SENATOR GAGLIANO: But wouldn't it be the Office of the Attorney General though who would ultimately have to be asked whether or not federal criminal laws or regulations were violated - the U. S. Attorney's Office?

SENATOR GREENBERG: Senator, you mean with regard to Commissioner Burke?

SENATOR GAGLIANO: I mean with regard to Commissioner Burke or anyone in his department because I think, regardless of whether or not Commissioner Burke was directly involved in any activity which may be a violation of the law, that the doctrine of respondeat superior holds to a certain extent; he is responsible for the activities of his Department. And we are not here to determine the guilt or innocence of anyone; we are here to decide whether or not Commissioner Burke should be confirmed. Therefore, we are investigating to a certain extent the operation of his whole Department and those people under him. That is why I think those issues are very important.

SENATOR GREENBERG: Do you have any evidence based on what you know at this point --- You know the function of this Committee.

MR. STIER: Yes.

SENATOR GREENBERG: You have been before us before on other matters. (Continuing) --- which in your judgment, based on everything that you know would or should require us not to conclude this matter at this time?

MR. STIER: There is nothing that we have learned and I think, more importantly, nothing that we have any indications that we can find out by way of investigation that would indicate the involvement by Commissioner Burke in any of the issues that are yet to be resolved - legal issues yet to be resolved. There is no reason I have to ask this Committee to hold up its action and nothing that I could report back to this Committee at some later time that might shed further

light on the situation.

SENATOR GREENBERG: The Chair is satisfied with the answer.

Senator Gagliano, any further questions?

SENATOR GAGLIANO: Well, with respect to the Department, itself - let's go back to the basic issue for a minute - the issue here, I think, is whether or not it was appropriate for the Burlington County Vocational Education Board to sponsor the thing they did sponsor, the contract, so to speak, and then have it approved by the State Board and paid for, in effect, by the State Board. Isn't that one of the basic legal issues here?

MR. STIER: I think that the basic legal issues concern --and, of course, for me to try to identify all of the legal issues that might arise under federal regulations may not be completely accurate. I am not an authority on those regulations and, as I said before, those regulations have been put in place and enforced by the Department of Health, Education and Welfare and they are the ones who have to answer that. But, given those limitations, I think there are several issues that are yet to be resolved, not by the Division of Criminal Justice but by other agencies who have some interest in those legal issues, such as, whether or not Title 18A of New Jersey Statutes or Title 52 cover the manner in which that contract should have been let. That is a significant legal issue which is not easily susceptible of resolution.

SENATOR GASLIANO: Wouldn't it also be an open question as to whether or not sections of the United States Code may have been violated with respect to the procedures used, vis-a-vis this contract?

MR. STIER: Yes.

SENATOR GAGLIANO: What you are saying though is that there could be; however, you have nothing further on that from the federal standpoint because it is outside your department, so to speak.

MR. STIER: That is correct.

SENATOR GAGLIANO: How long would it take your department, for example, to get together with the U. S. Department of Health, Education and Welfare or the U. S. Attorney for New Jersey and come up with a determination as to whether or not there were any violations of the federal laws or guidelines with respect to this contract?

SENATOR GREENBERG: Senator Gagliano, I will not preclude the witness from responding to the question. I just want to indicate that the focus of this Committee is with regard to the activities of Commissioner Burke. I am not a subscriber to the respondeat superior responsibility if, in fact, any violations exist and I don't have any doubts in my mind that any department in the State of New Jersey can be examined under a microscope and be found to contain violations of some codes, some regulations or some statute, federal, state or local. The question is whether or not based upon the expertise of this witness and the expertise of his office, regardless of the source of the statute or regulation with which we are dealing, whether Commissioner Burke's involvement, if any, gives rise to a need to withhold determination by this Committee, even in the face of certain unanswered questions.

I have asked that question twice, I think; and you have answered it twice. Your answer is: no, there is no need to stop - there is no need to stop. But feel free, after my having said that, to answer the question if you can.

SENATOR GAGLIANO: If he can remember the question.

SENATOR GREENBERG: We can have it read back.

MR. STIER: Do I construe what you just said as a ruling on whether or not I should answer the question?

I think I can answer it and the answer is: I don't know. You are talking about a highly complex, difficult area of law which we have been exploring with the Department of Health, Education and Welfare over the last few weeks and which we have yet to receive any kind of a definitive response on. I don't know what the Department of Health, Education and Welfare would require by way of its own review of the situation in order to reach a conclusion. So I just can't answer your question, Senator.

SENATOR GAGLIANO: I guess the next question then is: Suppose this Committee voted today on Commissioner Burke's nomination and in turn the New Jersey Senate voted on it and it went through - it was approved in both cases - and two weeks from now it was determined by the federal authorities that this contract was a subterfuge arranged to obtain federal grants or moneys into the State and was in violation of some regulation or law. Do you see my point? Do you see why I asked the original question and, that is, how much time it would take for us to get a definitive answer on this from the federal authorities?

MR. STIER: First of all, the judgment that you have outlined is for you to make obviously and not for me. I have given you the benefit of everything that we have learned about the situation by way of describing what we have been able to find out about Commissioner Burke's personal involvement or non-involvement and whether or not anybody else who had any relationship to that project might have committed any kind of a criminal offense; that is, a violation of the criminal laws of the State of New Jersey. I have given you the best and most accurate information I can. Beyond that, obviously it is for you to decide.

SENATOR GAGLIANO: You have handled, I am sure, hundreds of investigations every year. Where there is a thread to be followed and that thread leads you from State investigation to then an investigation into some federal aspect of it which operates under an entirely different set of rules, don't you ordinarily follow that thread to the end before you make a determination with respect to whether or not you should go forward with a grand jury - or whatever? Don't you ordinarily follow it all the way through?

MR. STIER: No, ordinarily, when we reach the point where we have decided that there is no potential state violation, but where there is something for the federal government to look at, we refer it. And it is their responsibility from that point on.

SENATOR GAGLIANO: You mean you refer it to the agency involved and not to your counterpart; that is, the criminal investigatory unit of the U.S. Attorney's Office. In other words, you have now gone to the Department of Health, Education and Welfare. You ordinarily go there; you do not carry it to your counterpart; that is, the U. S. Attorney?

MR. STIER: That depends on whether we see a potential for federal criminal violation or whether we see a potential for a violation or the possibility of a violation of some other kind of restriction. By "some other kind," I mean not every violation of federal law or regulation obviously is a criminal offense. There are all sorts of rules and regulations and procedures that control the way in which federal funds have to be utilized. Generally we refer those matters to the federal

agency which is responsible for the funding, rather than directly to the U. S. Attorney's Office. If we see evidence of a federal criminal violation, we then contact the U. S. Attorney's Office directly. We may contact both.

SENATOR GAGLIANO: So, for the record, there has been no direct contact with the U. S. Attorney's Office as of this time?

MR. STIER: That is correct. Let me clarify that. There has been no referral of this matter to the U. S. Attorney's Office. There have been discussions about the nature of our investigation and requests for information from the U. S. Attorney's Office as to whether or not they have any information which is relevant.

SENATOR GAGLIANO: Have they responded?

MR. STIER: Yes.

SENATOR GAGLIANO: And they have no information; is that it?

MR. STIER: I don't want to tell you what their response was. But we have checked with that office and we are satisfied that we have gotten complete cooperation from them.

SENATOR GAGLIANO: But you can't tell us what their response was?

MR. STIER: That is correct.

SENATOR GAGLIANO: Is that because there is a matter under investigation that you can't tell us?

MR. STIER: No, that is because I don't feel it is appropriate for me to disclose information that I get from particular witnesses or from other law enforcement agencies. That information is generally given to us on a confidential basis. Without their permission, I feel duty bound not to disclose it, as I would feel duty bound not to disclose information I received from a particular witness who was interviewed in the course of an investigation.

SENATOR GAGLIANO: Who actually conducted the investigation in the field?

MR. STIER: Members of the Division of Criminal Justice, a Deputy Attorney General, a State Police Detective, and an Investigative Accountant from my division.

SENATOR GAGLIANO: And was the --- Well, you have already indicated the extent of the inquiry included many of the officials at the Burlington County Board.

MR. STIER: That is correct.

SENATOR GAGLIANO: Has anyone talked to you about an audit process that has been ordered by the Department of Education of the State of New Jersey on the Burlington County Board?

MR. STIER: We have received information about matters that are currently being looked into by the Department of Education. I think we are going kind of far afield of the scope of my testimony and I would rather not discuss with the Committee specifically what we have learned about other matters that the Department of Education may be looking into. Again, for the same reasons that I have discussed, information that we received has ---

SENATOR GAGLIANO: Well, there has been some discussion about an audit currently being made.

MR. STIER: Yes, we have learned some information about that.

SENATOR GAGLIANO: I recall information in the press about so-called discrepancies between, for example, the number of meals that were served at the Forsgate County Club on a particular occasion. Was that investigated?

MR. STIER: Yes, it was.

SENATOR GAGLIANO: Was there a discrepancy?

MR. STIER: We have been able to reconcile the information we have received by way of interviews, by way of review of records, with the contract, itself, with the agreement to perform these services. That is, I have been satisfied as a result of investigation we have conducted that the funds that were given to CDA were used for the purposes for which they were intended. But let me add one caveat to that.

SENATOR GAGLIANO: Yes, the answer to my question, okay?

MR. STIER: I am sorry. I must have missed the point of your question.

SENATOR GAGLIANO: I asked you if you found any discrepancies.

MR. STIER: I am not sure what you mean by discrepancies.

SENATOR GAGLIANO: Well, between the number of persons that were charged for as luncheon attendees and the number of persons actually who were served at Forsgate Country Club.

MR. STIER: Do you mean misrepresentations?

SENATOR GAGLIANO: Well, discrepancies - you can call them misrepresentations, whatever you want. There was reported in the press a rather substantial difference of three to five thousand dollars and in terms of numbers of people served at this seminar, and the number of people that were reported to have been served. I am asking you if there were any discrepancies in those numbers.

MR. STIER: We have been able to account for that, yes. We have determined that it was not based on fraud or misrepresentation. In fact, we accounted for virtually all of the funds that were spent.

What I was going to add to it was this: This contract, along with the others that we looked into was viewed by the Division of Vocational Education as what they call a fixed fee contract, which is a contract negotiated for the performance of certain services in return for a specific amount of money, just as you go to a doctor's office and purchase professional services for a specific amount of money and not require the doctor to account for how he spent those funds. A budget was provided at the outset and, in the course of negotiations, certain changes were made in the way in which the contract was performed; that is, the site of the various seminars' workshops was moved from Forsgate Country Club to Rider College. We have been able to account for the funds that were spent for meals. In fact, we have determined that funds were spent for meals at Rider College. We have obtained records of a vendor and have determined that, in fact, those meals were purchased. I think that that answers your question. I hope it answers your question.

SENATOR GAGLIANO: And the meals at Forsgate were served also?

MR. STIER: Meals at Forsgate were served, although there was a change in the manner in which the meals were served. Originally, they were to be served individually. They later switched to a buffet style of serving the meals.

SENATOR GAGLIANO: Did you see the report in the press with respect to that allegation?

MR. STIER: Yes.

SENATOR GAGLIANO: Are you satisfied that the report in the press was erroneous?

MR. STIER: Well, I don't want to characterize the report in the press. We looked into the matter that you referred to and I am satisfied that we have been able to determine how the money was spent and that there was no fraud or

misrepresentation involved in it.

SENATOR GAGLIANO: Okay. It seemed to me there was a difference. Did you determine that there was a difference in the number of meals listed as being served and the number of meals actually charged?

SENATOR GREENBERG: Excuse me. I would like to determine initially whether we are in a relevant area because there are obviously eight thousand questions that could be asked on this subject.

Based on everything that you have determined to this point, does the subject matter have anything to do with Commissioner Burke; that is, did he have a sense of responsibility with regard to the area about which inquiry is being made?

MR. STIER: We found no evidence of Commissioner Burke's involvement in or knowledge of that particular subject.

SENATOR GREENBERG: That is my problem, Senator. Please bear with me. Incidentally, the witness is available. If you wish to pursue this matter with regard to a subject matter not involving Commissioner Burke, he can come back anytime and talk to us about it. But I think in fairness to the nominee and the people sitting here, as well as to the witness, I would like to confine the questions to the subject before the Committee.

SENATOR GAGLIANO: I appreciate that, Mr. Chairman, and I realize that my questions would be considered a little bit far afield in the ordinary circumstance. However, we are trying to determine whether or not Mr. Burke has operated the Department of Education in the best manner possible. And if we have a situation where something could be going wrong within the Department, then the next question that comes up is whether or not he has followed up, he has led properly, he has done his job to make sure that there are no loose ends. I realize it is a big department with a big budget.

SENATOR GREENBERG: Commissioner Burke is present. He is prepared to respond to us. But with regard to the specific findings in connection with activities of others with which Commissioner Burke had no contact or responsibility, according to this witness, as I understand his testimony, I think we would be here all day and all week.

SENATOR GAGLIANO: I will conclude.

SENATOR GREENBERG: Thank you.

Any other questions?

SENATOR RUSSO: Yes.

SENATOR GREENBERG: Senator Russo.

SENATOR RUSSO: Mr. Stier, how is Eric's last name pronounced?

MR. STIER: Dohogne.

SENATOR RUSSO: With the permission of the Chairman and yourself, I would like to direct a question to him.

MR. STIER: Ordinarily, we ask that members of the Division not testify, but that the Director of the Division act as the spokesman for the Division. I would prefer not to make an exception in this case unless there is some compelling reason why you would like to.

SENATOR RUSSO: I will respect that request. I will direct the question to you. Would you please ask Mr. Dohogne, and then respond through yourself, if he is in agreement with your testimony that the investigation with regard to Commissioner Burke has, in fact, been totally completed.

MR. STIER: Given that question, I will let Mr. Dohogne respond, himself.

SENATOR RUSSO: Thank you, sir.

MR. ERIC M. DOHOGNE: Yes, sir, I agree totally and absolutely.

SENATOR RUSSO: The reason obviously that I asked you the question is: newspaper accounts this morning indicate that you had stated that your investigation was not complete. Is the newspaper account inaccurate or is there some further explanation?

MR. STIER: Without again characterizing the newspaper article, let me clarify the status of the investigation.

SENATOR GREENBERG: Excuse me. Is it satisfactory, Senator Russo, if the response is that it is in fact complete without determining the accuracy today of any newspaper articles on the subject? Are you satisfied with the answer without going into your pending question?

SENATOR RUSSO: No.

MR. STIER: There have been investigative reports prepared on every aspect of this investigation by Mr. Dohogne and the other members of the team that investigated this, but no final report has been written, although we have discussed it and we have orally agreed upon the conclusion. The writing of the final report is nothing more than a formality in these kinds of situations.

Secondly, as I indicated before, all of the investigation by way of interviews and record reviews has been completed, although there are certain legal issues which, as I indicated, are yet to be resolved, not for our purposes, not for purposes of determining whether or not there are violations of State criminal laws, but because we think that these legal issues deserve resolution, such as, whether Title 18A or 52 is applicable and whether or not there was complete compliance with HEW rules and regulations. Those aspects are yet to be resolved. We intend to forward those to the appropriate agencies for resolution.

SENATOR RUSSO: So then, if I understand you correctly, if, in fact, anything is not complete, it is those matters other than that dealing with Commissioner Burke, directly or indirectly.

MR. STIER: That is correct.

SENATOR RUSSO: In the process of your investigation, your staff talked to many people and I assume that these interviews were not conducted under oath; is that correct?

MR. STIER: That is correct.

SENATOR RUSSO: And is that the standard procedure or was this investigation handled any differently in that regard than your investigations are generally?

MR. STIER: That is standard procedure for investigations that we conduct. Let me clarify something. We use a grand jury when there is no other way of obtaining a particular piece of information. We use it when there is reason to compel someone's appearance before a grand jury and obtain information under oath because of a serious conflict in testimony, because of some reason to believe that we are not receiving accurate information. The usual course of an investigation that we conduct is to conduct interviews, to obtain information in the easiest way possible from our standpoint, the quickest way, which is to sit down and interview people. It is only in the extraordinary situation; that is, where we can't obtain the information some other way or some other reason that we go into

a grand jury and put somebody under oath.

SENATOR RUSSO: Thank you, Mr. Stier, very much.

MR. STIER: You're welcome.

SENATOR GREENBERG: Senator Hamilton.

SENATOR HAMILTON: No. Senator Russo has covered the area I wanted to inquire about.

SENATOR GREENBERG: Senator Maressa.

SENATOR MARESSA: No questions.

SENATOR GREENBERG: Senator Musto.

SENATOR MUSTO: No questions.

SENATOR GREENBERG: Senator Perskie.

SENATOR PERSKIE: No questions.

SENATOR GREENBERG: Senator Vreeland.

SENATOR VREELAND: No questions.

SENATOR GREENBERG: Senator Cafiero.

SENATOR CAFIERO: No questions.

SENATOR GREENBERG: Thank you very much. I appreciate your coming.

Mr. Ricci, President of the State Board of Education.

Mr. Ricci, I note that you have a prepared statement. Would you prefer to read it?

MR. RICCI: I would, if the Committee does not mind.

SENATOR GREENBERG: Go right ahead.

P A U L R I C C I: Thank you, Mr. Chairman.

SENATOR GREENBERG: Incidentally, before you start, so that everyone understands, the witness list was closed at the conclusion of our last meeting. I think it was last Friday, but I don't recall the day. But the Judiciary Committee's staff, at the request of Senator Parker and certain other Senators, called you and asked whether or not you or any members of the State Board of Education wished to be heard. For the purposes of this testimony, and whatever else might happen here this morning, the Committee will take testimony. But for people who may be in the audience who may have a desire to testify, I just wanted to indicate the purpose of your appearing, why you are here and why the Committee is hearing you. For other purposes, the list of witnesses is closed.

Go ahead.

SENATOR PARKER: On that point, Mr. Chairman, I think I also requested, not only at the last meeting but the one before, that the same invitation be given to the PTA and the other large participating groups. I wonder if they have been invited and what their response was.

SENATOR GREENBERG: I don't recall your request to that effect. But this matter has been in the public domain for at least six weeks. Anyone who is interested in public education in this State knows of its existence. We are not here to compel testimony by any of the groups that you have made reference to or even by Mr. Ricci. The invitation was extended because I thought that it was appropriate to do so because we were dealing with the State Board and you made specific reference to it. If you made reference to other groups, I, frankly, don't have any recollection of it. But I am sure if they were interested, we would have heard from them.

SENATOR PARKER: For the record, I might indicate that our staff just handed me a memorandum in which they did respond to our request, indicating that the State Committee apparently would not take a position; it was up to the local PTA's to take their positions. Is that basically it?

MR. TUMULTY: That is what was indicated by the President.

SENATOR GREENBERG: Mr. Ricci.

SENATOR MARESSA: Mr. Chairman, in reading Mr. Ricci's statement, I notice he is going to tell us about a vote. Having polled the State Board of Education, he is going to tell us how many voted yes and how many voted no for confirmation. It would seem to me that we are not going to deal with any secret ballots. These are all public officials. If someone voted one way or another, certainly, his or her name and the way he or she voted should be made known. If it is not made known, I strenuously object to any statement concerning any poll.

SENATOR GREENBERG: Let me hear from the witness.

MR. RICCI: Mr. Chairman, may I present my statement and then I will deal with that issue.

SENATOR GREENBERG: I understand what you are saying, Joe. I think it is appropriate to hear from the witness.

SENATOR MARESSA: It would seem to me that the damage is done after it is read. I think the members of this Committee will want to know who is saying what.

SENATOR GREENBERG: If so, they will ask. Go ahead, Mr. Ricci.

SENATOR PARKER: All or most of the members of the Board are here.

SENATOR GREENBERG: Go ahead, Mr. Ricci.

MR. RICCI: Thank you, Mr. Chairman.

Members of the Senate Judiciary Committee, I am Paul Ricci, President of the State Board of Education.

I am authorized to make this statement on behalf of all of the members of the State Board. And all of those members are here; and, if I may, I would like to introduce them to you. David Brandt is the Vice President of the Board.

SENATOR GREENBERG: How many members are we talking about?

MR. RICCI: Thirteen.

SENATOR GREENBERG: I would love to meet them.

MR. RICCI: Would you like me to just read their names?

SENATOR GREENBERG: Please.

MR. RICCI: Jack Slater, Ruth Mancuso, Kay Neuberger, Anne Dillman, Connie Montgomery, Bill Colon, Sonia Ruby, Susan Wilson, Bob Wolfenbarger, Jack Bagon, and Tim Weeks. That is the full Board. This statement is on behalf of that full Board.

SENATOR GREENBERG: Go ahead.

MR. RICCI: And it is the statement that I am authorized to make.

I, with all the other members of the Board, am here in response to your invitation to present our views on the reappointment of the Commissioner.

Regardless of our views of the merits of reappointment, the State Board of Education is committed to its responsibility in evolving educational policies that extend equal educational opportunity to all students. We share respect for and require effective, forceful leadership. We believe in the system of educational governance which recognizes that public educational policy-making is a citizen responsibility which you have delegated to the State Board and local boards of education as the representative of our citizens. We agree that that system is one

which must be respected and implemented by all who share the delegated responsibility. We further agree on the virtue of cooperative efforts within the educational community to resolve complex issues without resort to expediency or easy compromise. We recognize, too, that our ability to develop and implement effective educational policy requires a high degree of mutual trust among all of the figures and components of the educational community. We recognize the importance of having professional leadership whose advice has credibility and whose consistency on behalf of children is constant and unremitting. We further believe that such effective leadership is an imperative in New Jersey.

We agree that the educational decision-making process is complex, often difficult and by its open and involved nature may engender conflict and difference. We find this is a viable process but one which can function only when there is indisputable leadership based on knowledge, understanding, and fairness -- leadership which understands the centralities of educational needs and organizes its resources to resolve those needs.

After consideration of these beliefs, I have polled the statutory voting members of the State Board of Education and will now share the results of that poll with you:

- Three members support the confirmation of Dr. Burke.
- Eight members are opposed to the confirmation of Dr. Burke.
- Two abstain from voting.

Needless to say, the unique relationship we share with the Commissioner and the responsibility we have to personnel, dictates greater detail of the positions we have taken should be explored with you in a private session. This we have offered to do with you this morning.

You have an awesome responsibility. Your decision is important to all of us. Most particularly, it is important to the children and young people of New Jersey who deserve the best we can give.

I thank you for this opportunity. (Applause.)

SENATOR GREENBERG: Thank you, Mr. Ricci.

Mr. Ricci, in response to your request for an executive session, this Committee has spent numerous hours in public hearings, all of which have been transcribed, as I said earlier, and submitted to the members of the Senate. We have had four days, my recollection is, of open public meetings. That is in accord with the desire of the Chair and the members of this Committee that we do as much as possible in the open. I would not feel comfortable, after all of that time and after all of that public testimony, to base a vote on what somebody whispers to me in my ear.

If there are people present on your Board who wish to testify, we will hear them. I will not entertain a request for an executive session which may influence certain members of this Committee into voting, as a result of which the public after all of this time and after listening to all of this testimony will not know what was said and what the source was.

Now, if there are any members of this Committee who disagree with me, they are perfectly free to talk to you or any member of your Board. But I will not lend the stamp of approval of this Committee to such a procedure because I think it is wrong. I think it is wrong in fairness to the public. I think it is wrong in fairness to the nominee and I think it degrades the function of this Committee.

Therefore, I say to you now and to the members of your Board who are present, if anyone in addition to yourself wishes to be heard, I would like him to raise his hand, please. Is there anyone present who wishes to be heard? I just want the record to reflect that no hands have been raised.

Senator Parker.

SENATOR PARKER: On the comment that you just made, it is my understanding - if I may direct a question to Mr. Ricci --- Is some of the information you want to give us matters that are confidential in nature?

MR. RICCI: Well, my Board has authorized me to make this public statement, and only this statement. But I think I could respond to the Chairman's comment and your question.

We are in a unique position. We deal with the Commissioner on a day-to-day basis and we have a relationship that must be protected. For us to ---

SENATOR PARKER: A confidential type of relationship?

MR. RICCI: Yes. For us to discuss delicate personnel matters in public would serve no useful purpose and harm the educational process in the State. For that reason, we would like an opportunity to meet with you in private - and I think that would answer Senator Maressa's question.

SENATOR PARKER: Mr. Chairman, I would move that we do that. In many cases involving all types of appointments, we have always adhered to the request of someone to meet with us in camera or in executive session. We did it all through the State Police hearings and all nominees. We have excluded the public on matters of this kind. I think it is absolutely essential --- And I might state for the record that I believe it was after the first hearing that I commented that the N.J.E.A., the P.T.A., and various groups, including yours, that deal on a day-to-day basis with the Commissioner of Education had not appeared and that I felt they should be invited. Whether they chose to appear or say something was up to them.

But I felt that they should be requested to appear.

Unfortunately, there must have been a mixup of some kind because you did not appear at the last session. I again raised it and I assume that is why you are here because we had requested it.

Mr. Chairman, I will now move that we go into executive session to hear from Mr. Ricci and the members of the Board if they wish to be heard on these matters because I believe it is vital - I don't know about my other colleagues - that we hear about the administration of personnel and what is going on. If nothing else, I think the Burlington County thing has cast an unfortunate problem on my people and if similar things have happened within your purview with other personnel and other department heads or division heads within the Department, then I think it is essential that we know about them.

SENATOR GREENBERG: For all the reasons that I stated earlier, including one which I did not, which I will add now, and that is the fact that we have just finished taking public testimony, which is the only kind of testimony we have taken in this matter, from the Attorney General's Office in a very sensitive area, I rule the motion out of order. If there is a motion to be made challenging the rule of the Chair, I will entertain it at this time.

SENATOR PARKER: I will make such a motion.

SENATOR GREENBERG: There is a motion made to reverse the ruling of the Chair. Is there a second?

SENATOR CAFIERO: I second the motion.

SENATOR GREENBERG: Is there any discussion?

SENATOR HAMILTON: Yes, Mr. Chairman.

SENATOR GREENBERG: Senator Hamilton.

SENATOR HAMILTON: Mr. Chairman, I share your basic philosophy about this. I articulated it at our last session. I don't want to make a decision on an important nomination of this kind by secret testimony. However, if after offering testimony here in open session, one or more members of the Board indicated there were matters that were sensitive in terms of affecting particular individuals and personnel policies, I would reconsider my decision. Absent that, the mere fact that it might be uncomfortable to continue a working relationship with Dr. Burke, after having testified in the open about this matter, is not sufficient grounds in my judgment for us to convene in secret session. I certainly support the Chair, the only reservation being that if any witnesses do avail themselves of the opportunity and there are at the conclusion of their testimony other matters they want to offer to us in executive session, I think we ought to consider that question at that time.

SENATOR RUSSO: Mr. Chairman.

SENATOR GREENBERG: Senator Russo.

SENATOR RUSSO: I think Senator Hamilton states it exactly precisely correct. If, in fact, the reason is it is uncomfortable, I think clearly there is no reason to make an exception to what we have done throughout these hearings.

If - and perhaps Mr. Ricci can tell us -- if it is a suggestion that there is, in fact, improprieties or things of that sort that deal with an extremely sensitive matter that shouldn't be made public - and I haven't heard that said yet - or if any member of the Board indicates that to this Committee, then it might be a different story. But thus far, it seems as though the only suggestion is that they have to work with him and, if he then is confirmed after such testimony, it

would be uncomfortable. I completely support the ruling of the Chair that that is no reason to go behind closed doors in a matter of this importance.

SENATOR DODD: Mr. Chairman.

SENATOR GREENBERG: One second, please. Senator Perskie asked to be recognized.

SENATOR PERSKIE: Mr. Chairman, I too am prepared to support the ruling of the Chair. In fact, if the Chair is overruled, I am not prepared to participate in such a forum. I am as interested as Senator Parker in things that he expressed an interest in hearing. I would like to hear from the members of the State Board of Education on anything that they have to say. I would like to hear that. But I don't believe, as Senator Hamilton has ably indicated, that the mere fact that there would be a potential source of discomfort in a possible future relationship with the Commissioner is sufficient for us not to allow the public to share in that process. And I am not prepared to do so.

SENATOR GREENBERG: Senator Cafero.

SENATOR CAFERO: Mr. Chairman, two of our members have stated that it is only a matter of the Board members feeling uncomfortable. I think that question is already academic. Mr. Ricci has already testified that eight are opposed and three are in favor and two have abstained. Mr. Burke is certainly a bright enough individual, I'll bet you he could sit there right now and finger the eight, the three, and the two. So, they are not hiding from that.

Mr. Ricci said in his letter that it was a sensitive matter. Now, one way we are going to find out is to listen.

One other thing, you said Mr. Stier testified in public. We will never know, but I would venture a guess that had his testimony been indicative of, or indicated some wrongdoing or improprieties, he would not have been too thrilled to testify in front of all of these people either. (applause)

SENATOR GREENBERG: Senator Gagliano.

SENATOR GAGLIANO: Mr. Chairman, following up on what Senator Cafero said, and referring to Mr. Ricci's letter of March 30, 1979, the third paragraph - and I quote: "We are concerned that most of the discussion pertained to personnel matters and feel that a private session would serve a more useful purpose than a public forum for discussing such sensitive issues." I don't think it is mere uncomfortableness. I think it goes beyond that. I think sensitive issues are real issues to a public board, on one hand, when they are talking about the person they have to work with every day.

The second part of this, Mr. Chairman is - and maybe you could direct this question to Mr. Ricci, if you wish - could it be possible that some of the things they might say would impose upon them the possibility of a suit against them, or a claim against them, for defamation of character, which would then go past the point of even sensitivity, but might-- And, these are volunteers who work for the State of New Jersey, I understand, for no compensation. It seems to me perfectly fair that we listen to them. And, if what we hear from the first one or two witnesses is farfetched, we can say that is enough and I think we always will. But, I think other than that, we should respect their wishes to be heard in private at first.

SENATOR GREENBERG: Senator Russo.

SENATOR RUSSO: Mr. Chairman, really -- maybe you didn't understand, Senator Gagliano, but knowing you to be an outstanding lawyer, for many, many years,

and one who protects the rights of those hurt, as well as those who may be hurting, I don't understand your suggestion that maybe we should do it behind closed doors because they might say something defamatory. If they should say something defamatory, they ought to be exposed to suit -- and I don't suggest that any of them would. But, should that be the reason, then it ought to be out in the public. In fairness to Commissioner Burke, as well as to the Board members, we ought not allow something -- if that should be the concern -- defamatory, or potentially defamatory, to be said about the Commissioner behind a closed door. It is not fair to him either.

Every other witness who has taken that stand has said what he wanted to say. He risked, perhaps, a defamation suit. The Board members should be no different. I respect the fact that they don't get paid. The ones that I know, I think, are outstanding people, even though we may or may not agree on a particular issue. But, certainly anything they have to say ought to be said publicly and if it is defamatory -- if someone thinks it is -- that is democracy. Some jury, some day, will determine that. So, that is hardly a reason to go behind closed doors.

SENATOR GAGLIANO: There are many questions not answered, Mr. Chairman and Senator Russo, that I may ask of the Attorney General's office because for certain reasons they said they did not answer some of my questions and they are ostensibly items behind closed doors, as far as I am concerned.

And, Mr. Russo, you are right. I do like to protect the private lives of people. I feel that is very important. Supposing we had a private session, with Mr. Burke in attendance? Would that make sense?

SENATOR MUSTO: Mr. Chairman.

SENATOR GREENBERG: Senator Musto.

SENATOR PERSKIE: Do you mean it was contemplated that he wouldn't be in attendance?

SENATOR MUSTO: Mr. Chairman.

SENATOR GREENBERG: Senator Musto.

SENATOR MUSTO: I would like to point out that I have no objection, generally, to executive sessions, or private sessions, when there is a basis for them. But, we sat here and a young man came here from Jersey City -- Mr. Colon -- and had no hesitancy to sit in that chair and say it as it was, whether you agreed with it or not.

SENATOR GREENBERG: You are referring to a Board member?

SENATOR MUSTO: Right. In no way could I support executive session, or private session, which I generally have no objection to, without reason. Mr. Colon is a member of the State Board of Education and he had no hesitancy at all to come here and say it as it was in his mind.

SENATOR GREENBERG: All right. Thank you.

SENATOR PARKER: I just want to say one other thing. It is absolutely incredible to me that you people can take that position. This gentleman is the head of the State Board of Education and he has indicated there are personnel matters which even under the Sunshine Act are excluded from the public -- (applause) -- and that he wishes to address to us.

I can tell you, they have addressed it to me publicly, many of them, and I think that it should be to protect various department heads and personnel people whose jobs may be at stake because of what is going to be referred to. I don't think we should subject them, in public or any other area today, to this. We did not do it in the Lordi hearings. We did not do it in the hearings on the State Police. We did not do it in the hearings for anybody else. It was all done

in camera.

SENATOR GREENBERG: Senator Parker.

SENATOR PARKER: What?

SENATOR GREENBERG: You are one of the reasons - you, particularly, and the position you have just taken, which has been articulated to me on prior occasions, specifically with regard to the Lordi matter - that these hearings be open. You told me that you did not wish to participate in that type of procedure again, where someone comes in and whispers something. When I say that, I am not only talking about you, Senator Parker; I share your view. That is why there have been open meetings.

I also recognize that there might be some sensitivity here. I recognize that. But, I think on balance, in my own view and from the public interest point of view - and the public has a vital interest in this matter; I frankly don't know of a more significant cabinet position than the Commissioner of Education because it affects the future of our children - I don't want to hear it in private, even if it does involve certain individuals. Enough has already been said in public. To bring matters into private now would be unfair to a lot of people, including the public.

I recognize your view. We disagree on it. You have right to do so. Please recognize my right to disagree with you.

Senator Dodd, you are not a member of this Committee, but you have testified before us and as a matter of courtesy, I understand you wish to say something and we would be happy to hear you.

SENATOR DODD: Mr. Chairman and members of the Committee: I would ask you to consider what you have heard this morning from the Chairman of the Board of Education - the quite dramatic testimony. Ten out of thirteen do not approve. Ten. These are the people that we charge - we, the Legislature - to administer the policy of education in our State. A rare request, that is certainly not unheard of in this Committee, has been made. These are not political people. They are honest, sincere people that work and take the God knows amount of abuse in education, and they have finally come out and asked a public group to hear them. They are not used to this. This is not their forum, nor should it be.

Now, I am disturbed today. I don't know what they want to say in private, but I would assume that they don't know the laws as we do. We have immunity. We, as Senators, can stand here and say anything we want to about anyone and no one can sue us. But they can be sued. And, I think that someone could have the courtesy to ask them - perhaps the Chairman - if their testimony, or what they want to say to you in private, has something to do with the fear of being sued. I think we owe it to the public. I think you can't just wash this out.

SENATOR GREENBERG: I understand what you are saying. I disagree with you. We have had six weeks of opportunity for every member of that Board to whisper whatever they chose to whisper into the ears of any legislator sitting on this Committee. As a matter of fact, I understand it is not true in this case. I understand it has not happened.

Why is it at the 11th hour, after 4 days of testimony, we now have this position taken? I frankly find it to be incongruous with the responsibility of the Board members. If they want to do that, it should have occurred on prior occasions. And, frankly, you don't need permission of the Chair or of the Committee to speak to any Senator. Every one of us gets phone calls, such as this, every day.

Senator Perskie.

SENATOR PERSKIE: Mr. Chairman, I want to respond to one thing that Senator Dodd said in passing, that has been pointed out by some members of the

Committee as well, because I take some issue with it. It has been said that the Committee takes testimony all the time in private session, and has done so on many occasions. I have only been a member of this Committee - I have only been a member of this House - for 15 months and I can't speak to anything that occurred before that time. I can tell you that in the 15 months that I have been here, although the Committee has on occasion gone into private session, to the best of my recollection, except for one or two occasions involving law enforcement personnel, we have never taken testimony from anybody on any issue in private. We have had a number of discussions in closed meetings with respect to the procedures of the Committee and the processes we will follow. But, that does not involve the taking of testimony, particularly on an issue where we have taken public testimony.

SENATOR PARKER: May I refresh your memory?

SENATOR GREENBERG: Senator Parker.

SENATOR PERSKIE: We heard from law enforcement personnel.

SENATOR RUSSO: That's right.

SENATOR GREENBERG: That's right.

SENATOR PARKER: Can we have a motion?

SENATOR GREENBERG: There is a motion made to overrule the Chair by Senator Parker. It has been seconded by Senator Cafiero. A vote in favor is a vote to overrule the Chair. A vote opposed is a vote against overruling the Chair. Call the role, please.

MR. TUMULTY: Senator Greenberg.

SENATOR PERSKIE: I'm sorry -- a motion?

SENATOR GREENBERG: There is motion pending to overrule the Chair. A vote in favor is a vote - a vote "yes" - is in favor of overruling the Chair. A vote "no" is opposed to overruling the Chair. Call the role, please.

MR. TUMULTY: Senator Greenberg.

SENATOR GREENBERG: No.

MR. TUMULTY: Senator Musto.

SENATOR MUSTO: No.

MR. TUMULTY: Senator Hamilton.

SENATOR HAMILTON: No.

MR. TUMULTY: Senator Maressa.

SENATOR MARESSA: No.

MR. TUMULTY: Senator Perskie.

SENATOR PERSKIE: No.

MR. TUMULTY: Senator Russo.

SENATOR RUSSO: No.

MR. TUMULTY: Senator Sheil.

SENATOR SHEIL: No.

MR. TUMULTY: Senator Cafiero.

SENATOR CAFIERO: Yes.

MR. TUMULTY: Senator Gagliano.

SENATOR GAGLIANO: I vote yes. I don't like to characterize it as overruling the Chair. I want to hear the testimony of the members of the State Board of Education. That is the reason for my vote. I have tremendous loyalty to the Chair, whoever is in it. I certainly have those loyalties to Senator Greenberg, but I do vote yes. I do want to hear the testimony, Senator.

MR. TUMULTY: Senator Parker.

SENATOR PARKER: Yes.

MR. TUMULTY: Senator Vreeland.

SENATOR VREELAND: With the same reasons as Senator Gagliano, I vote yes. I want to hear the testimony.

MR. TUMULTY: Four yes. Seven no.

SENATOR GREENBERG: The motion to overrule the Chair is defeated. I again ask you, is there any member of the State Board of Education present that wishes to be heard by this Committee? I see no hands.

Do you have anything further to say, Mr. Ricci?

MR. RICCI: Since you have taken the vote, no.

SENATOR GREENBERG: It is now 1:10. Commissioner Burke is present. There is no further testimony scheduled before this Committee, except that of Commissioner Burke.

SENATOR MARESSA: Mr. Chairman, excuse me.

SENATOR GREENBERG: Yes, sir?

SENATOR MARESSA: I try not to talk too much. I want to know whether or not we are going to know what the vote of the Board of Ed is with regard to the vote? We have numbers here. There are people in public trust, representing the State of New Jersey. Are you telling me that they are not going to make their--?

SENATOR GREENBERG: I am not telling you. I am asking them. We see no hands.

SENATOR MARESSA: I want to object.

SENATOR GREENBERG: Just a second. I represented to this Committee and to the public that Commissioner Burke would be called back to respond to questions that may be put to him as a result of all of the testimony we received. It is now 1:10, Commissioner. I know you have been sitting here. Frankly, we have a conflict at this point. Both parties have party conferences scheduled for 1:00.

I have called a Judiciary Committee meeting for 2:00, in connection with another matter. We will be meeting in the normal Judiciary Committee meeting room on the second floor of the State House. Before we adjourn, we would be happy to have you there and I would ask you to appear.

Before we adjourn, Senator Maressa, in response to your question, I have said that I have asked the Board members whether or not they wish to be heard on this matter and no hands have been raised. There is nothing further I can do because I can't testify.

SENATOR MARESSA: I wanted the record to show that. I didn't hear you say that.

SENATOR GREENBERG: I said it before and I will say it again.

SENATOR MARESSA: They are all seated there?

SENATOR GREENBERG: They are and no hands have been raised.

SENATOR MARESSA: Thank you, sir.

SENATOR GREENBERG: Thank you. The meeting stands adjourned. We will reconvene at 2:00.

Senator Hamilton.

SENATOR HAMILTON: Just one thing, Mr. Chairman. I recognize the logistic problems of having a session and having the Judiciary Committee meeting. If we are going to hear the Commissioner, I think we are going to need a larger room, very respectfully, than our usual meeting room. I wondered if you wouldn't reconsider the possibility of reconvening here or some other place closer to the State House, but larger than our normal meeting room. This is with respect to Commissioner Burke only.

SENATOR GREENBERG: No, we are meeting in the Judiciary Committee meeting room.

(meeting adjourned)

AFTERNOON SESSION:

SENATOR GREENBERG: In front of you is a list of nominees. They have all been disposed of except for the renomination of Fred G. Burke to succeed himself as Commissioner of the Department of Education. Commissioner Burke is present. Are there any questions?

SENATOR GAGLIANO: I just have one or two, Mr Chairman. Commissioner, with respect to the Career Development Associates, Inc., contract, I know now you are probably fairly well familiar with the situation, though, as the Attorney General said, you had no direct involvement; is that correct?

FRED G. BURKE: Yes, I have become familiar with that situation. That is right.

SENATOR GAGLIANO: Now, as far as you are concerned, are there any Federal guidelines with respect to the use of these federal grant monies?

COMMISSIONER BURKE: Yes. Each particular grant has its own guidelines. This particular grant, by the way, doesn't exist anymore. There is no, what we call, ETDA money. And the guidelines said that you had to submit a plan, and the plan was the document that was used, if it was approved, which we did. In that plan we indicated that we would be utilizing these to provide training programs for more than one district for statewide people.

When the issue arose, I wrote the Federal Government and asked their opinion on this, and I have even written to the U. S. Commissioner of Education, the Deputy Commissioner, and asked him to send a person to New Jersey to ascertain whether we indeed were working within the Federal guidelines. I assume we are.

SENATOR GAGLIANO: You assume we are, but we don't have a determination as of today.

COMMISSIONER BURKE: Well, I have one letter from the HEW which indicates that the procedures that we used and the activities we took are common to other states, as well.

SENATOR GAGLIANO: Common to other states, but not necessarily within the guidelines.

COMMISSIONER BURKE: Well, the inference of this letter, which I will leave with you if you like, is that it is within the guidelines. At least, I interpret it that way.

SENATOR GAGLIANO: Now, one other thing, Commissioner, and I say this, because I have heard some concern expressed by people - and they don't mean you, probably, but people in your department - that personnel in your Department may come down hard on people who have challenged your renomination and your continuation for a five-year period. You wouldn't condone any of that, would you?

COMMISSIONER BURKE: No, and I wouldn't take part in it. To the best of my knowledge, that has not been done.

SENATOR GAGLIANO: Well, I have two specific examples, that of Frank Kane of Freehold Borough, Superintendent, Board of Education, who I understand was clearly threatened with audits and that kind of thing.

SENATOR PERSKIE: Threatened by who?

SENATOR GAGLIANO: An assistant to Commissioner Burke. And this was discussed at one of our meetings, Steve, the first day. Mr. Kane was at a meeting with me that was covered by the press, and he did receive an indication that he shouldn't do this sort of thing, and they said, maybe his records were

not up to snuff, and they were going to check them out and that sort of thing. I think there is no reason for that, really.

And the other area was the Burlington County Vocational Board of Education matter. Regardless of what happens here, I don't think there is any room for reprisal or suppression, or threats of audits or the like.

COMMISSIONER BURKE: We had a request from a member of the Assembly and also from the Board of Education to audit a food service contract. We honored that request, which was completely separate and distinct from this.

SENATOR GAGLIANO: I have no other questions, Mr. Chairman. I realize the hour.

SENATOR GREENBERG: I am trying to accommodate you, Senator. Senator Hamilton.

SENATOR HAMILTON: Commissioner, I wanted to ask, perhaps, two questions. Recognizing the sensitivity and the importance of the job that you held for five years and that you seek to hold for another five years, and yet recognizing that it has a unique character unlike some of the rest of us in public life, we are held accountable every two years or every four years. We do through the process in which our opponents - and we have specific opponents - challenge us, and when it is all over and done with, the people go behind the curtain and cast a vote, and the result is known. Your process has been entirely different. Clearly, as you said, and I just began to read your remarks today, you have learned a great deal and it has been agonizing and yet it has been rewarding.

Could you share with us, since this matter is coming to a close, responses to maybe two things that I would ask about. What have you learned about what has happened over the last five years, and what, in general terms, would you do differently given the chance again.

COMMISSIONER BURKE: Well, I think New Jersey over the past five years has probably undergone more traumatic change in public education than any other State. We had a Supreme Court decision which ordered the Legislature and the Commissioner and the State Board to make fundamental changes in education, which has not occurred, to my knowledge, anywhere else. One is to alter significantly the way in which we raise and spend money in education which led to the income tax, and the other was to define what a good education was, and then to develop laws, rules and regulations, to implement that.

That, I think we have done essentially over the past three years. It has been a little better than four and a half years since the law was passed, but as you recall, it was nearly a year before it was funded. I think that process is in place, and our activities over the past three years have been to put the process in place. We learn a great deal in doing that. Some people think we put the process in place too fast, and too tough; some think we did it too slowly and not fast enough and not enough.

I think that in retrospect we could have improved the way in which we implemented the various regulations and rules. While, I think that the pace that we used was approximately right. I think the amount of change that the system could tolerate was about what we advocated. I felt and often interpreted my job over the past three or four years in that regard as maintaining a pressure cooker, that it had to hiss, or we were not putting the process into place. If it hissed too much, there was a danger of explosion, and our job was to try to maintain that.

I think, in retrospect, there were some parts of this that we might have moved a little more quickly and there were some parts of it, I think, particularly that which had a great deal of accountability, that we could have moved a little more slowly. But, what excites me about the future is the process is basically a sound one, and I think it is well in place and is working. We have an accountable system of education which is unique in this country. We now have an opportunity to get on with other kinds of things that I discussed with you in my opening comments, particularly with involving the school back more into society, community education, parental involvement, the involvement of the community generally in improving the quality of our schools.

SENATOR HAMILTON: Let me ask just one other thing, then, and I appreciate your remarks, and I think you hit the high points, without going on at great length. T & E is basically a process as opposed to the input models or output models that could have been made. With respect to basic skills, if it develops downstream - and I am vitally concerned with basic skills - that a process mode isn't bringing about tangible increases in the level of performance in basic skills, however measured, what will you do in order to bring about the improvement in those basic skills.

COMMISSIONER BURKE: I think that gradually we are combining a process mode with an output mode. Two or three things have happened recently which suggest that. One, the minimal basic skills requirements, and high school graduation requirements which are before the Assembly, and I suspect will pass. That legislation really in a sense is an output measure. In other words, you can't graduate from high school unless you perform at a certain level in the basic skills. There is a bill that has been reduced on promotion from one grade to another, which can create some problems.

The process, I think, will easily identify areas of high need. We will classify schools next year as approved, unapproved, approved with condition. One of the factors in that designation will be how well those districts do on the basic skill tests. Once they are identified, of course, this is the beginning of the solution. T & E is not designed in a sense to resolve the educational problems as it is to identify where the high needs are, and I think this is what we are doing.

We may need greater efforts in remediation. I feel very strongly that the educational improvement centers have a key role to play in this. I think we have in place with the minimum basic skills testing, with the possibility of promotion legislation, the high school graduation requirements, the minimum standards law, enough kinds of output measures, and I would add to that, by the way, the tenure teacher evaluation that was recently passed by the State Board. These together will give us the output measures to determine whether or not the process is indeed functioning.

SENATOR HAMILTON: Thank you. I have no further questions.

SENATOR GREENBERG: Senator Maressa.

SENATOR MARESSA: Commissioner, what has been your rapport, from your point of view, with the State Board?

COMMISSIONER BURKE: I think, basically, the rapport with the State Board over the years has been good. On a personal basis, it has been excellent. I think it is important to note that there have been no personal differences between myself

or any members of the State Board, as a matter of fact. And I think we work reasonably well together. I think, had the Board been asked, they would have suggested that. I think the State Board would like to be more deeply involved in educational decision making than they have been. Here we would have some slight difference as to the complexity of education decision making and the role of a Commissioner who is a member of the Executive Branch of Government who is appointed by a Governor, and who works with the joint Committee, and has to work with the legislative staff, as well as with the State Board. Decisions are made in a wide variety of areas by a Department of approximately 1800 people every day. The State Board is in once a month, and it is difficult for them - many of them who are local board members - to realize the enormous complexity and the range of decisions that are made, and, therefore, I think some frustration in not being intimately more fully involved.

I think, assuming my reappointment is confirmed, that - and we have talked about this - we would have to sit down and talk more carefully about ways to improve the kinds of communication they feel have been lacking.

SENATOR MARESSA: Have they indicated dissatisfaction with what you are doing?

COMMISSIONER BURKE: Well, it varies. The State Board, rightfully so, has different opinions on different issues. If you took the five or six major issues that the State Board has been involved in, you would get changing coalition. So, in some issues some of them would be supportive and some would not. With an issue change, that would also change.

SENATOR GREENBERG: Okay, Senator Dodd, again, who is not a member of this Committee, has requested permission to ask a question. I think, because of his prior interest, that permission should be granted. Senator Dodd.

SENATOR DODD: Commissioner, the Board of Education for the State of New Jersey is in effect statutorily your boss, and by a very substantial vote, namely, three members of the Board approving your continuing, how do you feel that the relationship in the future will work out? I have a great deal of difficulty comprehending how this will work, where only three members, and two of those three are relatively new appointments to the Board, are giving you a vote of confidence.

How can this possibly work in the future? Or, will it become a political issue and will education suffer in the future?

COMMISSIONER BURKE: I am not a lawyer, but I think that there is a fair amount of ambiguity as to the accountability that the office that I now hold has. The budget, for example, for education is not a budget which is decided by the State Board. It is a budget which is a part of the Executive budget. It is submitted to the Governor and then it goes through the legislative process. And, the Commissioner is also a member of the Governor's Cabinet, and takes part in making decisions which affect State Government generally. The State Board has a key role in education, the formulation of overall general policy, and I think that when the Board functions in that capacity it does a very good job.

I do not feel, and primarily on the basis of personal relationships that I have with Board members, which I think are very good, even today, that there would be any difficulty working with that Board. I think that the State Board of Education will be happier with a Commissioner who felt a much deeper sense of accountability to the Board as opposed to accountability to the processes of the joint committee, to the Legislature and the Governor, and one who, by the way, takes less time trying

to ascertain the concensus of the various interest groups in education. I do not see that as an immediate problem, Senator Dodd.

SENATOR GREENBERG: Thank you, Commissioner. I understand Senator Parker has a question.

SENATOR PARKER: I am sorry I was late. In regard to the Board, Commissioner, there was reference to several personnel problems and we had a rather lengthy debate as to whether we should go into executive session or not, and I am not privy to what they are. Do you have any knowledge of personnel problems involving members of your Department and the way it has been handled and what they are referring to?

COMMISSIONER BURKE: I think the reference was to the Sunshine Law, if the situation you are dealing with is one of personnel, then this is a legitimate purpose for meeting in executive session.

SENATOR PARKER: I am sorry, I am not talking about what our decision was. They indicated there were three personnel problems that they felt very strongly about. There were some personnel difficulties.

COMMISSIONER BURKE: I would have no difficulty, by the way, with an open session on anything that was said. I have not sat with the Board, and they have not said to me that there were three issues. One of them, obviously, I think, the basis of conversations that I have had, is they feel they have not been sufficiently involved in the decision making process.

Secondly, I think there is a difference of opinion as to the respective role of the Commissioner and the Board on the part of the Board, or some of the Board, and the Commissioner.

I don't know what the third one would be, very frankly. There have been some issues where the Board has taken a position and I have taken a different position. I indicated when I first came, some of you may recall, that the law is ambiguous about the Commissioner's accountability to the Board and to the Executive Branch of government. I was asked what I would do in case that situation should arise. And, I replied, "I would do everything possible to see that the situation did not arise. If it did, I would have to make a decision that would be in the best interest of the children, of education." That has occurred on a few occasions, and the position I took was essentially the position of the administration. The majority members of the Board felt that they took a different position. That was a very hard position to be in, but it was a decision I had to make.

SENATOR PARKER: There has been criticism involving representatives of certain school districts and what has occurred. One is Trenton. Although, Mr. Copeland, the Superintendent, supported you, members of your Board did not because of the reaction that you took or had hanging over them for some time. Can you respond to those criticisms? There were some in Newark, also, concerning one of the programs.

COMMISSIONER BURKE: I think in Trenton I would do exactly the same thing over again. T & E essentially is a process which identifies an unapproved school district. That doesn't mean when we have evidence that a district is not functioning well, for a variety of reasons, we shouldn't take action. I sent teams to the Trenton School System and tried to help them with some of their inadequacies or discrepancies, if you wish, and they failed to resolve those issues, and what I have done now is exactly what the T & E process wants us to do.

I have said, everything that I can see leads me to believe that your school system is not thorough and efficient, and it cannot be approved, therefore, I issued a show cause order for the Trenton Board to show cause why I should not appoint an overseer or take any other step that I felt necessary in order to insure the children of Trenton had a decent education. I issued the show cause order. Hearings have been held. They have just been completed. I am awaiting now the hearing officer's report to make a decision as to whether the evidence is such that an overseer needs to be appointed or something not as stringent in Trenton.

SENATOR GREENBERG: And Newark.

COMMISSIONER BURKE: In Newark I issued an Executive Order the first time. Essentially we took over for about six months the fiscal and business arrangements in the Newark School System. We instituted a number of changes, and recommended legislation which this Legislature passed which put an Auditor General accountable to me in the Newark School System. The Auditor General has the authority to command information and make information available but no authority to do other than that.

Since then I have by order given that Auditor General authority to pass on any line item transfer that is made in the Newark budget. Newark does not have a deficit. I got a report this morning. The budget will balance. The school system is much improved. I think that a close look on the part of anybody with sufficient interest at the Newark School System, you would note that it was a significantly improved school system than what it was three years ago.

SENATOR PARKER: Just one thing further. I know what the situation was with the Board, and many of them have talked to me, and I was instrumental in trying to bear it out as to what was going on and why they were reluctant to take a position. Many of them had personally conferred with me.

I also understand the PTA's position and since then our staff has received some objections from five boards, I believe. The NJEA has taken a stand one way or the other, as I understand it. Although I have talked with some of their representatives about it, and the ones I have talked to, quite frankly, have indicated that they think you should be reappointed. - although they have taken no position, and the School Board has taken no position. It concerns me, that, number one, they would not take a position. But what concerns me more is that after four years of turmoil that we have had, and a rather difficult time - incidentally, I don't believe the blame on T & E should be on your doorstep; it is the Legislature, really, that has made many of the decisions by which you are bound.

My concern is that all of these groups with which you are dealing daily have not stepped forward. I wonder if you would comment on that, and try to explain why, if you know.

COMMISSIONER BURKE: I don't know for sure. It is my understanding that with one exception neither of these organizations have as a matter of practice taken a stand on this. I think they have done so in part because they realize that education today increasingly requires a close working relationship which I have developed, I think, and that is one of the things I am proud of. There was a meeting this morning of the school superintendents and my staff which occurs every first Thursday in the month. I meet regularly with the heads of the NJEA and the School Boards and the School Administrators to discuss issues and to see

if we can't resolve them before they become unmanageable. I think it is because they took no position in the past, because I think they see the need to work closely together in the future. On the other hand, the other major groups in education have been before this Committee and have with no exception been supportive.

SENATOR PARKER: I know the NJEA, for instance, took a major role in Marburger's---

SENATOR MUSTO: That was the exception to the rule.

SENATOR PARKER: I wasn't aware of that. There is one other thing. A major criticism has been made, and I think maybe you ought to address it, because I missed you when you spoke before the Committee, and I apologize for that, I was in active trial. The major criticism is that you will make a decision and I believe several of the groups had itemized things that had been done, and when pressure came from the front office or from one of the power groups - which one now I can't recall - you then reversed your decision publicly. I wonder--- I forget what they were now. There were three or four of them. I don't want to go through them all. But, if you could address them generally, as to why that would be helpful. That seems to be a concern that has been through most of the public's comments about you - that a decision has been made and then pressure from one side or another was applied and then you recapitulated and made a different ruling.

COMMISSIONER BURKE: Well, I think that people who are thoroughly knowledgeable about decisions I have made, personnel decisions and otherwise, know that I don't crumble under pressure.

I think I know which issues you are referring to, because I have read about this in the press. With the exception of one, there was no change of position. Do I listen to other people before I make up my mind? Yes. Because, I will tell you, it is one thing to develop legislation, as you know, or rules and regulations. And, it is another to force it on someone that has to administer it. If you don't develop some consensus, you are not going to get the job done. My evaluation of my task is, will it work, can you get the job done? Do I change my mind? Yes, I do.

I think it was Bobby Kennedy who indicated, when there are new facts, a leader does change his mind. I outlined for you, and I won't go into it, because I know your time is short, the one issue where this has been raised, and that had to do with my position on tenure teacher evaluation.

SENATOR PARKER: I think there was something that had to do with Newark, also.

COMMISSIONER BURKE: I did not change my position on Newark. I did change my position on tenure teacher evaluation - not that there shouldn't be student progress in the regulations, but where it should be. By the way, the majority of the Board supported that position. And, I think that ours is the only State which evaluates tenured teachers under this new regulation with any reference to student progress, which we have in that regulation.

That was a majority opinion of the Board. It was a position that I drafted. I did change my mind in a sense when I first initiated or put forward a proposal, with some help from research from better schools, a research lab. I suggested one alternative, that a required criteria in the evaluation of the teacher would be student progress, that it measured student progress, how well the kids do.

The more I worked at this, and the more I listened to a lot of people, and the more I read, the more evident it was that this could not, given the technology we have today, be done fairly. We have team teaching. We have nurses that are certified, for example. We have people that teach part-time to compensatory ed. kids, and to Title One kids. How well those youngsters do in school is very hard to attribute to any one teacher fairly. Also, it is very hard to control such things as family life of children, discipline problems at home.

But, yet, in that Code is language that says that when the teacher has been evaluated against job description, or according to student progress, if the local board wants to, there is nothing to preclude the local board from incorporating the student progress in its criteria. But, it must, once the teacher is evaluated, when it sits down with that teacher and goes over the evaluation, take into consideration the progress the students have made in that district and discuss with the teacher what are the implications of good progress, lack of progress, in terms of the evaluation. That, to my knowledge, is unique. I did change, slightly, my position on that.

And, when I went before the Board to do that, it was suggested by some that it was a way to give the impression that I had chosen not to do that. I chose to say that I changed my mind.

SENATOR PARKER: Just one thing further and this has to do with the Legislature, I know. But, you are granting cap waivers, and I may or may not have accused you improperly and this will probably be a two-phase question. You made the announcement that school districts with a 65th percentile would not be granted a cap waiver because they were a wealthier district and should not get it. Before you answer it, let me get into my next question, and then you can answer them both.

My concern is that what is happening, or what will happen is that the school districts that are the wealthier districts and providing the enrichment programs and everything under T & E are now going to be brought down or will be brought down to mediocrity instead of bringing the others up. I think some of the poorer school districts show the deviation of their local funds into the system. That is taking place. How do you comport the first with the second in maintaining or trying to bring everybody up instead of bringing others down.

COMMISSIONER BURKE: I think the danger you raise is a real one. There is a danger of leveling down, and it is something that we direct our attention to, all of us. I have made a number of suggestions to the Legislature concerning changes in the caps that would in my view remediate that condition.

My examination of what is occurring, the gap between the high spending districts and low spending districts in the past couple of years, has revealed that the cap is not narrowing. In fact, there is some evidence that it is getting worse. The Robinson versus Cahill decision was based on narrowing that gap, and I took an oath - the same oath that you gentlemen took. Also, when the Legislature decided that they would not equalize educational spending above the 65th percentile, and also indicated in the powers given to me to not cap waivers that I would determine what was thorough and efficient because that is one of the elements that cap waivers could be given upon, I assumed that that power would enable me to conclude that if the Legislature would not equalize beyond the 65th percentile that districts were soon to be thorough and efficient if they are spending beyond the 65th percentile. That is the theoretical basis for that number.

If the low spending districts are not spending up to cap or are spending below cap and the high spending districts are spending at cap each year and asking for cap waivers, the gap is growing. I feel very strongly, and you will see some recommendations from me in the future, on two areas that need some work. One is the maintenance of effort requirement on low spending districts, and the other would be---

SENATOR PARKER: We can do that with a negative cap and put them together. Our staff is working on that.

COMMISSIONER BURKE: That's right. And the other would be taking into consideration declining enrollments. A number of districts, particularly again high spending districts, are able, despite the low cap, to increase rather significantly the per pupil expenditure because they are also the districts, with some exceptions, that have rapidly declining enrollments. So, although you have a cap of 5% or even a 4% cap, if you are losing 10% or 12% of the youngsters, your per pupil expenditure is still going up, so the gap is increasing there. So, those two elements, one on the bottom and one on the top, are going to necessitate close attention of myself and of the legislature.

SENATOR GREENBERG: Thank you very much, Commissioner. I think the Senators have now exhausted themselves and the rest of the world on this subject. Senator Sheil, do you have a motion?

SENATOR SHEIL: Yes, I feel that Commissioner Burke has done a fine job under difficult circumstances, and I think he is very, very worthy of another term, and I would like to make that motion.

SENATOR GREENBERG: There is a motion made by Senator Sheil for the renomination of Commissioner Burke for a second term be approved favorably by this Committee. Is there a second?

SENATOR PERSKIE: Seconded.

SENATOR GREENBERG: Seconded by Senator Perskie.

SENATOR CAFIERO: On the motion, Mr. Chairman.

SENATOR GREENBERG: On the motion.

SENATOR CAFIERO: Do we have a time schedule as to when the Senate as a whole may act on the confirmation?

SENATOR GREENBERG: The Senate is next scheduled to meet on April 23rd.

SENATOR RUSSO: You may pretty well rely on it being April 23rd.

SENATOR GREENBERG: Okay, on the motion, Senator Maressa.

SENATOR MARESSA: I just wanted to make one comment and get it off my chest. It has been insensating me all day long. It is my opinion that the action of the State Board of Education today is reprehensible. It amazes me. They refuse to indicate how they voted with regard to the Commissioner's reappointment. The Commissioner has no authority over the State Board. They don't have to fear for their jobs or anything like that. The Chairman of this Committee asked them to at least indicate by raising their hands, and instead they wanted to hide behind a vote that said eight voted for or whatever, and without declaring. As far as I know, this is not the way we teach our kids in our schools. We teach our kids to stand up and be counted. And refusing to stand up and be counted in any way, how they felt or who they were, in casting their secret ballot - I think that is a disgrace.

SENATOR GREENBERG: You can call the role.

MR. TUMULTY: Senator Greenberg.

SENATOR GREENBERG: Yes.

MR. TUMULTY: Senator Musto.

SENATOR MUSTO: Yes.

MR. TUMULTY: Senator Hamilton.

SENATOR HAMILTON: Yes.

MR. TUMULTY: Senator Maressa.

SENATOR MARESSA: Yes.

MR. TUMULTY: Senator Perskie.

SENATOR PERSKIE: Yes.

MR. TUMULTY: Senator Russo.

SENATOR RUSSO: Yes.

MR. TUMULTY: Senator Sheil.

SENATOR SHEIL: Yes.

MR. TUMULTY: Senator Cafiero.

SENATOR CAFIERO: Yes.

MR. TUMULTY: Senator Gagliano.

SENATOR GAGLIANO: Before voting, I just want to say a couple of things. I am not satisfied with the report from the Attorney General. I don't think it was complete by the Deputy Attorney General's own statement. By the way, the report that may have been sent to our office, I have not seen yet. I heard it was hand delivered, but I was here all day yesterday, and here again early this morning.

I think that we should wait until - with respect to the Worthington situation - the Federal authorities report. I think that from what I have seen it indicates to me that the people who are closest to the students at least those who testified - and I heard most of them and read the others - were not satisfied with Commissioner Burke's performance. I think that he has not been a leader in the sense that he could have and should have been. I think that the State Board of Education---

I can't agree with Senator Maressa, because I think that the State Board of Education said what they felt they could say. They wanted to offer more in caucus or in conference. We did not allow that. I would have liked to have heard that.

So, I think that my vote has to be in the negative. I feel, Commissioner, you have already enough votes to get through this Committee, but I vote no, and I do hope when and if you continue in your job that you will take all of these things into consideration, and you understand that I have no personal feelings either way about you. I just feel that the leadership has not been there. So, I vote no.

MR. TUMULTY: Senator Parker.

SENATOR PARKER: I am going to vote yes, but I am going to make a comment. First of all, I think Joe Maressa and the Chairman in all due deference, did a disservice to some degree today to the Commissioner by not meeting in camera, and I know that is an honest difference of opinion. We have done it in the past and I tried to recall the times when we have done that, and Judge Tomlin is one, if I recall, that we did do that which did not involve a criminal matter.

But, any way, the other thing---

SENATOR MARESSA: Excuse me, Barry. My objection was to their not voting. They didn't even vote.

SENATOR PARKER: All right, but I think everybody is entitled to their own opinion on that. I am afraid it may have some effect on my ultimate vote. I don't know. But, I have listened to the problems involving many of the school

districts and those items in which there was an allegation of vacillation and or change. And, I don't know that all of the ills that have been laid on the doorsteps of the Commissioner by many of our citizens who may not understand the process - it is very difficult for the legislators to understand - really should be borne by the Commissioner.

We have in the Legislature so strapped him with caps, which I supported, and various other regulations, lack of funding which was cut - and I don't know whether you recommended it or not, but I know that we cut to \$22 million and we cut the handicap aid, and various other things. But, the main concern I have, and I voted for T & E, and I voted for the Tanzman-Bateman, and I believe that we have to provide a thorough and efficient education for our children, I believe in the concept, and I believe in the commitment to move ahead to provide that.

And, I am extremely concerned at this critical time in which we have just gotten underway with T & E, just starting to try to meet the problem and get the administrative red tape out of the way, and the steam out of the boiler, as the Commissioner indicated, that it is not or may not be the time to change. I want to reserve my right to hear the full discussion on the floor. I think it should go to the floor.

But, I will vote today with those understandings.

MR. TUMULTY: Senator Vreeland.

SENATOR VREELAND: Well, I think explanations have been given here as to why people vote, particularly those in the negative, and I too have listened to these hearings. I have not been to all of them, but it seems to me that the very fact that you have eight state board members who are not in favor of reappointing the Commissioner, to me, that has a strong bearing in the way I feel.

I don't think that T & E has accomplished the purpose. I don't think that it is being administered the way it was intended. I didn't vote for it, of course, so I can't blame it all on the Commissioner. But, to make a long story short, from what I have heard and what I have seen, my vote has to be no.

SENATOR GREENBERG: While that completes the list, the Senator on my immediate right was under the same assumption that I am, that is, there will be a time and place for debate on this subject. So, he has leaned over and asked if he could explain his vote. I think, since all of his Republican colleagues have done so, it would be unfair to deny him that privilege. Before we announce the result, Senator Cafiero would like to say a few words.

SENATOR CAFIERO: I think there were four or five or six days of exhaustive hearings. I think everybody had the opportunity to state their case. Before I vote, I did ask you when confirmation date was. You told me it was eighteen days away. If there is anything out there lurking in the wilderness, if someone has something to say, they have eighteen days in which to do so. In all fairness to the Commissioner, Shakespeare said, "If 'twere to be done, the best that it be done quickly." I don't think he should have to agonize any longer. So, my vote is in the affirmative because I think the full Senate should pass on it. There are eighteen days left for any mysterious guests who want to appear. That is the reason for my voting in the affirmative.

SENATOR GREENBERG: Count, please.

MR. TUMULTY: Nine to two.

SENATOR GREENBERG: Congratulations, and we thank you, ladies and gentlemen.

(Hearing concluded)



**common
cause** NEW
JERSEY

28 WEST STATE STREET, RM. 910, TRENTON, NEW JERSEY 08608



609-398-1150

April 5, 1979

To: Senate Judiciary Committee

From: Lucy Mackenzie
Executive Director

It has been said that the Judiciary Committee will today approve the nomination of Commissioner Burke, and that an attempt will be made to have the nomination confirmed by the full Senate. New Jersey Common Cause hopes that this is not the case. Such an action would do great harm to the reputations of Dr. Burke, the Judiciary Committee, and the Senate.

Attorney General Degnan has assured us that his investigation into the Worthington matter "will be concluded only after a thorough evaluation of the facts presented." The Judiciary Committee should also be expected to make this evaluation. A whirlwind report and instant decision will do nothing to dispel the cloud which hangs over Dr. Burke's nomination. It can only intensify suspicions about this matter.

Why is such an action even being considered? Why is the Judiciary Committee willing to be called, once again, a rubber stamp for the Governor? Why is the Senate willing to injure itself in the eyes of the public?

The Secretary of State is legitimately concerned with the apathy of voters. To witness a major cause of that indifference, he has only to walk down the hall to the Senate chamber.

We hope that these events will not occur. If they do occur, or if there is an attempt to bring them about -- why?

PASSAIC PUBLIC SCHOOLS
CONTINUING EDUCATION DIVISION
ADMINISTRATION BUILDING
220 PASSAIC STREET
PASSAIC, NEW JERSEY 07055

OFFICE OF THE DIRECTOR

TELEPHONE 777 5300
AREA CODE 201

April 2, 1979

Senator Martin Greenberg
State House - Room 219
Trenton, New Jersey 08625

Dear Sir:

During the last few weeks, I have followed with great interest the hearings on the reappointment of Commissioner of Education Burke.

I have found some of the commentaries expressed by those who made an appearance at the hearings most enlightening. In particular, the statements by Dr. Gustavo Mellander, President Passaic County Community College, Dean Kenneth Wright, Passaic County Community College and William Pascrell, Member of the Board of Trustees Passaic County Community College.

As a professional educator and as a member of the Passaic County Community College Board of Trustees, I would like to state that these gentlemen who have so freely given of their opinions do not in any way express the opinions of the Board of Trustees of this college. While they are guaranteed under our Constitution the Right of Freedom of Speech, I feel they neither have the experience in public school education nor the expertise with regards to New Jersey School Law to pass judgment on the responsibilities and duties of the Commissioner of Education.

I am disturbed by the unprofessional statements which appeared in the press. I believe there are many problems associated with this college that need to be taken care of before they begin to hammer at the doors of public education with their viperous commentaries.

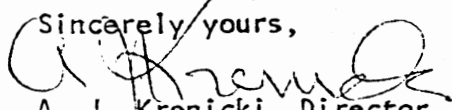
I too have at times expressed concern with the management of public education in this State and have served on many committees both at the local and State level and know the difficult task in changing the machinery of education, as it were, especially the recent decision handed down by the Supreme Court- mandating T & E.

I believe Commissioner Burke is a responsible and highly dedicated public official worthy of his position. As the Late President Kennedy said, "Things just don't happen, they are made to happen." Perhaps the hearings have served some purpose and if they give the Commissioner the direction and responsibilities to carry out the mandate of the State Board of Education then maybe we can see things happen. We cannot use 19th Century methods in the 20th Century and expect the children of New Jersey to function in the 21st Century.

Change is not easy and the comments made by my colleagues do not help.

2X

AJK:ac

Sincerely yours,

A. J. Krenicki, Director
Career and Continuing Education

DR. BRYANT GEORGE
52 MERRISON STREET
TEANECK NEW JERSEY 07666

March 26, 1979

Senator Martin L. Greenberg
110 Evergreen Place
East Orange, New Jersey 07108

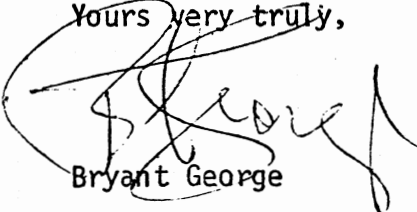
Dear Senator Greenberg:

Subject: Fred Burke

I was a member of the N. J. State Board of Education for about four years -- while Fred Burke was Commissioner. I am Black, and when I came I viewed Fred with some question because his background in US education was in a state with few Blacks. He really had to prove himself to me on the subject of race (he did). Also I believe in statewide minimum standards for graduation from high school and he had to defend his position on this subject to me.

My experience with this man is that he is a man of integrity, a first class educator soundly based in good theory, yet he knows what will and will not work. He gets along with the most difficult of people (of which I was one) and yet he is able to administer a T&E system that is moving our state forward. I believe he understands and deals fairly with issues concerning the urban districts and minorities and he certainly is able to deal well with the Washington elites from which much of our money comes. I hope that your committee will support him fully and that we will continue to have the services of this really quite exceptional man.

Yours very truly,



Bryant George

6 Abingdon Street
Morris-Plains, N.J. 07950

March 16, 1979

Hon. John R. Dorsey
N.J. State Office Bldg.
Trenton, N.J. 08625

Dear Sir:

Concerning the confirmation of one Fred Burke, as N.J. State Educational commissioner. I am not sorry to say that this man (I cannot call him - the acme of perfection in education) has been in and inefficient as to what an educator should be.

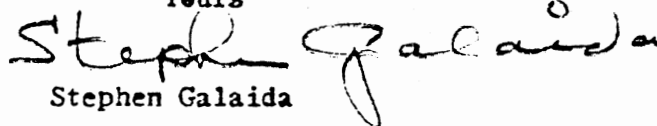
When one looks at what has happened to the City of Newark Educational System, alone, one wonders by what stretch of the imagination caused the Governor to re-appoint Mr Burke, to another term as Commissioner.

Up until two years ago, I lived in the City of Newark, and my children received an excellent education. My three children all went to the LINCOLN Grade School, Vailsburg Jr. High School, and West Side High.

But you sir, if have the time, I would like to have you just take a trip and visit these three (3) schools. Considering the condition of these schools at the time my children were students, and when one visits and looks at the same schools as of to-day, their condition turns one's stomach. The Lincoln school, was a picture, with fencing about the same. But to day the fencing has been destroyed, graffiti all over, for shame which is also a (SIN).

I had to leave Newark, in order that my grand children, could get a decent education, the only place in Newark a child could have a decent education was Sacred Heart where my grand children went, or any other Catholic School. This because the Newark Public Schools were a sham. This is just like Mr. Burke. Does any one dare tell me that the STATE of New Jersey, with all of its educational facilities, has been unable to produce a qualified man or woman to take over this position. I can't for the life of me understand why the Governor of New Jersey, had to "HIB" to Rhode Island, for an educational commissioner. This is a disgrace to the intelligent people of our State. Don't OK Burke.

Yours


Stephen Galaida

[illegible]

