

PUBLIC HEARING

before

ASSEMBLY EDUCATION COMMITTEE

on

ASSEMBLY BILL NO. 929  
(Requiring observation and evaluation of non-  
tenure teaching staff members.)

and

ASSEMBLY BILL NO. 960  
(Prescribing nontenure teachers' rights.)

Held:  
March 11, 1974  
Senate Chamber  
State House  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Albert Burstein (Chairman)  
Assemblyman William H. Hicks  
Assemblyman William P. Fitzpatrick  
Assemblyman John H. Froude  
Assemblyman Harold Martin  
Assemblyman Daniel F. Newman  
Assemblyman Charles D. Worthington  
Assemblyman John H. Ewing

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# ASSEMBLY, No. 929

## STATE OF NEW JERSEY

INTRODUCED JANUARY 24, 1974

By Assemblymen FLORIO, LITTELL and McMANIMON

Referred to Committee on Education

AN ACT to amend and supplement "An act concerning education and providing for continued employment of nontenure teaching staff members and supplementing Title 18A of the New Jersey Statutes," approved February 10, 1972 (P. L. 1971, c. 436).

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. Every board of education in this State shall cause each non-  
2 tenure teaching staff member employed by it to be observed and  
3 evaluated at least four times in each school year, to be followed by  
4 a conference between that teaching staff member and his or her  
5 superior or superiors for the purpose of identifying any deficiencies,  
6 extending assistance for their correction and improving instruction.

1 2. Section 2 of P. L. 1971, c. 436 (C. 18A:27-11) is amended to  
2 read as follows:

3 2. Should any board of education fail to give to any nontenure  
4 teaching staff member *the evaluations set forth in section 1 of this*  
5 *amendatory and supplementary act* and either an offer of contract  
6 for employment for the next succeeding year or a notice that such  
7 employment will not be offered, all within the time and in the  
8 manner provided by this act, then said board of education shall be  
9 deemed to have offered to that teaching staff member continued  
10 employment for the next succeeding school year upon the same  
11 terms and conditions but with such increases in salary as may be  
12 required by law or policies of the board of education.

1 3. This act shall take effect September 1, 1974.





ASSEMBLY, No. 960

STATE OF NEW JERSEY

INTRODUCED JANUARY 31, 1974

By Assemblymen FLORIO and LITTELL

Referred to Committee on Education

AN ACT concerning education and amending and supplementing  
"An act concerning education and providing for the continued  
employment of nontenure teaching staff members and supple-  
menting Title 18A of the New Jersey Statute," approved Febru-  
ary 10, 1972 (P. L. 1971, c. 436).

1 BE IT ENACTED by the Senate and General Assembly of the State  
2 of New Jersey:

1 1. Section 2 of P. L. 1971, c. 436 (C. 18A:27-11) is amended to  
2 read as follows:

3 2. Should any board of education fail to give to any nontenure  
4 teaching staff member either an offer of contract for employment  
5 for the next succeeding year or a notice that such employment will  
6 not be offered, all within the time and in the manner provided by  
7 this act, then said board of education shall be deemed to have  
8 offered to that teaching staff member continued employment for  
9 the next succeeding school year upon the same terms and conditions  
10 but with such increases in salary *and other benefits* as may be re-  
11 quired by law **[or]**, policies of the board of education *or agree-*  
12 *ments between the board of education and the recognized bar-*  
13 *gaining representative of the unit of employees including the*  
14 *teaching staff member.*

1 2. Any teaching staff member who receives a notice that such  
2 employment will not be offered may within 5 days thereafter in  
3 writing request a statement of all of the reasons for such non-  
4 employment which shall be given to the teaching staff member in  
5 writing within 5 days after the receipt of such request.

1 3. Any teaching staff member who has received such notice of  
2 nonemployment and statement of reasons shall be entitled to a  
3 hearing before the board of education provided a written request

EXPLANATION—Matter enclosed in bold-faced brackets **[thus]** in the above bill  
is not enacted and is intended to be omitted in the law.

4 therefore is received in the office of the secretary of the board of  
5 education within 5 days after receipt by the teaching staff member  
6 of the statement of reasons.

1 4. The hearing provided for in section 3 of this act shall be  
2 conducted by the board of education in accordance with rules of  
3 procedures established by the State Board of Education and a  
4 determination as to the employment or nonemployment of said  
5 teaching staff member for the next succeeding year shall be made  
6 and a copy thereof served upon the teaching staff member on or  
7 before May 31 of each year.

1 5. Should the board determine not to offer continued employment  
2 following such hearing a teaching staff member may proceed to  
3 binding arbitration of the dispute if provided for by policies of  
4 the board of education or by written agreement between the board  
5 of education and the majority representative of the unit of em-  
6 ployees including the teaching staff member, in which event the  
7 arbitration award may include a requirement that the board of  
8 education reemploy the teaching staff member. If such procedures  
9 are not so provided then the teaching staff member may appeal  
10 to the Commissioner of Education within 10 days after receipt of  
11 a copy of the determination and the commissioner shall then  
12 determine whether or not the determination of the board was  
13 supported by substantial evidence or violated any board policies  
14 or rights of the teaching staff member and shall have the authority  
15 to require the board of education to reemploy the teaching staff  
16 member.

1 6. Any nontenure teaching staff member who receives a notice  
2 that his employment will be terminated pursuant to a provision  
3 contained in his contract of employment shall be entitled to a state-  
4 ment of reasons, hearing, arbitration and appeal to the Commis-  
5 sioner of Education as provided in this act provided that the de-  
6 termination of the board of education following such hearing shall  
7 be made and served before the expiration of the notice period  
8 provided for in said contract. Should the board of education fail  
9 to comply therewith the said notice of termination shall be invalid  
10 and of no force and effect and the employment of the teaching staff  
11 member continued as provided for in section 2 of P. L. 1972, c. 436  
12 (C. 18A:27-11).

1 7. This act shall take effect immediately.

ASSEMBLYMAN ALBERT BURSTEIN (Chairman): Ladies and gentlemen, I declare the hearing open, with regard to Assembly Bills 929 and 960, before the Assembly Education Committee.

My name is Albert Burstein and I am Chairman of the Committee.

I shall ask those whose names have been submitted to offer testimony, in an order that I have here in front of me, but if any of you wish to offer testimony, whose names have not been submitted, I would ask that you please submit your names to our Staff Aide, Paul Muller, who is directly behind me.

I would like also, at this point, to introduce the members who are sitting with me at the moment.

On my left, your right, Charles Worthington; on my immediate right, Harold Martin; Daniel Newman to his right; and, behind me, William Hicks.

I would like to first call upon Assemblyman James Florio, the prime Sponsor of the Bills.

J A M E S J. F L O R I O: Thank you, Mr. Chairman and members of the Committee.

I appreciate the opportunity to come and speak before you with regard to the merits of these two bills. I can assure you that my remarks are going to be very brief because in many respects I think the bills are extremely clear in terms of the language as well as the purpose to be carried out. And I regard the purpose to be carried out as one of such obvious need in the State of New Jersey that there is not too much to be said over and above the mere language of the bill.

The first bill, A-960 - and, if you don't mind, I will refer to both bills throughout the course of my brief presentation - has been referred to as

Nontenure Teachers Bill of Rights legislation. And, quite clearly, the only intent of the bill is to provide that a nontenured teacher be given the courtesy, it seems to me, of a statement as to the reasons why a board desires not to renew his contract in the event that should be the board's desire. And in the event that the reasons, as presented to the teacher, did not satisfy him and he desires the opportunity to present evidence to refute the allegations contained in the statement of reasons, he is then given an opportunity for a hearing, a basic principle, it seems to me, of due process, - an opportunity to refute those arguments and an opportunity to appeal from the determination should the board, after the hearing, still feel that his performance should not merit the offer of another contract.

I regard this bill and the next bill as really the next step in the development of the law in New Jersey with regard to public employees. As you know, Chapter 303 of the Laws of 1968 was a rather radical turn of events in New Jersey in that it severed our previous commitment to the common law precedent of master-servant relationship between public employees and public employers. We at that point said that the employee was a partner in the relationship between the public employee and the public employer and that he should have some ability to contribute to the fixing of terms and conditions of employment and that, in fact, from that point forward that there was to be this new day. I think the State is better off because of that turn of events.

Since that time, there have been a number of court cases which have determined that in fact teachers have rights. The previous determination that had been

established by older court cases that there was no right on behalf of a nontenured teacher to some semblance of due process is in the process of being overturned in the courts. This bill is one which is going to codify the practice that is existing in a number of municipalities, that is to say, in a number of boards of education, that teachers do have rights.

I think we have advanced in this Nation to the point where we appreciate there is no absolute right on the part of anyone in the public to undertake actions, that they have to be accountable for their actions, that the courts have established the standard that public action by any public official cannot be arbitrary and capricious.

In a sense, this may be regarded as a nontenured teachers' bill of rights and yet, at the same time, we are going to be assisting the school boards as well. They may not appreciate the fact, but the fact is that they are being assisted by providing them with a mandatory standard that they have to live up to; that if they are going to attempt to dispose of a teacher who is not fit, they are going to have to become involved in seeking reasons, good reasons, reasons that are not arbitrary and capricious. And this is going to put the boards on their toes.

And, in a sense, the second bill that we're talking about, A-929, the evaluation bill, I think has to be considered as part and parcel of this package because, in essence, by providing and requiring - the school boards are required to evaluate nontenure teachers four times a year - we are giving the school boards the tools that they need for weeding out - I can't think of a nicer way of putting it but weeding out those teachers who are not qualified, those



teachers who are not going to perform the way that they should be performing. So though this may, at first blush, appear to be a teachers' bill - and it is to the extent that it is going to provide due process to teachers - both of these bills are also bills that are designed to upgrade the educational process and that can provide to the school boards the tools that they need to upgrade the process and to make it as concrete as possible so that in the event that there is a teacher who does not perform in the way that he should be performing that the school board, under the old procedure which requires no hearing, which requires no evaluation - by statute, anyway - can then have difficulty in not renewing the teacher's position by contract.

So what I am saying is that though this may appear to be a teachers' bill, it is a bill that's going to work in the interest of the education process. The evaluation procedure which is called for is not only a method of hiring a teacher or firing a teacher, it is also designed to be clearly a teaching process device because the whole system or the whole device of evaluation is also a device to assist a teacher in upgrading his teaching skills.

The bill provides for four evaluations per year with the opportunity for conferences and consultations so that a new teacher can be informed by his superior as to suggestions that could be made for the improvement of his procedures. And in that respect, it seems to me, inevitably the teaching process in our State is going to be the victor.

The four evaluations which are called for are the result, I suspect, of the recommendations of Governor Cahill. He previously vetoed this bill on

the basis of the fact that he felt that two evaluations were not sufficient. I concur in that reasoning. I think that four evaluations are a minimum.

And might I say that many enlightened school boards already are in the process of evaluating teachers. Many contracts that exist now between school boards and teacher associations already have in them procedures for evaluation. I would just suggest that what we're doing is extending that enlightened policy and making it mandatory on all school boards that there be evaluations and that, accordingly, a teacher be given the benefit of those evaluations. And, carrying it back to the first bill, that those evaluations be the basis of the board's decision as to whether a teacher will be rehired or not rehired.

I think to continue further would be redundant so I think, at this point, I would merely like to suggest that these bills I perceive to be in the public interest, in the interest of those who are concerned about education, and I would now like to answer any questions you might have.

ASSEMBLYMAN BURSTEIN: Thank you, Assemblyman Florio. I would like to start the questioning myself, please.

I am referring first to A-929. Do you think that there would be any value, or is there anything to be said for having observations four times a year but evaluations at some lesser frequency? In other words, there is a definite distinction in the two elements that are incorporated in paragraph 1 of that bill and I am wondering whether or not that might be given some consideration.

ASSEMBLYMAN FLORIO: Mr. Burstein, respectfully, no. I think that we are going to have to formalize

the procedure. The observation is a much more informal procedure. I think the evaluation is something that's necessary because, in all candor, I'm just concerned that school boards may desire to slough off their responsibility and to have the evaluation as part and parcel of the operation is something which I regard as necessary.

Anticipating another objection, the point that if the board does not comply with the evaluation procedure a teacher would automatically be granted a new contract, though there may be critics who would say that this is too arbitrary, this in fact is blanketing in someone because of the school board's failure to comply with the terms of the law, all I can say is that this law, if it's to be enacted as a law, in order to be meaningful is going to have to have teeth. Those are the teeth as I see them. There would be no possibility of an inadequate teacher being granted a contract as long as the law is lived up to. If in fact the school boards say that they cannot afford, they have not the personnel or the time to comply with this law, I can say that certainly someone has a perverted sense of priority. If in fact this whole procedure, which goes to the whole quality of education, is put on a lesser scale of importance than something else - the whole rationale, the whole justification for the educational system is to have a high quality and a high caliber of education. This bill addressed itself to that point, first and foremost, and there can be no higher priority in terms of school board time, administrative costs and administrative effort.

ASSEMBLYMAN BURSTEIN: My follow-up question to you would be with regard to again focusing on those two words "observation" and "evaluation". I would take

it that implicit in the evaluation would be some kind of writing and implicit also in the observation would be some kind of time requirement. You don't certainly contemplate, and your testimony indicated some kind of cursory look into a classroom by a supervisor or administrator on the performance of a teacher. There is supposed to be some element of time involved here. And I'm just wondering if perhaps the bill ought not be added to or made explicit in both those regards.

ASSEMBLYMAN FLORIO: Well, if you're concerned and if the Committee is concerned about an administrator walking through a classroom looking at someone for a two-minute period and regarding that as an observation - in a sense what I'm saying, addressing myself to your first question, is that the way that we're going to avoid that difficulty is by requiring an evaluation which connotes a written observation.

Now I am talking about professional pride on the part of administrators as well as teachers, that if an administrator is going to be required to evaluate, that is reduce to writing, the results of his observations, I don't see it occurring that we're going to have an administrator or a supervisor, immediate supervisor, sitting down and writing an evaluation on the basis of a two-minute observation.

I am convinced, and I am attributing good faith to all parties, that all people who are involved in this field are interested in education. So we are not going to regard this as a requirement that has to be complied with, we're going to regard it, hopefully, as a procedure which is designed to increase the teacher's ability to teach more effectively. So I would not foresee or attribute to any administrator or supervisor the bad faith which would be inherent in the thought

that he is merely going to do this to get it over with.

If in fact that turns out to be a practice, well certainly it may very well be that we will have to write into the law, at a later point in time, that there be a 30 minute evaluation, a 30 minute observation. I don't think we have to get to that point at this stage of development.

ASSEMBLYMAN BURSTEIN: Well, in so far as a written evaluation is concerned, would you see any objection to inserting a requirement that the evaluation be in writing? It's silent at the moment and I am just pressing the point as to the writing aspect of it.

ASSEMBLYMAN FLORIO: I would have no difficulties with that amendment. It was my intent, and I think it's the intent of this bill, that there be a written evaluation.

ASSEMBLYMAN BURSTEIN: The final thing that I would ask, Assemblyman, is with regard to a comparison of the two measures, 929 and 960, both of which deal with an amendment to N.J.S.A. 18A:27-11 but deal with that same section in different ways. 929 has a very brief amendment by the inclusion of amendatory language that would reflect a mandatory four-time evaluation, whereas in 960 you have a somewhat more elaborate setup and I am wondering whether or not at least certain parts of what you have in A-960, forgetting for the moment or if one would leave aside for the moment the matter of hearings incorporated in A-960, -- whether or not some of the other language as to benefits should be incorporated in A-929.

ASSEMBLYMAN FLORIO: I suspect - you know, of course, there's no guarantee that the Legislature will pass both of these bills. We are hopeful that in their enlightened self-wisdom they will pass both of these



bills. But I am of the opinion that the way in which this was handled is a desirable one because of the process of the amendment procedure taking place in either or both houses, and to incorporate both bills into one bill and to incur the possible wrath of those critics of a portion of either bill would not legislatively be desirable. If in fact there is a desire to amend 960 so as to incorporate provisions of 929 into it, I would have no difficulty with that because, obviously, I am in favor of the provisions of both bills.

But I think, in terms of a tactical approach to getting the bills through, both bills in the fashion in which they've been presented are probably easier to sell, rather than to attempt to muddy up the waters by dealing with two definite concepts. Inter-related though they be, there are two definite concepts, it seems to me.

ASSEMBLYMAN BURSTEIN: Thank you.

Assemblyman Hicks, any questions?

ASSEMBLYMAN HICKS: No, it is going to be a long day.

ASSEMBLYMAN BURSTEIN: Thank you for your consideration, Assemblyman.

Assemblyman Worthington?

ASSEMBLYMAN WORTHINGTON: Assemblyman Florio, it has been said that part of the problem with a written evaluation is the fact that school boards might then leave themselves open for further litigation on the part of nontenure teachers. Do you see this as being any particular kind of problem?

ASSEMBLYMAN FLORIO: May I ask in what respect? Are you talking about slander or libel?

ASSEMBLYMAN WORTHINGTON: No. Because in the

matter of due process, extending the process to them, many boards of education, I think, feel - many principals and superintendents - that they don't have a quarrel with telling someone particularly why they weren't rehired, but to put that in writing and have it stand up under attack of litigation many of them feel they would be unwilling to do.

ASSEMBLYMAN FLORIO: Well, in the sense of just recounting the proposition, you've almost answered it. The test that the courts or an administrator or, rather, an arbitrator would utilize is in a sense to the benefit of the school board. The school board is given the presumption, as is any agency, that they are making a rational, non-arbitrary decision. All that the teacher would be interested in would be to see the reasons. And, on appeal, the courts would sustain the school board's decision as long as they have some rational non-arbitrary basis. So that if in fact a school board is so reluctant to reveal the reasons for their action they are not willing to commit them to writing, that leads me to believe that maybe the reasons are arbitrary, maybe their reasons are capricious and, accordingly, in refusing to put something in writing you almost state that you haven't any confidence in the merits of your determination.

So I do not feel that that's an adequate reason for anyone to oppose the written evaluation. And I really find it very difficult to accept that as a legitimate concern.

ASSEMBLYMAN WORTHINGTON: Some states, I understand, have a list of reasons that would be acceptable as to why teachers are not rehired. Are you interested in getting into anything like that?

ASSEMBLYMAN FLORIO: In terms of this legislation?

ASSEMBLYMAN WORTHINGTON: Yes.

ASSEMBLYMAN FLORIO: No, I don't think that's necessary. I think the school board should have discretion. I don't think they should be required to adhere to a checklist of good reasons or bad reasons. There may very well be something that they feel is appropriate and proper for not renewing a contract and they should be given the discretion to submit that and to offer it to a court ultimately, if the appeal process works to that level or whatever the appeal process is going to be, depending upon the contract rights. But, no, I do not think the boards should be limited by the Legislature. The board members are elected. They are elected by their constituents. They are answerable to those individuals and I think they are going to have to have the discretion to make a determination.

ASSEMBLYMAN WORTHINGTON: Relative to A-960, I think that many school districts today provide at least for four, and frequently more observations and evaluations than four per year for nontenure teachers.

So what we're talking about, we're talking about promulgating legislation for what many school districts in the State are now carrying out, what you would mandate. But some boards have complained, especially very small boards, - and to some extent very large boards of education - that this would produce a financial hardship. I can visualize a school district that has a teaching principal, and in this kind of context it might be difficult for that particular school board to follow through on a mandated four evaluations a year. Is there anything magic about the number 4 or is this in response to the legislation that was vetoed by the Governor?

ASSEMBLYMAN FLORIO: Well, obviously there is

Nothing magic about the number 4. I think what we're talking about is quality evaluations over the period of time. I think 4 is the minimum. I concur with Governor Cahill in the feeling that 2 is not sufficient.

With regard to the point that the administrative costs for school boards may be burdensome - again repeating my initial response, I can think of nothing that is more important than assuring quality education in the classroom, and quality education involves quality teaching. And in order to assist a teacher in improving himself, in order to dispose of a teacher who is not capable, I think we can talk about no more important consideration. And I would ask anyone to submit to me something that's more important than determining whether a teacher is good or not good, or assisting a teacher. I cannot see anything that's more important. This is the highest priority.

ASSEMBLYMAN WORTHINGTON: Thank you.

ASSEMBLYMAN HICKS: Mr. Chairman?

ASSEMBLYMAN BURSTEIN: Yes, sir. Assemblyman Hicks.

ASSEMBLYMAN HICKS: Mr. Florio, if this bill is passed, what would be the difference between a tenure teacher and a nontenure teacher?

ASSEMBLYMAN FLORIO: What will the difference be between the tenure teacher and a nontenure teacher?

ASSEMBLYMAN HICKS: Yes.

ASSEMBLYMAN FLORIO: Well, in essence, it's a very profound point that you raise. In many respects there won't be too much difference with regard to the question of dismissal. What we're attempting to do is overcome that distinction. We're saying that a person is entitled to due process, in fact the hearing that is afforded to a tenure teacher, if an attempt is made

to have him removed, should be afforded to a nontenure teacher as well.

So in essence, I suppose with regard to hearings for dismissal there would be no difference. I think that's a desirable change.

ASSEMBLYMAN HICKS: Thank you.

ASSEMBLYMAN BURSTEIN: Assemblyman Martin?

ASSEMBLYMAN MARTIN: Assemblyman Florio, isn't it conceivable that you're building into this process of evaluation a rigidity which would remove from the school board a certain area of flexibility and ability as an employer to make value judgments which are pretty difficult to reduce to a formula, to a paper type of report which could in effect be injurious to a teacher's future livelihood?

ASSEMBLYMAN FLORIO: Mr. Assemblyman, words are funny things, and what you call flexibility, other people call arbitrariness. I suppose what we're saying is that there should be some minimum standards that everyone is required to abide by. Those standards should be set forth so that everyone knows what the rules of the game are. And I don't think that what we're saying and what we're specifying in this bill is something that's going to preclude the board from acting in the best interest of the children. As a matter of fact I'm saying, and I think the board should appreciate, that we're assisting them and, in a sense, I suppose forcing them to upgrade their standards. We're saying that if you're going to get rid of a teacher, you don't want to renew the contract for a teacher, have good reasons. I think the purpose of this bill is to ensure that the board knows what it's doing, that if they're not going to renew someone's contract that they make sure that they



do it for good reasons. And, conversely, I think this is something that's very important, we all have an interest in not having unqualified teachers in the system. And, therefore, without an evaluation process, because someone is quiet and, you know, these are the facts of life, if a teacher doesn't cause a commotion and there's no evaluation process, he can get blanketed in at the end because he hasn't. One day, ten years after he has the job we discover that he's incompetent. Well, this is going to preclude that because the board is going to be required to take a look at their teachers, they're going to be required to evaluate the teacher. And after they make these evaluations they are going to be in a position and have the responsibility to inform the teacher that he's not satisfying their needs and, therefore, his contract is not going to be renewed.

This has two sides and I think the board is going to be stronger for it, though they may not appreciate it.

ASSEMBLYMAN MARTIN: But isn't this something that would ordinarily come about as a result of the public's pressures, the public's awareness of what the performance of their local board is? Isn't that true? Isn't the board supposed to be responsive to the desires of its constituency and see that the best teachers are retained in the public schools? I am aware that this doesn't always happen but it would seem to me that by removing that flexibility, that ability of a board to carry out its function, perhaps you're putting a strait-jacket on the board, and interfering or interposing the State between the local board and its constituency, the locality, the community, and the teachers.

ASSEMBLYMAN FLORIO: Mr. Assemblyman, people have accused me of being naive on occasion with regard to the operation of the school board, with regard to the

operation of politics. I now feel like an old pro.

ASSEMBLYMAN MARTIN: Thank you for the compliment.

ASSEMBLYMAN FLORIO: Mr. Assemblyman, no. I think the answer is that we're not putting a board in a straitjacket, we're assisting the boards. The boards that I know meet once a month. We're talking essentially about the administrators; we're talking about the superior teachers making the decisions with the board being the ultimate reviewing board anyway, at the local level anyway. We are saying this is going to enable them to have the information to make the decision, but all too frequently a decision is not made and it should be made.

ASSEMBLYMAN MARTIN: One further question. In the event that the bill passes and the four evaluations are put into practice, if you find that 4 are insufficient what number then would you go to? five? six? where do we stop?

ASSEMBLYMAN FLORIO: Well, that's the argument, and I am not attributing this type of motivation to you, but that's the type of argument that's put forth by those who don't want to see anything happen. It's necessary that we start somewhere. It may very well be the converse; 4 may be found to be too many. The Legislature, in its wisdom, may make a legislative decision next year that 2 are sufficient, and we can change it down. I haven't got the answer as to where we start or where we stop. I think the general policies encompassed in these bills are good policies and I think in fact 4 is a reasonable number. I said that the Governor, in a very lengthy veto message, suggested that 2 was insufficient and, in the spirit of bipartisanship, I will be happy to take the Governor's suggestion with regard to this bill and we will see how it works out. We don't write laws in stone here. We try to do our best. I am of the opinion that these

bills at this time are the best that we can do.

ASSEMBLYMAN MARTIN: Thank you.

ASSEMBLYMAN BURSTEIN: Assemblyman Newman?

ASSEMBLYMAN NEWMAN: Assemblyman, while I take issue with several things which you have said, I'll just address myself to one issue because we don't have a lot of time to talk.

Addressing ourselves to the evaluation of teachers - I don't know that you have ever physically had the opportunity to review one or look at one. I first submit to you that they are all different from one school district to another, from one administrator to another within the same school district. And I think that we ought to be thinking, when we are talking about the evaluation process in general, about addressing ourselves to what is an evaluation. So far everyone who has spoken has mentioned the word and I don't know that anyone of us knows what a proper evaluation should be. Maybe in these hearings that may be answered.

But, additionally, I just want to pose this question to you. As Assemblyman Martin pointed out, I think some time ago when the tenure laws were enacted originally the Legislature in its wisdom, that you speak of, obviously must have had a reason for providing that there be nontenure teachers, and I would be interested in knowing exactly what that reason was to see how far it has progressed today.

It would seem to me, and I would just pose this as a question to you, as you point out several times, all of us should be interested in providing the best education possible and the best staff members possible for the children of any school district - it would seem to me, with the market being what it is today-- and that's why we have legislation here, to adjust education

to today - and it's not our fault that the market is the way it is, but, nevertheless, it is -- should not the board of education in the interest of no standards statewide, or even locally presently, to retain a nontenure teacher other than what your bill would provide - incapacity, inefficiency or incompetency of a staff member -- as Assemblyman Hicks pointed out, it would give them exactly the same protections that a tenure teacher would have. That's what we really ought to say because that's in effect what we're doing.

Do you think the board of education, any board of education, should take its first and second year teachers who may be cutting the average acceptance requirements of that board, or even bordering on the area of mediocrity and apply their applications against those applications that the board may be considering? What I really mean is, if you have a young staff and you have ten or twelve nontenure teachers in your district and you're sitting on 1500 applications for no jobs available, and you have two or three applicants in that pile of applications with five, ten, fifteen, twenty years of experience or whatever, and you wish to improve your staff by incorporating one of these applicants in your staff and the only way you could do it would be to deny an average or mediocre teacher reemployment and add this member to your staff, thereby hoping to improve your staff, don't you think that's a sensible approach? And my point is that this bill would prohibit such freedom on the part of the employing agency.

ASSEMBLYMAN FLORIO: That breaks the record for a question.

ASSEMBLYMAN NEWMAN: I have three of them that I've noted.

ASSEMBLYMAN FLORIO: Try to give them one at a time.

ASSEMBLYMAN NEWMAN: I will.

ASSEMBLYMAN FLORIO: With regard to your first suggestion, and I think it was a suggestion, that we don't really have written into this law what constitutes a sufficient evaluation, now that puts me on the horns of a dilemma because Assemblyman Martin was just concerned about us straitjacketing school boards by talking about mandating 4 evaluations.

To follow your thought to its conclusion, we're going to put them in more of a straitjacket than Mr. Martin is concerned about because I suspect what you're talking about is that we should be writing in here what constitutes an evaluation to have uniformity. That may be an ultimate thing that may have to be done by the Legislature at another time. But as I indicated in response to your other question, I am willing to attribute good faith to school boards that they will derive a sense of uniformity throughout the State as to what constitutes a minimum evaluation. If that proves not to be the case, we'll come back for more legislation.

The second point you raised was you asked, I think, implicitly wasn't there some legislative justification for making a distinction between nontenure teachers and tenure teachers with regard to how you go about providing them with a hearing and so on. I would suggest yes, there probably was at the time that this law was enacted. Again, as I responded previously, the law is changing, the philosophy of public employment is changing; that there is no one in government that should have absolute rights to do anything because if you look at the cases, the old cases, on these matters



you find all sorts of language that the public employer has the absolute right to do anything he wants to with regard to public employees. Now we've changed that. They can no longer dispose of someone because you don't like the color of their skin. We have cases that say you can no longer dispose of someone because you don't like the fact that he's involved in union organizations or collective bargaining. I'm saying this is just the next step, that we shouldn't have the point that anyone can do anything that they want in our form of government.

The last point you raised is an interesting one and superficially, I think, has some merit, concerning can't we get rid of an average teacher if we have an applicant who is a superior teacher. I have no difficulty with that. It seems to me that if an evaluation was written on an individual and - you used the word mediocre - I think that would be sustained in a determination to not renew. An evaluation which showed someone as being an average person, showed someone as being a mediocre person who, as a result of 4 evaluations and the consultations which had been provided to him, had not made any kind of improvement - that's grounds. It seems to me that a board would be able to show that their decision not to renew that person would be a reasonable argument to be put forth. And I don't think there is anything wrong in the course of an evaluation or a hearing, rather, to not renew a contract to state that this particular teacher was regarded as a mediocre teacher, we have a desire to hire other potential teachers who have superior qualifications and on the face of that fact and as a result of this hearing that we have afforded to this teacher we have decided not to renew. It seems to me infinitely reasonable, infinitely rational, and the

court would uphold it as not being arbitrary and capricious.

ASSEMBLYMAN HICKS: Mr. Florio. I have two questions. The first one is, what in your opinion would constitute an unfair dismissal of a teacher?

ASSEMBLYMAN FLORIO: I suppose what I'm saying is what would be unfair would be something which would not be related to his teaching ability. If a teacher is involved in outside activities that the board doesn't feel are appropriate; if the teacher doesn't dress the way the board likes; these things are not germane to his performance as a teacher. I suppose that's the test. Is there something that is in some way opposed to his effectively functioning as a teacher?

ASSEMBLYMAN HICKS: Let's say I'm a teacher and my contract has not been renewed, they dismissed me. Give me three probable reasons why you dismissed me.

ASSEMBLYMAN FLORIO: Three reasons why you could dismiss someone?

ASSEMBLYMAN HICKS:--that would be unfair. Just for the sake of discussion.

ASSEMBLYMAN FLORIO: I'm sorry. You're trying to find reasons that would be unfair as opposed to reasons that would be legitimate reasons for a dismissal?

ASSEMBLYMAN HICKS: Legitimate reasons for not renewing my contract.

ASSEMBLYMAN FLORIO: That would be good reasons or bad reasons?

ASSEMBLYMAN HICKS: Good reasons.

ASSEMBLYMAN FLORIO: Good reasons for not renewing your contract.

ASSEMBLYMAN HICKS: Yes.

ASSEMBLYMAN FLORIO: If your language was such that you couldn't communicate; if you have no knowledge of your subject matter; if you are in fact constantly absent. These would be good reasons for not renewing a contract.

ASSEMBLYMAN HICKS: I would think any teacher serving a probationary term would certainly be at school on time, with the proper clothes, if he wants tenure.

ASSEMBLYMAN FLORIO: I would.

ASSEMBLYMAN HICKS: I'm just trying to find a real strong reason why you wouldn't renew my contract that would stand up in court. According to the legislation, I'm entitled to a hearing. And I think if you didn't renew my contract and I felt that I was discriminated against I would ask for a hearing.

ASSEMBLYMAN FLORIO: Mr. Hicks, in response to that, I think one of the things we're stressing in putting this bill forth is to say that rather than look for bad reasons or even no reason, that the school board now has the responsibility to have good reasons for not renewing, that the law again, the old cases, say that the boards don't have to have a reason, don't have to put anything forth as a reason for nonrenewal. I suppose the radical change here, if we categorize the radical change, is that we're now shifting the burden to the board saying that if they are going to not renew a contract they have to have a reason. It's not sufficient that they say, well, we don't have to tell you. Now they have to tell you. And I think that's a desirable change.

ASSEMBLYMAN HICKS: One other question. Do you think, should this law pass, that perhaps ten years from now, even 20 years hence, the school would be like

a closed shop eventually, with all tenure teachers?  
Is this desirable?

ASSEMBLYMAN FLORIO: Do I think the school would be a closed shop with all tenure teachers?

ASSEMBLYMAN HICKS: Is there a possibility if this law passes?

ASSEMBLYMAN FLORIO: I suppose there's a possibility. I'm not sure it's undesirable. You know, we could argue the merits of tenure. Tenure is a necessary concept to provide teachers with the protection necessary to enable them to effectively operate as educators, so that I'm not offended by that either.

ASSEMBLYMAN HICKS: Isn't there controversy and dispute that sort of decide these things as --

ASSEMBLYMAN FLORIO: I'm sorry.

ASSEMBLYMAN HICKS: Isn't it controversy and dispute that decide these things today instead of arbitration?

ASSEMBLYMAN FLORIO: In the bill, and I am sure you have examined it, the option is - I think what you're addressing yourself to is the question of appeals. In the event that a contract exists in the school district and provides that such disputes are to be resolved by an arbitrator, fine. The parties will live by the terms of their contract. On the other hand, the bill provides that if there is no such contract with any such provision, then the Commissioner and the Board of Education, the State Board of Education, will be the ultimate determiner. Yes.

ASSEMBLYMAN HICKS: Thank you.

ASSEMBLYMAN BURSTEIN: Thank you, Assemblyman Florio. Your testimony has been most constructive and helpful to the Committee. I thank you for all members of the Committee.

ASSEMBLYMAN FLORIO: Thank you very much, Mr. Burstein.

ASSEMBLYMAN BURSTEIN: I will next ask Dr. Hipp or Miss Stilwell - in whichever order you wish to appear, unless you want to sit as a trio. That would be helpful.

Kathryn Stilwell having seized the microphone, I take it that you will be the first.

MISS STILWELL: I'm sorry. We may change that a bit. I would like to introduce, on my left, Dr. Hipp who will speak first; and on my right is Walter O'Brien, Director of Government Relations.

F R E D E R I C K L. H I P P: Gentlemen of the Assembly Education Committee: I would like to address my remarks first to Assembly Bill 929 because the evaluations would ordinarily precede the procedure outlined in 960.

Our Research Division estimates that about 35,000 New Jersey Teachers out of an estimated total of about 87,000 teachers do not now have tenure. Those are the people we're talking about in New Jersey today. In addition, this bill provides that superintendents, principals and other supervisors and administrators be evaluated.

A-929 would require every board of education to provide for at least four observations and evaluations of its nontenure teaching staff members per school year. Each of these observations and evaluations would be followed by a conference between that teaching staff member and his or her superior or superiors for the purpose of identifying any deficiencies, extending assistance for their correction and improving instruction.

If a board of education should fail to provide for such evaluations and no steps are taken to notify a teaching staff member of his non-reemployment prior to April 30, the teaching staff member will automatically

be reemployed for the following year with such increases in salary as may be required by law or policies of the board of education. That April 30th date, of course, is wrong.

Many school boards now provide for such evaluations for all teachers and have done so for many years. At the same time, many other boards of education make no such provision. And those are the ones that concern us.

As a result, hundreds, perhaps thousands, of New Jersey teachers have no one evaluate their teaching by personal observation from September through June. No one enters the classroom from September through June except children. This means they are in no sense evaluated by a superior at any time.

Nontenure persons are often dismissed from their positions or are not reemployed. And just as often, which is extremely important to us, no reason is given for such dismissal. It's almost an arbitrary unwritten law that this is the procedure that happens more often than not.

A few years ago, 91% of NJEA members said they want someone to come into their classrooms, evaluate their work and point out how they can improve. This included tenure and nontenure teachers. In other words, the procedure is a good one for any person wishing to improve.

In our opinion, this simple device will do more to improve education than any other single procedure available. It is almost a disgrace that teachers must be here this morning and must ask for enlightened supervision while boards of education oppose carrying out this very important responsibility. No up-to-date enlightened business would be so careless with its employees.

What do we want to be evaluated during these observations?

This is not written in law but is a policy established by the NJEA, some of the things that would be considered. I think that question was raised earlier.

Effective teaching results from a combination of planned actions and reactions. It includes some of these elements:

1. Effective, democratic discipline.
2. The teacher's competence in his subject field.
3. The teacher's enthusiasm for the subject he teaches.
4. The teacher's concern for students.
5. The teacher's art and technique of presentation.
6. The teacher's preparation for a specific lesson.
7. The teacher's personal appearance.
8. The physical appearance of the classroom.
9. The teacher's willingness to accept new responsibilities and his performance of extra assignments.

These other considerations affect teaching effectiveness:

The classroom climate. Does learning occur efficiently in the classroom? Are student activities purposeful? Or are the students so uncontrolled that planned instruction cannot proceed? Are they so overcontrolled that student creativity is curbed?

Interaction. Do students feel free to comment and ask questions? Does the teacher accept questions without appearing to snub or quash the students who ask them? Does the teacher deal honestly with student questions and needs? Do the students appear satisfied



by the teacher's answers?

Objectivity. Does the teacher explore all sides of topics and questions? Is the teacher objective? Does the teacher admit that other opinions exist, and attitudes other than his own are possible? Or does the teacher try to compel students to accept his attitudes and opinions?

Motivation. Does the teacher challenge students the most? Does the teacher ask the most probing questions? Does he cause the most students to think, to probe, to question, to inquire, to examine, to use logic? These are all signs of an outstanding teacher.

Students. Do the teacher's students learn the skills they are expected to learn? Do they participate in the learning experiences that the teacher plans? Do they help to plan these learning experiences?

These are the areas that school administrators can - and should - evaluate.

If anyone on the school professional staff is evaluated, then everyone must be evaluated - including the evaluators and the chief school officers.

Each professional - administrator, specialist, teacher, - will grow in competence and skill to the degree that he is cognizant of his educational strengths and weaknesses.

Almost all teachers experience unexpected classroom problems. To some degree, all need supervisory help. I suppose anyone in any position, no matter what it is, needs help. This is especially true of first-year, inexperienced teachers.

Thus, the most important traits to be evaluated in the nontenured teacher are: (1) a willingness to accept help and (2) improvement as demonstrated by growth in skill, in specified areas, from evaluation to evaluation. And that's why, incidentally, we ask for

at least 4 evaluations.

The school administration's ability to detect deficiencies in nontenured teachers is crucial to the quality of a district's instructional force. In a school district with efficient administration, poor prospects are identified early.

Where correctable, the poor prospect's deficiencies should be immediately treated. To help this beginner develop as a teacher, the district's staff of helping teachers should work quickly to overcome teaching difficulties and to fortify teaching strengths.

The helping teacher should begin with the most serious difficulty and work with the teacher until it is eliminated. The helping teacher should then work on a second difficulty and so on until the new teacher overcomes all deficiencies.

If supervisory first aid fails, the effort at least should guarantee that the beginning teacher's pupils receive necessary instruction during the crisis period.

Where the beginner's deficiencies are so widespread or so deep as to be uncorrectable, the administration must see that this individual is replaced by a competent practitioner at the earliest moment.

Many professionals in all fields operate capably in their jobs at less than their maximal level of production or efficiency. Accordingly, industry spends considerable amounts to upgrade the performance of professional, technical, and middle-management personnel. Schools make little comparable effort to upgrade the efficiency of their professional personnel - the teachers.

It is only through this kind of evaluation

that a board of education can know much about the quality of teaching in its schools. This enlightened procedure also protects the teacher and helps that teacher to improve.

Evaluations can be very important in securing justice before an arbitrator. Arbitrators are relying heavily on teacher evaluations where they exist. They can also be very helpful in the courts.

Recognition of evaluation procedures is growing as boards of education and teachers are reaching agreements in their collective bargaining contracts in this area of activity. In 1971-72 one hundred and ten teacher-board agreements in New Jersey provided for evaluation of nontenure teachers. One year later this figure grew to 159. We count this as progress. However, two-thirds of the agreements contain no such provision.

For this reason, it is highly important that we have legislation requiring evaluations of nontenure teaching staff members.

When I was twenty-five years old and a so-called superintendent of a very small school system in Ohio, again, where there was no teacher tenure, I asked a wise, experienced superintendent of schools at Liberty Center, Ohio, what he does about incompetent teachers. I have never forgotten his reply. He said, "We don't have incompetent teachers. We are careful whom we hire and we work with them to make good teachers out of every one of them. We don't fire teachers. We make them good teachers."

Now if every administrator were like this gentleman, if every board possessed his wisdom, we would have more observations and evaluations. Because that is what the Liberty Center superintendent did. He and his colleagues knew what was going on in the classrooms of his district. And they made good teachers

out of those having difficulty. And the children were far better off for it.

I know from personal experience that only a little bit of help can save a teacher. We had this young lady around our house who was a beginning teacher, two of them, a few years ago that taught in a nearby district. They taught one month and no one came into the classroom and they kept asking, well, I wonder if I'm a good teacher. And this went on through October and November and December. Finally, I called the Superintendent in January and asked if he wouldn't look in these classrooms to find out what was going on and tell these teachers whether or not they were good or if they could be improved. There were some classroom visitations. One was declared very good and she'll be back next year. The other one there was some question about. There were a number of visits to that classroom that spring and they decided to keep her. Three years later, in a district that had 300 teachers, the superintendent told me that the one who had been having difficulty was one of his five best teachers. And this type of evaluation can accomplish miracles in giving confidence to a person who really has no way of knowing whether he or she is doing a good job.

What we are pleading for is not sensational nor will it make headlines. It is, however, a down-to-earth time-honored method to improve instruction. And the children of this state will be far better off for A-929. And I don't see how anyone could conceivably feel that it will not improve the schools of the state and the instruction in the classrooms considerably.

Therefore, we consider it almost mandatory that this bill become law, and we hope that you will report it favorably.

ASSEMBLYMAN BURSTEIN: Thank you, Dr. Hipp.  
Miss Stilwell?

KATHRYN STILWELL: Chairman Burnstein, members of the Assembly Education Committee, I am Kathryn Stilwell, President of the New Jersey Education Association.

Mr. Chairman, on behalf of the 78,000 members of the NJEA we applaud the decision of the Assembly Education Committee to hold public hearings on two such important education bills as A-929 and A-960.

I will address my remarks more specifically to A-960.

At present, nontenure teachers in New Jersey have no guarantee to due process if their contracts are not renewed or if they are terminated. Nontenure teachers may appeal to the Commissioner of Education. However, Commissioners' decisions concerning the employment and dismissal of nontenure teachers in New Jersey have relied on a 1917 Illinois Court decision which states: "The board has the absolute right to decline to employ or re-employ any applicant for any reason whatever or for no reason at all". Using this precedent, the Commissioners' decisions have been clear -- nontenure teachers have no legal right to a statement or explanation of the reasons for non-renewal, or to a hearing as to the reasonableness of reasons for non-renewal.

It is interesting to note another statement in that 57 year old Court decision on which New Jersey' Education Commissioners rely so heavily: "It is no infringement upon the constitutional rights of anyone for the board to decline to employ him as a teacher in the schools, and it is immaterial whether the reason for the refusal

to employ is because the applicant is of fair complexion or dark, is or is not a member of a trades-union, or whether no reason is given for such a refusal".

That amazing sentence has not stood the test of time. Today it is a violation of a person's constitutional rights to consider the color of his skin in hiring and firing, and it is a violation to dismiss for reason of membership in a representative organization.

Gentlemen, precedents change with the times. And it is now time, after two generations, to lay to rest the idea that non-tenure teachers may be dismissed for "any reason whatever or for no reason at all". To continue to allow this precedent to stand is to deny the basic human and moral rights of a teacher to have his or her side heard.

We believe that with the enactment of A-960 the New Jersey Legislature will not only be establishing some very basic procedural due process for non-tenure teachers but it will also serve notice on Education Commissioners, present and future, that their thinking must be updated and that neither they nor district boards of education can any longer hide behind 57 years of "any reason" or "no reason".

Gentlemen, Section 2 of A-960 provides that a non-tenure teacher may within 5 days after receiving notice that employment will not be continued, request a statement of all of the reasons and that statement shall be given.

No matter what his or her job, anyone who is fired wants to know why. This includes teachers.

I come from Bergen County. Englewood Cliffs is a suburban community where low cost housing goes for \$60,000 and schools have been considered among the best in the State. When in 1970 an "economy" block took control of the Englewood Cliffs Board of Education they went on a firing spree. The board sought to demote the district's reading coordinator, abolish a principalship, dismiss six highly-rated

teachers and remove the system's only psychologist. At stake was the quality and reputation of Englewood Cliffs schools. The school board consistently refused to give any reason for the firings. One teacher, armed with her supervisor's evaluations, publicly asked the Board President why she was being fired. The Board President's only answer was: "Next question!" A-960 would make that kind of conduct on the part of a school board member clearly illegal.

New Jersey's students are guaranteed due process concerning suspension and expulsion from school. These rights include: (1) a written statement of charges against them justifying the grounds; (2) a hearing with a lawyer present, an opportunity to cross examine witnesses appearing against them, the opportunity of having witnesses appear for them, a copy of the transcript of the procedures, the proceeding to be held with all reasonable speed and; (3) a means of effective appeal to the State Board of Education or to the Courts.

However, non-tenure-teachers after having completed a college education, often with a Masters Degree, and having been certified by the State of New Jersey as qualified to teach-are not afforded basic due process or even in some cases common decency when school boards or administrators take it into their heads to "get rid" of them.

Sections 3 and 4 of A-960 establish the right of the non-tenure teacher to tell his or her side of the story to the Board of Education. Now what could be unjust about this provision unless it infringes upon the "Divine Right of Kings" philosophy under which far too many boards of education still operate. The Board level hearing procedure would enable a board of education to hear both sides and consider whether or not the administrative staff had in fact acted fairly and in good faith with a non-tenure employee.



Section 5 of A-960 provides for an appeals procedure for the non-tenure teaching staff member if he or she believes that the result of the Board level hearing was unjustified. This is not really a new concept.

Under present law, if a non-tenure teacher wishes, he or she may appeal to the Commissioner of Education. However, the Commissioner would have substantially more on which to base his decision than at present. The Commissioner, under A-960, would have to determine whether or not the finding of the local board of education was supported by substantial evidence or violated any board policies or rights of the non-tenure teacher in question. The Commissioner would have the authority to require the board of education to reemploy the teacher.

Section 5 alternatively provides for an appeal to binding arbitration if it is provided for either in the written agreement between the board of education and the majority representative or by policies of the board of education. The arbitrator would have authority to order the teacher restored to his or her position.

The NJEA believes that appeal to an objective third party is a necessary and eminently fair component of elemental due process.

Critics of A-960 charge that the board hearing and appeals procedure would be costly and time consuming.

Mr. Chairman, I am shocked at such a charge. Where in the Constitutions of the United States or of the State of New Jersey or in any law of this land is it implied that justice should be denied because it costs too much or it takes too much time to find a fair and equitable resolution.

Those who seek to continue to deny minimal rights for non-tenure teachers say that A-960 would provide instant tenure. This just is not true. Title 18A:6-10 states that no person under tenure can be dismissed "except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only

after a hearing is held .... by the Commissioner, .... after a written charge or charges, of the cause or causes of complaint, shall have been preferred against such person ....".

A-960 still provides for the local board to retain the right to determine the continuance or non-continuance of a non-tenure teacher. Only if the affected teacher questions the validity of the decision not to continue his or her employment would the due process procedures of written reasons upon request, board level hearing, and appeals procedure be implemented.

The NJEA believes that effective evaluation procedures, as we are urging through A-929, with a system of evaluations that is sound and constructive will add a great deal of stability to the non-tenure question. Probationary teachers may very well request written reasons for their termination, but we believe there will be fewer appeals to boards or beyond when sound evaluation procedures are firmly established. Arbitrators and the Commissioner must accept and rely heavily upon the professional judgment of those certified and charged with the responsibility of recommending continued employment. Under A-920 the burden of proof will be on the affected teacher to demonstrate arbitrary, capricious or stupid administrative actions.

The NJEA does not seek to protect incompetent teachers - either tenure or non-tenure. What we do seek is an end to arbitrary firings, terminations, or non-renewals for undisclosed reasons that may in reality be based on politics, false economy, retaliation for association activities, race, appearance or any other unreasonable and unjust cause.

What the NJEA does propose through A-929 and A-960 is to serve the best interests of the schools, the children, and the community through the development of the best possible professional staff to meet the needs of the community while providing a fair and just means for removing the truly unsatisfactory teacher.

Nor is what we are proposing unique. At least 18 other states have laws which require some form of procedural due process prior to the non-renewal of a non-tenure teacher's contract.

Unfortunately, teachers have been fired without cause many times in many districts of this State.

The NJEA urges you to vote to release A-929 and A-960 from the Education Committee and to seek their passage by the New Jersey Assembly.

And I would like to just say this: My personal experience, and I am sure that of many here, has been that tenure is one of the most misunderstood words in the English language. I wish that there was some way that I could emblaze it across this State in neon lights or with bullhorns, or something, - the erroneous idea which is held by many parents and taxpayers and board of education members that tenure, once received, is automatic. There is nothing further from the truth.

Every educator who receives his next contract, tenure or nontenure, has to be recommended by the supervisor or administrator. So there is nothing that's automatic about tenure.

And if you have any questions, we'll try to answer them.

Thank you.

ASSEMBLYMAN BURSTEIN: Thank you, Miss Stilwell.

Mr. O'Brien, do you have any statement to add?

MR. O'BRIEN: Not at this time, Mr. Chairman. We would like to entertain your questions.

ASSEMBLYMAN BURSTEIN: All right. Thank you. We will start with Assemblyman Froude.

ASSEMBLYMAN FROUDE: No questions.

ASSEMBLYMAN BURSTEIN: Assemblyman Fitzpatrick?

ASSEMBLYMAN FITZPATRICK: No questions.

ASSEMBLYMAN BURSTEIN: Assemblyman Newman?

ASSEMBLYMAN NEWMAN: No questions.

ASSEMBLYMAN BURSTEIN: Assemblyman Martin?

ASSEMBLYMAN MARTIN: No questions.

ASSEMBLYMAN BURSTEIN: Assemblyman Worthington?

ASSEMBLYMAN WORTHINGTON: I would like to ask the group, roughly how many states in the Union have tenure laws? Or how many states don't have tenure laws?

DR. HIPPI: I would say all but four or five.

MR. O'BRIEN: They are in the South.

Excuse me, Assemblyman Worthington, a few states which may not have tenure protection are found in the southern states.

ASSEMBLYMAN WORTHINGTON: Could you give me a brief background, Mr. O'Brien, as to what the conditions were in the State of New Jersey when tenure laws were established?

MR. O'BRIEN: I would have to do that from a reading of history. The New Jersey Tenure Act was signed, I believe, in 1907 or '08 - Dr. Hipp says 1909.

ASSEMBLYMAN WORTHINGTON: He was there.

MR. O'BRIEN: At the time, it was common practice for a school board not to renew a teacher for any reason or no reason at all. We know of a case, ironically enough, Mr. Worthington, in Pleasantville, New Jersey, where a teacher who had served that community for 50 years was not renewed and at the time was not given a pension. History tells us that that teacher was replaced by a young woman who was a niece of a school board member. This was not an uncommon practice

at the time. Jobs were scarce. And the way to get a job was to have an uncle or an aunt or some good friend on the school board.

Other times, teachers were dismissed because of the fact that they may have held views contrary to the views of school board members. So that the history of the enactment of tenure laws, not only in New Jersey but in other states, really teaches us that the communities at large thought they were protecting themselves and the freedom of children to learn by holding teachers after a probationary period under tenure so that they could not be dismissed too quickly because of the fact that they held unpopular views in that community or attempted to teach in an area where several school board members felt they should keep their mouths still.

We had a case, also in New Jersey, where a school superintendent indicated that he could not operate, really, without the protection of tenure in that community because of the political makeup of that community. He said, I could hardly come to this district, buy a home, and invest my professional career in serving the children and community and hang month by month on the virtue of a five to four vote.

I hope I've tried to get at what you're asking, that is that the basis for tenure originally was to protect the community against an arbitrary or capricious school board which would have the right to dismiss teachers too readily.

ASSEMBLYMAN WORTHINGTON: Thank you, Mr. O'Brien.

It seems to me that tenure laws and due process come under attack when we have a surplus of the commodity here - the teachers. And I think perhaps what this bill is addressing is to try to afford due process to the

teacher and also to protect the rights of school boards to hire and to not renew contracts, as they currently have.

What we're looking for, I should imagine, in the bill is the extension of due process to the teachers.

ASSEMBLYMAN BURSTEIN: Anything else, Assemblyman?

ASSEMBLYMAN WORTHINGTON: No.

ASSEMBLYMAN BURSTEIN: Assemblyman Hicks?

ASSEMBLYMAN HICKS: Yes, Mr. Chairman. I would like to ask the group, has the tenure, or the nontenure teacher rather the same constitutional rights developed by statute, and if so, what are they?

MISS STILWELL: Would you repeat that?

ASSEMBLYMAN HICKS: Has the nontenure teacher certain constitutional rights, according to statute, and if so, just what are they?

MISS STILWELL: Yes. I listed them in my testimony. Under Title 18A:6-10 - this states that no person under tenure can be dismissed except for inefficiency, incapacity, unbecoming conduct, or other just cause and then only after a hearing is held by the Commissioner after a written charge or charges of the cause or causes of complaint shall have been preferred against such person.

ASSEMBLYMAN HICKS: On the basis of this, I would have this question. Why do you feel a nontenure teacher should have a hearing on a ground other than constitutional rights.

MR. O'BRIEN: Assemblyman Hicks, in a case that was brought before the United States Supreme Court the Court indicated that the nontenure teacher had certain constitutional rights which were violated by the actions of the board. The court said that there was a question of the nontenure teacher's right to the pursuit of

liberty, that is to get a job in the United States, and also the failure to non-renew might have begged the question of his right of property, that is to keep a salary that he or she has in their teaching position. So at least the courts have begun to indicate that nontenure teachers may have rights under the 14th Amendment.

With respect to your second question, we're not maintaining that the nontenure teacher in New Jersey has constitutional rights under the Constitution of New Jersey and that is why we are trying to have these rights spelled out in statutory law in 929 and 960.

ASSEMBLYMAN HICKS: Dr. Hipp, you mentioned in your presentation certain reasons, and I dare say good reasons, why teachers should be retained. I agree with that wholeheartedly. But conversely, if a board of education should submit either one of these reasons for dismissal, would it be acceptable?

DR. HIPPI: You're talking about a tenure teacher or a nontenure teacher?

ASSEMBLYMAN HICKS: Nontenure teacher.

DR. HIPPI: Nontenure teacher. It would be up to the arbitrator of the Commissioner of Education to rule whether it was acceptable.

Our thrust here is to make sure that every child has a good teacher. We are not here to defend somebody who is a hopelessly poor teacher. But we do think there are many teachers who can be improved and become superior teachers with some assistance.

I don't know that that answers your question but we would certainly expect a proven reason for dismissal.

ASSEMBLYMAN HICKS: According to the bill - it reads to me, and if I'm wrong correct me, that if a



teacher is dismissed and the teacher disagrees with the reason for dismissal, he has the right of appeal.

DR. HIPPI: Right.

ASSEMBLYMAN HICKS: To the local board of education. If the local board agreed that he should be dismissed then he could appeal to the Commissioner's office. Is that right?

DR. HIPPI: Yes, that's true. Or to an arbitrator if that happens to be in the contract.

ASSEMBLYMAN HICKS: Do you really feel that the Commissioner of Education would have more insight into why he should be dismissed than the local board of education?

DR. HIPPI: I think you might question our whole present procedure with respect to judging cases like that. Yes, I think somebody who looks objectively on a case of this kind can make a better decision, who is not personally involved.

ASSEMBLYMAN HICKS: One other question. If a dismissal is appealed and it goes to arbitration, and say it's dragged out one month, two months, three months, and the teacher is reinstated after the appeal is resolved, is the teacher entitled to retroactive pay?

DR. HIPPI: We would hope so.

ASSEMBLYMAN HICKS: Thank you.

ASSEMBLYMAN BURSTEIN: One statistical question, if I may, on behalf of Assemblyman Newman. Of the 35,000 nontenure teachers that you mentioned are presently in the school system, - I think that was the number you gave to us -how many were offered contracts of a permanent nature, on an annual average basis?

DR. HIPPI: We don't have that figure. We hear about those that are not offered contracts, and they can go into the hundreds.

ASSEMBLYMAN BURSTEIN: Dr. Hipp, since you're adept at hitting curve balls out of the park, I want to throw a curve ball at you, and pick up something that you mentioned in the course of your presentation which related to the two young ladies who were with you during their nontenure probationary period, and that one of them proceeded in subsequent years to become one of the most valued teachers in the system.

DR. HIPPI: Right.

ASSEMBLYMAN BURSTEIN: My question takes off from that premise and it's simply this. Is a two and a half year period, which is basically what we're talking about for the nontenure teacher, before a board makes up its mind about whether to offer a permanent contract, adequate from the standpoint of time to evaluate either a late bloomer or to allow a teacher in a nontenure status, who is perhaps in a gray area, that is to say not terribly bad so as to make it a clear case of disposition of that one by not offering the contract, but in the gray area where she might be good at some future time. Does 960 tend to erode the board's ability to handle that kind of a situation, and do you think that perhaps some consideration, if A-960 should be adopted, should be given to lengthen the probationary period?

DR. HIPPI: I think a board that's conscientious, an administrator who is conscientious about evaluating a teacher can easily tell within a two and a half year period whether or not that teacher has potential. I don't think it takes that long. In the instance I mentioned it was actually four classroom visits in the first year, and that's all. In a lot of this, there is really nothing wrong. They just need a suggestion here or there.

A teacher in Trenton came into the office

because she was ready to quit at the end of her first week of teaching. This principal had two buildings and there was no one around to help her and she got into a very rough disciplinary situation. If she had not come into the office, she would not be teaching today. She has been teaching now for about eight years in Trenton. All she needed was a little bit of assistance. We called the attention of the supervisor to her difficulty and she is a very good teacher in Trenton. But to have ignored her completely, she would have walked out that Friday. And that's what we're talking about to a considerable extent, that a high percentage of these teachers, not only could be saved for their own value but for the good of the school system they become much better.

ASSEMBLYMAN BURSTEIN: Thank you very much. We appreciate your testimony.

I will now call upon Dr. Herbert Scuorzo. Here we have a tandem of Dr. Scuorzo and William Clark.

Gentlemen, let us know who you are and who you represent.

H E R B E R T S C U O R Z O: Assemblyman Burstein and members of the Assembly Education Committee, I am Herbert E. Scuorzo, Principal of Cleveland School in Newark, New Jersey. This statement is made in behalf of the New Jersey Council of School Administrators. The Council includes the New Jersey Association of Elementary School Principals, New Jersey Association of Secondary School Principals, New Jersey Association of School Administrators, and the New Jersey Association of School Business Administrators. I represent the New Jersey Association of Elementary School Principals on the Legislation Committee of the Council, and serve as Legislation

Chairman of the New Jersey Association of Elementary School Principals. I am accompanied by William F. Clark, Superintendent of Schools in the Rancocas Valley Regional High School district, also representing the New Jersey Council of School Administrators. We will be happy to answer questions following the reading of this statement.

Our Council is convinced that A 929 and A 960 would not serve the best interests of public education and I am here to urge that they not be approved.

A 929 provides for the automatic reemployment of any nontenure teaching staff member whose superior or superiors may fail to give the teaching staff member four evaluations, based upon observations, before April 30.

We fully acknowledge that the process of observation, evaluation, and conference are among the prime responsibilities of administrators and supervisors. However, A 929 is overly specific in its requirement of four evaluations while, at the same time, it is vague in that it fails to define "observation", "evaluation", and "conference". Lacking such definitions, the chances of controversy and appeal are great. How much time should be involved in an "observation"? Does the term "evaluation" imply a written report? If so, how extensive a report? Such questions seem inevitable, and on the resolution of disputes arising from these questions hinges the important matter of the reappointment of personnel. One can conceive the possibility of a reappointment becoming effective because of a determination that an observation session was too short or an evaluation was too vague.

It may also be noted that A 929 is a unilateral measure in that it places specific obligations on those who supervise, with a "penalty" in the event of failure to comply, without similar stipulations concerning the "teaching staff members". If failure to observe, evaluate,

and confer, four times each, results in automatic reappointment - no matter the quality of performance - should failure of teaching staff members to submit reports on time result in automatic dismissal - no matter what the quality of performance otherwise?

We feel that boards of education now have sufficient authority to establish and enforce adequate procedures for obtaining the data needed in order to make accurate and fair decisions related to the re-employment of nontenure personnel.

For the reasons noted, we cannot support A 929.

A 960, if enacted, would effectively eliminate a probationary period for teaching staff members and substitute "instant tenure". This would be a serious threat to the quality of the staff and remove discretionary powers which now enable boards of education, that can afford the cost, to replace staff members who perform at an average or mediocre level with those whose work is of higher quality. And I personally would like to stress that part.

The right of a hearing before the board of education when nontenure personnel are not reemployed, and the subsequent right of appeal to the Commissioner of Education, are much like the rights of tenured personnel. The main difference is that A 960 does not define the justifiable reasons for failure to reemploy. In the application of the provisions of A 960, the Commissioner in hearing appeals would be seeking "substantial evidence". However, one must ask, "Evidence of What?"

As far as the teaching staff members' right to appeal any violation of "rights" - presumably constitutional rights - there exist presently the necessary legal avenues for pursuing such a matter.

We respectfully urge consideration of the concerns expressed, which make it impossible for us to support A 960, and thank the Assembly Education Committee for this opportunity to express our views.

ASSEMBLYMAN BURSTEIN: Thank you. Does Mr. Clark wish to speak at this time?

MR. WILLIAM F. CLARK: No.

MR. SCUORZO: Mr. Clark would be here to respond to questions as a Superintendent of Schools, if you should desire.

ASSEMBLYMAN BURSTEIN: Are there any questions?

ASSEMBLYMAN WORTHINGTON: Mr. Scuorzo, in your statement, you say, "We fully acknowledge that the process of observation, evaluation, and conference are among the prime responsibilities of administrators and supervisors." Yet you feel very strongly about this - you don't want to mandate this.

MR. SCUORZO: That's right, sir.

ASSEMBLYMAN WORTHINGTON: Is there any particular reason why not? Do you think that these processes should go on in all schools throughout the State?

MR. SCUORZO: I don't think there is any question but that the processes should go on. For example, in my school, we already do in my district everything contained within these bills and far more.

ASSEMBLYMAN WORTHINGTON: With tenure teachers as well as nontenure teachers?

MR. SCUORZO: With tenure teachers as well as nontenure teachers. I think they far exceed what is needed and it is that personal experience that made me willing to be the one to testify this morning. We can get locked into procedures which effectively make an administrator impotent because he is locked into doing things which otherwise would not be necessary, except that they are specified, so he must do them. Now, as

far as evaluation, observation and conference, we have no quarrel with this whatsoever. We feel that they are necessary, that they are essential. We question the quantity. I personally question the quantity and I can give you personal observations much as my friend Dr. Hipp did.

I have a young lady teaching for me now who is a first-year teacher. I don't think I have ever seen a better teacher. And, frankly, if I or one of my supervisors didn't have to go in the rest of the year, it wouldn't bother me one bit because here is a professional. I would think in that case possibly two observations would be quite adequate for this first-year, nontenure teacher who is really great.

I have other teachers who will receive more than eight observations this year - new, nontenure teachers - because there is a question. I think in locking us into a number, what you are effectively doing is saying, "This is the minimum," and you will soon get to, "This is the maximum." I would fear that.

ASSEMBLYMAN WORTHINGTON: That first-year teacher for whom you indicated two observations would be sufficient - you intend to reemploy that teacher so it really doesn't matter. So you could stop after one if you wanted to, if you were going to reemploy her the following year. I think the problem that is being addressed in this bill is the fact that there are many teachers throughout the State who get no observation. And I am sure that you in your professional status would probably agree that it is almost impossible to deny employment to someone that you haven't even observed and had a conference with.

MR. SCUORZO: I would agree 100 percent, sir. I think Mr. Clark would too.

ASSEMBLYMAN WORTHINGTON: This is being done in



this State. What we are trying to do is set some standard and to protect the rights of the teachers here who are not being observed and whose contracts, capriciously, it appears, are not being extended.

MR. SCUORZO: I think I speak for Mr. Clark and myself and our Council when I say that in no way does the Council of Supervisory Associations endorse any capricious dismissal of teachers or any other personnel. What we do say is that we are not being given the professional freedom to make observations when necessary and not make them when necessary. Whether the bill says that or not, essentially what we are doing is locking in everybody to four evaluations per year. And I personally do not believe that it will serve its purpose because when you have a teacher who is really not a good teacher, I don't care who the principal is, to justify his own existence, he is going to have more than four observations. Otherwise, he is going to have a rather difficult time justifying his decision.

Now this decision already has to be justified. I don't see why it is necessary to spell it out in this detail, and then to leave vague the meaning of terms.

ASSEMBLYMAN WORTHINGTON: Thank you.

ASSEMBLYMAN MARTIN: Dr. Scuorzo, would you have any knowledge now many instances there are in the State of New Jersey of capricious action on the part of the School Boards with respect to teacher evaluation?

MR. SCUORZO: No, sir, I would have no such information of my knowledge. I wouldn't even hazard a guess. I would suspect that it does exist, but I would also say it should not, even under present law. I don't think a board has that right.

ASSEMBLYMAN MARTIN: In other words, as I understand you, you feel the law is adequate to cover such cases at the present time?

MR. SCUORZO: Yes, sir.

ASSEMBLYMAN MARTIN: Thank you.

ASSEMBLYMAN FROUDE: I wonder if I could have some elaboration of your criticism of 929 as being a unilateral measure. If I am a teacher under your supervision, I assume I am going to have to respond somehow or other to your evaluations. Is there anything other than teaching performance I could look forward to as a means of indicating some kind of response? If the question doesn't mean anything, can you explain to me what you mean by unilateral measures. I can't conceive of it as being unilateral.

MR. SCUORZO: I am not certain that I understand the question, but I will do my best. The unilateral statement means in essence that there are rights that the teacher has under this bill, rights are being developed, additional rights. But on the other hand, it does not work in the other direction. If a person in authority, supervisory authority, has a requirement that he wishes to make of that teacher, he states the requirement, but the teacher is under no obligation to follow it. It isn't a two-way street; in essence, it is a one-way street. All the requirements are put on the Board of Education and its supervisory staff rather than on the teacher, and it is the teacher we are trying to improve.

MR. CLARK: The aspect of the observation is a major concern to me, in that it doesn't define, as was indicated in our statement, what the observation really entails. Does it mean a classroom observation? Does it mean the other involvements of the teacher outside the classroom? Does it involve her relationship with her existing staff members? Does it involve her relationship with the supervisors and administrators? These are all aspects of a total evaluation of a teacher, of which I consider the classroom

observation as one part. I think in this legislation here, the bill refers to observation, which I think has led to the classroom area and has not involved itself with the total aspect of the teaching responsibility.

I think there could be a situation outside of the classroom which might not have fallen in the four observations, if that is the intent of the legislation, that would preclude an administrator making the recommendation of the undesirability of retaining the teacher. I think it all leads to the classroom situation and I think there are other things over and above that. I think that is important, but other things are equally important.

ASSEMBLYMAN FROUDE: I would just like to ask one other question of these gentlemen, and, that is, assuming that we all agree on the need for evaluation and the need to help produce the kinds of environment where improvement will be made by teachers and they will be provided with the help necessary to make that improvement, what alternatives do you have to the two proposals before us right now?

MR. CLARK: I don't have an alternative because I believe in our district we are doing it. In other words, we do afford the right of due process. We do have observations and conferences following the observations. We also include other areas.

ASSEMBLYMAN FROUDE: Mr. Chairman, if I may ask one further question, then this will not have much of an impact upon those school districts who, I assume, you would look upon as doing the job that must be done?

MR. CLARK: Certain aspects of the bill would.

MR. SCUORZO: With regard to the impact, may I respond that I think it would have a greater impact. A previous speaker indicated the numbers might run in the hundreds when talking about teachers whose contracts

were not renewed. Now possibly this is in response to a question I was earlier asked. I was trying to do a little mental arithmetic as to how many people would be involved in those situations out of the 35,000 mentioned. I came up with one in ten and I asked the former Superintendent if that was a reasonable number that might be involved and he thought it would be greater. If we use the one in ten as a possibility, we are talking about 3,500 potential cases each year. And if we are talking about that, we are talking about a situation where truly at every level you are going to be tying up the administration of schools.

So I think as far as an impact goes, there will be an impact. There will be a cost impact that will be phenomenal because, after the first year of experience, it will be obvious that you will need more supervisory help and I think that possibly is a hidden agenda somewhere in this bill. It will be obvious that you will need more supervisory assistance and then your cost factors will, of course, rise also.

ASSEMBLYMAN FITZPATRICK: May I ask you gentlemen what your thoughts are on the basic concept of the board of education having the right to dismiss for any reason or for no reason?

MR. CLARK: We attempt to give reasons. We don't usually get them involved in the written aspect and follow up with a hearing, although I think a teacher deserves the due process under that aspect of at least being involved and knowing where her deficiencies lie, and then given a reasonable period of time to correct the deficiencies. However, a mandate of four would not be what we consider to be desirable because this wouldn't always be the case.

ASSEMBLYMAN FITZPATRICK: So, therefore, you

do not object to that aspect of the bill which addresses itself to the proposition that the non-tenure teacher should at least have an explanation and be offered some reason as to why his contract was not renewed?

MR. CLARK: I have no objection to that.

MR. SCUORZO: I don't think we would have any objection at all with the offering of the explanation. I think that as soon as we get to the offering of the explanation being in writing we are effectively setting up a legal procedure that is going to take place. I have done it in writing, because that's the way I'm required to do it in my particular situation. The teachers are notified in writing. Whenever a teacher is not to be rehired, she is given reasons. We have had hearings, even with substitutes, I might add, not necessarily appointed teaching personnel.

So I personally have no objection and I don't think our Council would have any objection to people being given reasons why they are not going to be rehired.

In some instances the giving of reasons gets rather touchy but it still should be given. I recall one instance where a young man stormed out, indicating that both the Director of Personnel and myself would be brought to court. He never did bring us to court because of the reason, which I will not mention here. But the mere giving of reasons is sometimes touchy, to say nothing of putting them in writing.

ASSEMBLYMAN FITZPATRICK: Thank you.

ASSEMBLYMAN HICKS: Mr. Scuorzo, as a School Principal, could you enlighten me, and perhaps others, as to the right of appeal of the school board if they couldn't comply with this decision?

MR. SCUORZO: Unfortunately, sir, I don't see any right of appeal. That's precisely the kind of one-way street we were talking about. Apparently it is strictly that the teacher has all these appeal rights, all the way up to the Commissioner. But as far as the school board is concerned, this is the party that will be acted against all the time. So I really don't see any appeal that the school board would have.

ASSEMBLYMAN HICKS: To take it a little further, there has been mention that there is a possibility that, if a teacher is reinstated after an appeal is resolved and the hearing is finished, there might be a question of retroactive pay. Who would pay this money back to the teacher for say six months of unemployment or three months of unemployment?

MR. SCUORZO: I would have to guess that the school board would because it's the only group with enough money to do so and also because it is the hiring authority and would have been the firing authority.

That is not an idle question - I know you didn't mean it to be and it most assuredly is not - and I would like to stress the importance of it because the procedures could wind up taking more than the five days all along the line that I see specified. And I could envision the possibility that another teacher would be hired in the place of one dismissed and then the dismissed teacher comes back. What do you do with the teacher hired in place of the dismissed one? That's another question that I don't know the answer to.

ASSEMBLYMAN HICKS: This bill makes no mention of money or appropriations. Do you think that it might not be unreasonable to assume that this bill would be

necessary to appropriate funds to offset this current school budget because it's really predicated upon what are the known facts and if there are additional monies needed because it does mandate 4 evaluations -- do you think that the current school staff, administrative staff, is sufficient to carry out these four mandated evaluations upon the school itself?

MR. SCUORZO: In systems, sir, where this has been put into effect, such as my own, we see a need for increasing numbers of supervisory personnel. In my own particular situation, I have an experimental school and one of the experimental programs is one in supervision. I have enough supervisory help to do this job so I don't even question the idea that I have to have five evaluations for some, six for others and eight for others.

But, in general, to answer your question, I don't have the slightest doubt but that there would be a great deal of additional funds required, not only for the evaluation of personnel and observation but the administration that is going to occur afterward when the teacher finds it a great deal easier to exercise his or her rights and requests a hearing, because a great deal of time is going to be taken up in that.

In a similar experience I had two years ago, the hearing aspect and the documentation aspect of the case certainly took more time than any other aspects. And this is unfortunate, really. The time should be spent on supervision and helping of teachers, not built-in time that has to be spent doing paper work to document a case. And that's what this is doing.

ASSEMBLYMAN HICKS: Earlier Assemblyman Burstein mentioned the teacher in a gray area that undoubtedly

will be a good teacher say in two, three, four or five years, after serving a little longer apprenticeship than the tenure law allows. Would it not be unkind at times to state why the teacher wasn't retained, such as for inefficiency? You know, you have to state these things on paper and you pass it along and it becomes a matter of record for reemployment. Wouldn't it be kinder to say some other reason so that you wouldn't put in jeopardy this teacher's chance of being reemployed by another district? Although I'm certainly not averse to telling why, I'm just curious as to how you feel about it.

MR. SCUORZO: I personally have no qualms about putting down a reason for not being reemployed. If I have to do it, I do it. I question whether it's the best way. I think it is unfortunate. I think there are some administrators who are unprofessional in the sense that they would be happy to get rid of some teachers and would not give proper reasons. I think that's unprofessional and I think it does exist, as it exists in any field. And we would be lying and hiding it to say that it didn't.

But as far as - you mentioned the longer period. I would have to agree with Dr. Hipp in his statement. As a principal who is every day concerned with the operation of teachers in their classrooms, I just don't think it takes more than 3 years, or even that, to tell if you have a good teacher on your hands. Now the problem is where you have the teacher who is marginal because at that point you want to say, well, now, for the best interest of my school I want to get a better teacher, without all the rigmarole that's put forth in this bill. However, I realize I have an obligation to that teacher also and I have to try to make that teacher perform better through



supervisory assistance.

Now to do both of those, in my own personal experience, winds up taking about two years.

The good teacher or the very poor teacher I don't think are really questions. The one who is the question to me is the mediocre or the marginal teacher.

ASSEMBLYMAN HICKS: Thank you.

ASSEMBLYMAN BURSTEIN: Thank you, gentlemen, Dr. Scourzo and Mr. Clark.

Is Mr. William Bell in the audience?

I understand that you have a time problem, Mr. Bell.

MR. BELL: Yes.

ASSEMBLYMAN BURSTEIN: All right. I would appreciate your coming forward now.

For those of you remaining in the audience, just to give you some chronology of events, it is now a little after 12 o'clock. We will continue the hearing until 1 o'clock, at which time we will break for lunch. Those of you who still wish to be heard will come back at 1:45.

Mr. Bell, please introduce yourself for the record and state whom you represent.

W I L L I A M     B E L L: William Bell, 503 Nicholas Road, Brick Township, and I represent the Brick Township School Board as their President.

Assemblyman Burstein, thank you very much, and members of the Committee.

I would like at this particular time to address myself first to Assembly Bill 960 and then to 929.

ASSEMBLY BILL NO. 960

POINTS FOR OPPOSITION

FIRSTLY, I BELIEVE THAT SOME THOUGHT MUST BE GIVEN TO THE MOTIVATION FOR SUCH A SEVERE DEPARTURE FROM THE HISTORICAL CONCEPT OF THE PROBATIONARY PERIOD OF A TEACHER IN THE STATE OF NEW JERSEY. I SAY ECONOMIC REFERENCE BECAUSE IT IS A WELL KNOWN FACT THAT AT THIS MOMENT IN TIME, TEACHERS WHO WERE ONCE ON A PREMIUM BASIS HAVE, IN FACT, FLOODED THE EMPLOYMENT MARKET. TO THIS END, THEN THOSE WHO ARE DEDICATED TO FULLY FURTHERING AND PROTECTING THE ECONOMIC RIGHTS OF TEACHERS, WISH TO MAKE INROADS UPON ALL OF OUR PRIOR HISTORICAL CONCEPTS. ONE OF THESE INROADS IS TO EQUATE THE NON-TENURED TEACHER WITH ALL OF THE RIGHTS AND PROTECTIONS OF A TENURED TEACHER. THIS, OF COURSE, DEPRIVES A BOARD OF EDUCATION FROM FULFILLING ITS CONSTITUTIONAL MANDATE TO PROVIDE THE MOST THOROUGH AND EFFICIENT SCHOOL SYSTEM IT CAN.

THE EXISTING LAW, AS IT NOW STANDS, GIVES TO A TENURED TEACHER, ONCE HE ACQUIRES TENURE STATUS, PROTECTION IN THAT HE CANNOT BE DISMISSED *EXCEPT FOR INEFFICIENCY, INCAPACITY, CONDUCT UNBECOMING A TEACHER OR OTHER JUST CAUSE*. AS OPPOSED TO THIS, BOARDS OF EDUCATION WHERE THE NON-TENURED TEACHER IS CONCERNED, ARE PRESENTLY GIVEN THE UNSHACKLED RIGHT FOR THE NON-RENEWAL OF A NON-TENURED TEACHER'S CONTRACT WITHOUT ADVANCING ANY REASONS OR CAUSE. THIS IS TRUE AND A GOOD PHILOSOPHY AS SET

FORTH BY JUSTICE SCHETTINO WHEN SPEAKING FOR THE SUPREME COURT  
IN ZIMMERMAN V. BOARD OF EDUCATION OF NEWARK:

"IT IS DIFFICULT TO EVALUATE THE CHARACTER, INDUSTRY,  
PERSONALITY, AND RESPONSIBILITY OF AN APPLICANT FROM  
HIS PERFORMANCE ON A WRITTEN EXAMINATION OR THROUGH  
CURSORY PERSONAL INTERVIEWS. KNOWLEDGE AND INTELLI-  
GENCE DO NOT ALONE [SUFFICE] \* \* \*. THE CRUCIAL  
TEST OF HIS FITNESS IS HOW HE FARES ON THE JOB FROM  
DAY TO DAY WHEN SUDDENLY CONFRONTED BY SITUATIONS  
DEMANDING A BREADTH OF RESOURCES AND DIPLOMACY. MANY  
INTANGIBLE QUALITIES MUST BE TAKEN INTO ACCOUNT, AND,  
SINCE THE LACK OF THEM MAY NOT CONSTITUTE GOOD CAUSE  
FOR DISMISSAL UNDER A TENURE STATUTE, THE [EMPLOYER]  
\* \* \* IS ENTITLED TO A PERIOD OF PRELIMINARY SCRUTINY,  
DURING WHICH THE PROTECTION OF TENURE DOES NOT APPLY,  
IN ORDER THAT IT MAY MAKE PRAGMATICALLY INFORMED AND  
UNRESTRICTED DECISIONS AS TO AN APPLICANT'S SUITABILITY."

ADDRESSING, THEREFORE, THE STATUTE IN QUESTION, ASSEMBLY  
BILL NO. 960, WOULD SEEM TO LEAVE OPEN AN INTERPRETATION OF THE  
WORD AT LINE 10 *AND OTHER BENEFITS*, AND IT WOULD APPEAR THAT THE  
STATUTE AS PROPOSED TO BE AMENDED WOULD LEAVE FOR DECISION AT A  
LATER DAY WHETHER OR NOT TENURE IS ONE OF THESE *OTHER BENEFITS*  
ALLUDED TO BUT NOT SPECIFICALLY MENTIONED.

SIMILARLY, TO PERMIT THE NON-TENURED TEACHER TO REQUEST IN WRITING THE REASONS FOR HIS NON-REEMPLOYMENT, WOULD DEPRIVE THE BOARD OF EDUCATION OF EXERCISING WHAT JUSTICE SCHETTINO HAS PREFERRED TO AS THE CRUCIAL TESTS AND SUITABILITY TO BECOME A TENURED EMPLOYEE, INASMUCH AS IN MANY INSTANCES THE PRAGMATIC AND SUBJECTIVE THINKING OF THE ADMINISTRATION IN NON-RENEWING A NON-TENURED TEACHER'S CONTRACT WOULD NOT CONSTITUTIONALLY SUFFICE TO SUSTAIN THAT NON-RETENTION, SINCE ALL STANDARDS WOULD HAVE TO THEN BE MET WITH RESPECT TO THE REASONS FOR WHICH A TENURED TEACHER IS DISMISSED. IN EFFECT, THE RIGHT TO REASONS AND A HEARING WOULD ABOLISH ALL DISTINCTION BETWEEN A NON-TENURED AND TENURED TEACHER.

AN EVEN GREATER COMPLAINT, HOWEVER, FOR THE ENCROACHMENT THROUGH BINDING ARBITRATION NOT ONLY ON THE EDUCATIONAL AND MANAGERIAL PREROGATIVES OF A LOCAL BOARD OF EDUCATION, BUT UPON THE PRIMARY JURISDICTION OF THE COMMISSIONER OF EDUCATION, WHO HAS PARAMOUNT DUTY UNDER TITLE 18A TO DECIDE ALL CONTROVERSIES AND DISPUTES ARISING UNDER SCHOOL LAW. REFERENCE IS DRAWN TO PAGE 2, PARAGRAPH 5, OF THE ASSEMBLY BILL 960, WHEREIN A TEACHER AGGRIEVED OF A HEARING COULD PROCEED TO SUBMIT TO BINDING ARBITRATION THE DISPUTE NOT TO REHIRE HIM, AS WELL AS TO THE COMMISSIONER OF EDUCATION. HISTORICALLY SPEAKING, THE EXPERTISE OF THE COMMISSIONER OF EDUCATION IS THE PERSON EMPOWERED BY STATUTE TO RESOLVE SUCH A CONTROVERSY OR DISPUTE AND BY PERMITTING ARBITRATORS THROUGHOUT THE STATE OF NEW JERSEY WOULD INVITE A RAFTER OF

DIVERSIFIED, UNINTELLIBIBLE, AND UNCONTROLLED DECISIONS  
RENDERED BY LAW PROFESSORS AND NON-PRACTICING ATTORNEYS.

I AGAIN RETURN TO MY INITIAL ARGUMENT THAT PARAGRAPH 2 OF PAGE  
1 DOES NOT PRECISELY ANSWER THE QUESTION WHETHER THE INTENDMENT  
IS TO CONFER TENURE IF A BOARD FAILS TO GIVE NOTICE OR HEARINGS  
REQUIRED. HOWEVER, I AM MINDFUL THAT THIS STATUTE IS NOT  
UNDER THE TENURE ACT, BUT UNDER ARTICLE IV ENTITLED *CONTINUA-  
TION AND TERMINATION OF EMPLOYMENT*.

FINALLY, SUCH A BILL WOULD TAKE AWAY FROM LOCAL  
ADMINISTRATIONS AND BOARDS OF EDUCATION THAT WHICH IS ALREADY  
REPOSED WITH THEM UNDER STATUTE PURSUANT TO TITLE 18A AND  
GAVE THESE ADMINISTRATIVE RIGHTS AND PREROGATIVES TO ARBITRATORS  
AND COMPLETELY WREST FROM ALL BOARDS OF EDUCATION THE SALUTARY  
BENEFIT OF DECIDING, AFTER THE PROBATIONARY PERIOD, WHETHER OR  
NOT A PUBLIC EMPLOYEE IS SUITABLE AND FIT.

ASSEMBLY BILL NO. 929

WHILE MANY OF MY ARGUMENTS ALREADY ADVANCED ON  
ASSEMBLY BILL 960 HOLD TRUE FOR ASSEMBLY BILL 929, I BELIEVE  
THAT UNBLINKINCLY OBVIOUS TO THIS BODY SHOULD BE ALMOST  
UNCONSTITUTIONAL AS SAID ADDITION IS GIVEN TO PARAGRAPH 2 OF  
ASSEMBLY BILL 929. THIS CALLS FOR NON-TENURED STAFF MEMBERS  
TO BE *OBSERVED AND EVALUATED* FOUR TIMES A YEAR, AND WHICH  
OBSERVATION AND EVALUATION IS IN NO WAY DESIGNED BY THE  
STATUTE ITSELF. HOWEVER, FOR FAILURE TO SO CONDUCT THAT  
*OBSERVATION AND EVALUATION*, THE MOST SEVERE PENALTY IS  
IMPOSED UPON EVERY BOARD OF EDUCATION WHAT IS TERMED IN  
EDUCATION CIRCLES *THE AUTOMATIC RENEWAL PROVISION*. BY WAY

OF PROCEDURE AND PRECEDENT TO THE COLLECTIVE BARGAINING UNITS OF MANY ASSOCIATIONS IN THE STATE THAT ATTEMPTED TO INCORPORATE IN THE AGREEMENTS BETWEEN THE BOARD AND THE ASSOCIATION SUCH A TRAP AS THE *AUTOMATIC RENEWAL PROVISION*, AND IN CASE AFTER CASE, THE COMMISSIONER OF EDUCATION HAS DECLARED ULTRA VIRES, ILLEGAL, VOID, AND OF NO EFFECT, SUCH PROVISION. SINCE THESE PROVISIONS BY AGREEMENT THROUGH A PROCEDURAL DEFECT ENCUMBER A BOARD OF EDUCATION WITH THE EMPLOYMENT OF A NON-TENURED TEACHER. IT WOULD APPEAR THAT THIS IS ONE MORE BASIS TO BULSTER THE ECONOMIC PLIGHT OF NON-TENURED TEACHERS AND TO ENCUMBER A BOARD OF EDUCATION BY STATUTE WITH EVALUATIONS AND OBSERVATIONS REQUIRED ON A STATE BASIS RATHER THAN A LOCAL BASIS. THIS IS AN EDUCATIONAL AND MANAGERIAL SITUATION COMPETENTLY AND APPROPRIATELY HANDLED ON THE LOCAL LEVEL AND SHOULD REMAIN SO. THE PROBATIONARY TEACHER KNOWS WHEN HE FILED HIS PROBATIONARY CONTRACT THAT IT AUTOMATICALLY EXPIRES AT THE END OF THE YEAR. THEREFORE, ANOTHER INROAD WITH RESPECT TO THE HISTORICAL CONCEPT OF A PROBATIONARY TEACHER WOULD BE ONE MORE GRANITE STONE ERASING THE DISTINCTION BETWEEN A TENURE AND NON-TENURED TEACHER, PLACING UNDUE HARDSHIP AND THE MOST SEVERE PENALTY UPON ADMINISTRATION FOR A FAILURE OF PROCEDURE, RATHER THAN LOOKING TO THE SUITABILITY AND FITNESS OF THE TEACHER.

IT WOULD APPEAR TO ME THAT SUCH LEGISLATION WHICH I HAVE DISCUSSED WOULD ALMOST AUTOMATICALLY COMPEL BOARDS OF EDUCATION TO PAY LIP SERVICE COMPLIANCE AND A PRECONCEIVED POLICY TO AUTOMATICALLY NOT RETAIN ALL NON-TENURED TEACHERS. SUCH A POLICY GOES TO THE DESTRUCTION OF EDUCATION RATHER THAN TO ITS EDIFICATION.

Gentlemen, the Brick Township School Board in its entirety is definitely opposed to both bills. We are not opposed to everything contained in them but certainly the automatic renewal of nontenure teachers.

ASSEMBLYMAN BURSTEIN: Thank you. We will now have questions. Assemblyman Hicks?

ASSEMBLYMAN HICKS: Mr. Bell, I realize that the Education Department of the State and the Federal Government also moves with all deliberate speed. Do you feel that a local board of education could adequately conduct hearings and determine re-employment within a specified five days, as outlined by the bill? If yes, or no, what are the complications involved?

MR. BELL: I think, within a five day time it would be very difficult.

ASSEMBLYMAN BELL: Why, sir?

MR. BELL: Because most of your board of education members are employed outside the district. It is difficult to get all the information to them, set up meetings. Their workload is rather tremendous. I know we have more than two or three meetings a week. We don't meet once a month. We meet legally once a month but in our particular district our workload is very heavy. And I think in the area of nontenure teachers, if we had to give hearings and this bill were passed, we would be flooded with hearings on nontenure teachers.

ASSEMBLYMAN HICKS: One other question.

I think America as a whole is sort of involved in the home rule concept, and the local board of education is all that we have in our local school districts and in our cities to sort of let the people

themselves get involved in how the school is run. Do you feel that these two bills would sort of encroach upon the home rule concept?

MR. BELL: Very definitely.

ASSEMBLYMAN HICKS: How, sir?

MR. BELL: Because you are legislating educational values, I think, which belong to the administrative and managerial aspect of local school districts. And even the boards of education themselves do not administer or get into the educational values. We work a school district. We do not go in and tell the administrators how to run an educational process.

ASSEMBLYMAN HICKS: Thank you very much.

ASSEMBLYMAN WORTHINGTON: Mr. Bell, could you give me the approximate date of that decision - Zimmerman V. Board of Education, Newark? Is that a recent decision or is that an old one.

MR. BELL: There is no date on that, sir. I can get it to you.

ASSEMBLYMAN WORTHINGTON: Thank you.

Mr. Bell, you say under the provisions of A960 it would be almost mandatory for school boards to offer contracts to nontenure teachers each succeeding year. I wonder why. I don't understand that. I thought it wasn't necessary to offer a contract and if you didn't offer a contract you just would provide the teacher with a statement as to why her contract wasn't being renewed.

In so far as this 5 day period, I think that if you were going to do this you would have a statement prepared ahead of time in case a teacher wanted to know the reasons why. I don't see why the 5 days would make any difference. I should imagine you would do this ahead



of time, that you just wouldn't tell the teacher one day and then take five days to prepare a statement. I should imagine the statement would be prepared ahead of time.

MR. BELL: This is usually handled on the administrative level. The teacher is notified through the administrator as to whether or not he is going to be rehired. I don't believe that we should be placing into the file a statement as to whether or not they should be rehired or as to the reasons why, because it opens the doors, as was said before, to many legal problems.

In the case of tenure teachers, you do have to document and it has opened the door many times, as in Brick Township, to many legal problems. I am sure the same thing would happen with nontenure teachers. There are areas of grievance procedures, binding arbitration, that are incorporated here that I think would cause undue hardship on the taxpayers for legal fees if we opened the door to that. I think sufficiently we can notify a teacher that they are not going to be rehired and I don't think we should be faced with the undue burden of giving them a hearing afterward, the same as a tenure teacher.

ASSEMBLYMAN WORTHINGTON: You feel the teacher should be notified as to why they haven't been rehired.

MR. BELL: They are in Brick Township.

ASSEMBLYMAN WORTHINGTON: They are in Brick Township?

MR. BELL: Yes, sir.

ASSEMBLYMAN WORTHINGTON: Do you do it in writing?

MR. BELL: They are notified in writing that

they are not going to be rehired, yes.

ASSEMBLYMAN WORTHINGTON: In so far as the reasons why?

MR. BELL: Whether or not all of the reasons are incorporated, we don't look into the folders, no.

ASSEMBLYMAN WORTHINGTON: Do you give them a statement outlining them?

MR. BELL: The administrator, to my knowledge, does. But we do not look into their folders. The board does not delve into the personnel folders of the teachers.

ASSEMBLYMAN WORTHINGTON: No, but the teacher himself is notified as to what the reasons are.

MR. BELL: Within the time limit, yes.

ASSEMBLYMAN WORTHINGTON: How would this then affect what you do in your district, if you already do this now? I don't see where it would cause you any concern.

MR. BELL: Because this particular bill gives them the area of binding arbitration and appeal to the Commissioner, which would, again as I said before, place undue hardship on the taxpayers of Brick and any other community as far as legal fees go.

ASSEMBLYMAN WORTHINGTON: As a Board President you feel teachers who are not rehired really ought to be told why.

MR. BELL: Yes.

ASSEMBLYMAN WORTHINGTON: As a matter of good practice.

MR. BELL: We do.

ASSEMBLYMAN WORTHINGTON: Thank you.

ASSEMBLYMAN FROUDE: I just have one question. As a member of the Board, what do you require of the supervisor before confirming an administrative recommendation?

MR. BELL: You mean to the Board?

ASSEMBLYMAN FROUDE: I'm concerned about a recommendation of an administrator to not rehire a nontenure teacher. What do you, as a board, require of that recommendation?

MR. BELL: They have to make observations and evaluations of the teachers before they come to us. And we do that in Brick Township.

ASSEMBLYMAN FROUDE: And when they come to you, what do they come to you with?

MR. BELL: Whether or not they would keep them on, what their qualifications are, and whether or not they are suitable to work in the district.

ASSEMBLYMAN FROUDE: In what form does that report come to you?

MR. BELL: Verbal.

ASSEMBLYMAN FROUDE: Verbal?

MR. BELL: We meet with the administration.  
Yes.

ASSEMBLYMAN FROUDE: How many administrators or supervisors would be involved in that verbal reporting procedure?

MR. BELL: It depends on which level. Every level is different. Our elementary, secondary and high school.

ASSEMBLYMAN FROUDE: Let's assume it's elementary.

MR. BELL: Then we would have the elementary assistant superintendent and we would have the principals involved in those schools and their supervisors.

ASSEMBLYMAN FROUDE: And you, as a board member, would assume that that teacher was observed not by one supervisor but by a number?

MR. BELL: Yes.

ASSEMBLYMAN FROUDE: And you would have the benefit of written reports from each one of those supervisors before confirming?

MR. BELL: If requested, they have them.

ASSEMBLYMAN FROUDE: If requested.

MR. BELL: If we request them, they have them.

ASSEMBLYMAN FROUDE: There would be times when you would not, as a board, request?

MR. BELL: I think we would be remiss in our duty if, as a board of education, we asked for every single evaluation and observation of a teacher, full well knowing that we pay these administrators very well and we do have to rely on their judgment. And I think we would be questioning their good judgment if in fact we did just that.

ASSEMBLYMAN FROUDE: Would it be fair to assume then that as a board member at Brick I would not feel as though there was going to be a great deal of additional paperwork imposed upon my administrators or our administrators if a teacher had the right to request in writing the reasons for not being reappointed? Do you feel rather confident that they have all that information documented and written?

MR. BELL: I would say our administrators do a very good job. They are not remiss in their duties.

ASSEMBLYMAN FROUDE: I'm sure they do. I'm asking you whether they have a written document.

MR. BELL: Yes, they document it.

ASSEMBLYMAN FROUDE: In writing.

MR. BELL: Yes, sir.

ASSEMBLYMAN FROUDE: So then it would be a matter of duplicating it and handing it to the teacher.

MR. BELL: If we requested it, they would have it and they would get it. There are many times that we do request certain information on teachers,

asking whether or not it might not be proper to give them another year, is there some way we can help them. We do go out of our way to ask our administrators on the first year basis of nontenure teachers if in fact they have given the teachers all the help that they did need to help them through their second and third year. If by the end of the third year they can't cut it, then we don't keep them. But we do bend over for every nontenure teacher that we can. And we do ask our administrators, our subject supervisors, to go in and help them and many times they did help them a lot to improve themselves.

ASSEMBLYMAN FROUDE: Well, I take it that's the kind of relationship you have with your administrators but as a standard procedure all teachers benefit from it. Right?

MR. BELL: I would say so. We have a good relationship with our administrators and we have a good relationship with our teachers.

ASSEMBLYMAN FROUDE: You are conveying to me that you are spotchecking - is that what you're conveying to me that you are spotchecking your administration at times to see that the system that you have this faith in is in fact operating? Is that what you're saying?

MR. BELL: I say that there are times when you do go and question some of the things that they're doing. We're not all perfect but I do say we do have a very fine staff of top administrators

ASSEMBLYMAN FROUDE: Thank you.

ASSEMBLYMAN MARTIN: Mr. Bell, have you had any rejections from teachers who did not agree with the recommendation of the administrator or supervisor?

MR. BELL: I would say that we had a couple.

ASSEMBLYMAN MARTIN: How were these eventually disposed of?

MR. BELL: Through the courts, placing an undue hardship on the taxpayers of the Township of Brick.

ASSEMBLYMAN MARTIN: I assume from your answer that the courts found in your favor?

MR. BELL: Today they're still pending. The cases are still in the court.

ASSEMBLYMAN BURSTEIN: Mr. Bell, do you have your superintendent of schools do any evaluations?

MR. BELL: Sometimes. He does most of the top administrative evaluation.

ASSEMBLYMAN BURSTEIN: Does he do classroom evaluations?

MR. BELL: I think with the workload that our Superintendent of Schools has it would be very difficult for him to do classroom evaluations. As a matter of fact, he was just let out of the hospital after a heart attack because of his workload.

ASSEMBLYMAN BURSTEIN: How big a school system do you have?

MR. BELL: We have some ten thousand one hundred and some odd students. Eleven schools.

ASSEMBLYMAN BURSTEIN: And how many teachers?

MR. BELL: Approximately 580 or 585.

ASSEMBLYMAN BURSTEIN: Of whom what proportion are nontenure?

MR. BELL: Off the top of my head it would be very difficult to answer.

ASSEMBLYMAN BURSTEIN: Thank you. Thank you for your testimony.

MR. BELL: Thank you, sir.

ASSEMBLYMAN BURSTEIN: Mrs. Kathryn Pietrunti. Would you please introduce yourself and whom you represent.

K A T H R Y N     P I E T R U N T I: My name is Kathryn Pietrunti. I am President of the Brick Township Education Association.

I do not come before you with a prepared statement. However, after listening to Mr. Bell, it necessitated my sitting here to rebut some of the things he said, with brevity.

MR. BURSTEIN: May I say, if I may interrupt you, please, I don't want, if possible, for you to rebut statements of Mr. Bell. We are here to hear testimony with regard to two bills that relate to teacher tenure. If you have experience from your Presidency of the Brick Township Education Association, I am sure it will be beneficial to us. Rather than make a debate out of it, I would just as soon hear your comments on your experience.

MRS. PIETRUNTI: Well I can incorporate the debate subtly and I will make comments to the bills.

ASSEMBLYMAN BURSTEIN: Proceed.

MRS. PIETRUNTI: I think the two bills before you today are actually an outgrowth of a situation that exists in Brick Township. And the most notorious case is the case of two teachers, which Mr. Bell made comment to. It's still pending. It's in litigation. It's three years old.

Those teachers, contrary to what was offered to you, were dismissed over and above their contractual rights. They were nontenure teachers with exemplary records, teaching records. They were dismissed, fired or non-renewed, without written or oral documentation.

And I think that that incident, which has resulted in enormous expenditures in the courts, is what brought before you the two bills today. I think the nonexistence of nontenure teacher rights has become --

throughout the district teachers in the State of New Jersey have become educated on this matter that non-tenure teachers do not have rights. They have pleaded with their leadership in NJEA to come forth with bills such as you have before you now.

Nontenure teachers in Brick Township are not afforded written or oral documentation on their dismissal, in no way, shape or form, three years ago or two years ago or at the present time.

ASSEMBLYMAN BURSTEIN: Thank you.

Any questions?

ASSEMBLYMAN HICKS: I must apologize. I left the room and I didn't get your name.

MRS. PIETRUNTI: Kathryn Pietrunti, President of the Teachers Association of Brick Township.

ASSEMBLYMAN HICKS: Thank you very much.

Do you really feel that a continuation of employment is a major policy decision by the board of education?

MRS. PIETRUNTI: Yes, I do.

ASSEMBLYMAN HICKS: I am reminded of a Supreme Court ruling - Dunellen - that a board of education cannot legally agree to submit to arbitration the soundness or the validity of a determination in cases involving major educational policy. You said just a moment ago that continuation of employment was a major policy decision. Do you feel that the board of education should allow arbitration to decide major policy decisions?

MRS. PIETRUNTI: Yes. I am not steeped in the law but my understanding of the Dunellen decision is that they have given to the Board of Education complete authority, as it relates to curriculum. That's my understanding of it and that's been my legal advice on that matter.



As far as personnel goes, I don't think boards of education are really the place to look to, the people to look to as far as rehiring even if it's legally within their jurisdiction. But they are dependent completely upon administrators for hiring or non-hiring of professional personnel.

ASSEMBLYMAN HICKS: Would you like to withdraw your first statement that you don't believe continuation of employment in education is a major policy decision. You don't believe that then.

MRS. PIETRUNTI: I wouldn't want to debate with you the defining of policy decisions as it relates to the decision in the Dunellen case, not at all. As I said, I'm not a lawyer, I'm an educator.

ASSEMBLYMAN HICKS: Certainly. I'm a teacher too.

MRS. PIETRUNTI: I wouldn't want to debate that at all. That's not my forte. Education is my business, not law.

ASSEMBLYMAN HICKS: Then do you feel decisions to employ or not to employ should be submitted to arbitration?

MRS. PIETRUNTI: In a situation such as this with nontenure teachers, I would say definitely.

ASSEMBLYMAN HICKS: You would disagree with the Supreme Court ruling in that case?

MRS. PIETRUNTI: I don't know if that's what the Supreme Court said.

ASSEMBLYMAN HICKS: No further questions. Thank you.

ASSEMBLYMAN BURSTEIN: Mr. Emory Kiess.

E M O R Y     J.     K I E S S, Jr.: Members of the Committee:

I am Emory J. Kiess, Jr., principal of the Port Norris Elementary School of Commercial Township, Cumberland County. I have been a member of the education profession for 16 years, six as a classroom teacher and ten as an administrator. Currently I am serving as the southern region field representation for the New Jersey Elementary Principals Association. I am a former member, vice-president and chief negotiator of the Elk Township Board of Education, Gloucester County, having been duly elected to that Board for two successive terms. Also, I am a former member of the Board of Directors of the New Jersey School Boards Association. Included in my services with the New Jersey School Boards Association, was the chairmanship of their committee to study staff evaluation and its relationship to tenure and compensation and membership on their Committee to study modification of state tenure laws.

I mention my background to qualify myself to speak today against Assembly Bills 929 and 960. I am here primarily as a representative of the New Jersey School Boards Association partially because of my former committee involvement but also as a citizen and educator committed to the concept of local control of education by duly elected or appointed local boards of education.

I stand in opposition to both 929 and 960 basically because of four reasons: 1) they violate constitutionally and legislatively mandated local management prerogatives; 2) they mandate a specific number of evaluations; 3) give tenure rights to non-tenure teachers; and, 4) in effect, give almost automatic immediate tenure to newly elected teachers. I shall embellish upon these reasons in my subsequent testimony.

A-929 deals with quantity, not quality. If a time study were done to determine impact in terms of increased fiscal and manpower needs for implementation it could be easily shown that quality is being sacrificed for quantity.

Current law requires notification of continuation or termination of employment by April 30. At first glance this leaves the school administrator with seven months, 140 school days to conduct four observation/conference evaluations on each non-tenured teacher. A time study would reveal that in reality this is not true. A review of the seven months done in terms of identifying optimum fair evaluation time reveals that there is much less than 140 school days.

September provides about ten optimum days as it is a month of pace setting, organizing for the school year and all professional employees find themselves deeply embroiled in administrative tasks other than or in addition to instruction. October is a good month for optimum time in that the holiday interruptions are few. This month should provide 20 optimum days. November and December are riddled with holidays and combined provide about 24 optimum days.

Days before and after holidays are not optimum days because of anticipation and regression patterns in children. Succeedingly, the instructional process is interrupted by the NJEA convention, parent-teacher conferences, Thanksgiving and Christmas. January and February are excellent and offer approximately 38 optimum days. March can be interrupted by Spring or Easter vacation and offers less than 20 optimum days. April offers only five optimum days, because only the first week is realistically available if the administration is to be allowed the practical amount of time to complete their recommendations for the Board of Education which in turn must have sufficient time for disposition prior to April 30.

If one claims that every instructional minute of every school day September through and including April is a time for optimum evaluation, then approximately 140 evaluation days are available. My aforestated review of the months suggests that only 117 are available. This is based on the "every available instructional minute" criteria, which I submit is not a valid concept.

Purposely I have not yet defined what I mean by "optimum evaluation time." By this expression I mean that period of time in a school day wherein conditions for evaluation are most favorable for the teacher. In my professional opinion, Tuesday, Wednesday and Thursday mornings are the truly optimum evaluation times in which conditions should be most favorable to observe a teacher in the best possible situation for the teacher. Following this concept, which is developed in the favor of the teacher, there are left only 71 days per school year in which to carry out the mandate of this proposed legislation.

The estimated ratio of non-tenured teachers to certified evaluators is 14 to 1. Traditional evaluation, the form referred to in this legislation, is the observation/conference exercise and is a very unfair and limiting process for assessing the professional effectiveness of a teacher. Hypothetically, a reasonable evaluation observation lasts one hour on the average; the evaluator should spend an average of one hour in preparation of the written document and at least another hour in conference. Three hours per evaluation, times four evaluations, times 14 teachers, requires 168 hours at the minimum to be spent on a mandated, poor approach to evaluation. This is a disproportionate amount of time when one considers the overall responsibility of the principal. Observations and conferences are only one part of supervision of the instructional program and that role is only one part of the overall job of the principal. Consequently, there is a strong impact here in terms of man hours and increased fiscal responsibility at the local level with no suggested support increases from the state level.

A-929 also implies that the traditional "observation/conference" exercise system of evaluation is satisfactory. I submit that even though it is the most frequently used it is also the most ineffective. If it were so effective, why do we graduate so many non and poor readers and so many with no saleable skills?

If the intent of this legislation is to require local boards of education to design, adopt and implement local evaluative instruments then let it be said

that way. To mandate development and implementation at the local level is acceptable to us but to mandate a quantity and express its form in traditional terms is unrealistic and evasive in terms of true needs, good evaluation systems and current manpower availability.

As chairman of the New Jersey School Boards Association Committee to Study Evaluation, I can submit that the Association firmly supports the concept and value of evaluation. The final report of my Committee has subsequently formed Association policy which states that the Association believes it to be the responsibility of the local board of education to adopt policies requiring the development and implementation of local evaluative instruments and that it should be the responsibility of the local board to provide in-service training for the improvement of its professional staff and that further, such responsibilities receive high budgetary priority. This, in part, implies that the Association believes that the process of evaluation is much more broad and deep than simply the observe/confer exercise.

NJEA supports the concept that each child is and should be treated as an individual. I suggest that this belief is transferable to teachers. There exists no single magic number of evaluations. One teacher may require a dozen evaluations while another only two or three. Further, not all non-tenure teachers are beginning teachers. Why should, for example, a teacher with ten years of successful teaching experience be subjected to a mandated four evaluations simply because of any one of a number of possible valid circumstances which caused a job change?

This last point brings up another question. Why all of this concern over non-tenure personnel? Our children are taught by teachers, some non-tenured, some, many, tenured. If evaluation is so valid and necessary for one group I feel it should apply to all groups. Tenure doesn't guarantee a thorough and efficient teacher. All it guarantees is job protection and that's a bit of a one way street.

In terms of the ability of the board and administrative staff to carry out the mandate of this proposed legislation, there are many variables which may make it impossible to complete the mandate. Because of reasons beyond control, a person receiving several poor evaluations would receive a contract automatically if the mandate were not fulfilled. Consider the ramifications if this individual were up for tenure. The result would be granting employment for life to a less than satisfactory employee. Because the legislation only deals with quantity, and presents the possibility of automatic contract renewal because the local board was unable to complete the mandate, the local board is denied its primary management prerogative, the selection of instructional staff members.

Section 2 of A-929 is unnecessary because it is redundant. That is, all teachers have recourse through constitutional guarantees and Public Law 303 if any individual rights have been violated. The local board is the policy making body. That prerogative does not permit development of policies that infringe on individual rights. It does permit policy development for evaluation and if that evaluation subsequently violates individual rights and such violation can be sustained adequate recourse is currently available.

I would now like to speak in opposition to A-960. Though I am not a member of the Bar, it is my layman's opinion that A-960 is unconstitutional in that it violates the prerogative of the local board of education to secure and properly evaluate the best staff for the instruction of the children in their charge under the constitutional requirement to provide a thorough and efficient education.

In effect it grants tenure upon the moment of employment in that it grants tenure rights to non-tenure personnel. In fact, it takes the present detenuring process available to tenured personnel and improves upon it in the favor of the individual by shortening time periods excessively, by-passing some current steps, and interjects the concept of binding arbitration in a management prerogative area.

NJEA is on public record as being satisfied with the currently available detenuring process. Why then does the legislature have submitted to it a process even more favorable to the individual?

In effect, A-960 places the full burden of securing a good instructional staff on the hiring process. No matter how comprehensive the hiring process is that a board and administrative staff designs, there exists no absolute way to determine the real effectiveness and potential success of an individual teacher until that teacher is in the employ of the board. If a board determines they have made a mistake in a hiring decision, A-960 places the board in an almost impossible situation by overburdening the board and administrative staff with an appeal process covering a very short time period and heavily in favor of the individual. The board is representing the children and the children as well as the teacher deserve equal due process.

Further, by placing almost full burden on the hiring process, the probationary period in effect is eliminated. Don't all employers have the right to place their new employees on probationary status? Emperically, A-960 shortens the present probationary period from three years to seven months.

If an employee is treated fairly a good evaluator will advise the employee of points that need improvement and will do so in writing. If such points are not improved satisfactorily in the eyes of a properly certified evaluator then the employee already knows the

reasons for non-renewal of contract. Legislation requiring such advisement is unnecessary. If the employee feels he or she has not been treated fairly in terms of individual rights recourse is already available to them.

A random sampling of New Jersey school districts indicates that 9% of non-tenured personnel were not rehired. The reverse of this is that 91% were rehired. Considering the current national credibility gap existent between the schools and the communities they serve, this suggests that the evaluative process is weak. The sampling further suggests that 91% were properly trained and were successful in the classroom. Our drop-out rate is still too high. Too many young people graduate from high school as poor readers with no saleable skills. Yet 91% of our probationary teachers are successful. Something is wrong somewhere and it is not the current inability of the non-tenured teacher to have rights to reasons for dismissal and subsequent appeal rights.

We do not need more legislation to make the process of improving education more cumbersome, time consuming and difficult. If any legislation is needed it should take the form of enhancing and supporting boards of education to carry out the constitutional mandate to provide a thorough and efficient education.

Summarily, schools exist for the education of our children, not irreversible life employment for staff members. A-929 and A-960 deal with the latter. Elected public officials, both legislators and board members, must concern themselves primarily with the quality of the instructional program and I beseech all to seek legislation in that regard.

Thank you for the privilege of your time.

ASSEMBLYMAN BURSTEIN: Thank you, Mr. Kiess.

May I ask you one or two questions, please.

First, with regard to the statistical aspect of what you presented to us, the 91% as against 9%. Does that mean that 91% were given permanent contracts?

MR. KIESS: No. 91% were either awarded second or third year contracts.

ASSEMBLYMAN BURSTEIN: So that it really doesn't reflect in accurate form the differential between tenure and nontenure teachers, does it?

MR. KIESS: I don't understand the question.

ASSEMBLYMAN BURSTEIN: Well, the 91% does not represent, in any given year, that number of people who are in nontenure capacity who then obtained permanent contracts. Is that correct?

MR. KIESS: No. It simply represents the fact that 91% of nontenure personnel received another contract. Now I don't know what portion of that 91% received a tenure contract. I don't have that.

ASSEMBLYMAN BURSTEIN: Then the statistic loses its meaning for us, frankly.

MR. KIESS: Not completely.

ASSEMBLYMAN BURSTEIN: All right. I won't argue the issue.

You also mention the fact that one of the products of the study that you had made was that your group felt that there ought to be a good deal more in the way of evaluation than simply the observation aspect, and you were highly critical of the bill, 929 particularly, that focused to a heavy extent upon the observation of evaluative form. And you mentioned also the fact that one of the recommendations was that there be in-service work provided, if I recall rightly.

And my question, based upon those premises, is whether that in-service work would be during the

probationary period. Is that what your group intends?

MR. KIESS: No. Any in-service program would deal with a total instructional staff. There may be some in-service needs that are determined by committees to pertain particularly to nontenure personnel but the statement generally referred to in-service training in general.

ASSEMBLYMAN BURSTEIN: In view of the fact then that we are dealing with two bills that are focusing upon the nontenure status of personnel, and the fact further that you are critical of the emphasis upon simply observation and evaluation, what alternatives do you suggest?

MR. KIESS: I could retire early if I had the full answer to that.

ASSEMBLYMAN BURSTEIN: So could we all.

MR. KIESS: People have been working on this for years. There is much more to it, as I indicate here, than simply visiting a classroom for an hour or twenty minutes or whatever amount of time the individual evaluator so chooses and observing one situation and then reacting to that one situation. I think the certified evaluator should be about that building quite frequently, should be popping in and out of classrooms quite frequently and should have lots of conversations with the teachers, should be working with the teachers on the improvement of the total program of the school. And their, in turn, cooperation to that end is part of his evaluation of them. I think that he should have a chance to see them in many situations. I suggested an optimum time and that was related to the evaluation-observation-conference kind of format.

ASSEMBLYMAN BURSTEIN: In view of the fact that A-929 doesn't mandate 4 evaluations, period, but says at least 4 shall be held, that doesn't preclude



the kind of picture that you're presenting to us, does it?

MR. KIESS: No. But it doesn't suggest anything else either. It's very lacking in form. It's very lacking in ideas.

ASSEMBLYMAN BURSTEIN: Given that to be the fact and given all the infirmities of the Legislature and legislation generally in promoting innovative ideas to the fullest possible extent that would represent an ideal, I would pose this question to you. Is there any school district in the State of New Jersey doing something in the field of observation and evaluation of nontenure personnel that could offer to us some suggestions that would enhance the legislation now before us.

MR. KIESS: I can't speak for other school districts. There are several that would come to mind but I am not in a position to offer their names to you, some that I've worked with and some that I'm familiar with.

ASSEMBLYMAN BURSTEIN: I'm not looking for names. All I'm looking for are ideas.

MR. KIESS: Yes, there are a number.

ASSEMBLYMAN BURSTEIN: And could you give us an idea of what it's about? How do they go about evaluating their nontenure personnel in ways that would enable us to perhaps embellish or enhance or improve this legislation?

MR. KIESS: One model that I support, that our Committee dealt with and I have seen function in one particular school district in Gloucester County, - I won't go beyond saying the county - had to do with the educational leaders of the building sitting down with each individual teacher at the beginning of the

year and then at appropriate periods thereafter and assessing behaviorally their objectives with a particular group of children that had been assigned to them. Okay, what do these children need? How can the board and administrative staff be supportive to help you do the job? And together the evaluator and the teacher establish the behavioral objectives that that teacher will follow for a period of time. Then later on we come back together and we say, well now here we are, where are we in terms of where we would hope to be at this point with each individual child in your responsibility. And if you aren't at this point, why not? where did it fall down? Did we misperceive the needs? Did the local board and administration not give you proper supportive staff materials, etc.? Or did you, in fact, not carry out the job?

The burden of an effective instructional program doesn't lie just in the lap of the teacher, it lies with everybody involved in the instructional program. I see that kind of thing of much more value than the traditional exercise we've been going through for years.

ASSEMBLYMAN BURSTEIN: I could probably spend all day questioning you, Mr. Kiess, but I want to allow time for the other Assemblymen to ask questions, if they have any questions. And making his formal debut this morning, I call on Assemblyman Ewing, if he has any questions.

ASSEMBLYMAN EWING: No.

ASSEMBLYMAN BURSTEIN: Assemblyman Worthington?

ASSEMBLYMAN WORTHINGTON: Mr. Kiess, the representative from the Council of School Administrators and the representatives from the Board of Education that have so far

testified before this committee thought that it was the prime responsibility and a good technique of the evaluative procedure to carry on the way this bill outlines, in so far as sitting down and observing and sitting down in conferences with the teachers who have been observed and perhaps reducing this to writing. And the two gentlemen from the Council of School Administrators say that this is the technique and it is an approved technique and it is a fine technique and it works well in their schools. The gentleman from Brick Township says that they do the same thing.

If this is good practice and good procedure from an educational standpoint of view and if the better schools in the State are carrying out this kind of procedure, then the way I look at this here is that what we are trying to do here is to mandate to perhaps some of the schools who aren't doing this that maybe they ought to be doing it. And because they aren't doing it, we are going to compel them to do it.

It seems to me if it is good procedure and good practice and, if there are in fact many school districts who aren't following these procedures and practices -- under the laissez-faire system that we have at present, they can or they can't, depending on what they choose to do. We are trying to get them to do something that we feel ought to be done.

ASSEMBLYMAN BURSTEIN: The question is: How do you feel?

MR. KIESS: I was going to say, Assemblyman, what is your question?

ASSEMBLYMAN WORTHINGTON: He is here talking for the New Jersey School Boards. When we listen to school board members, they say, this is good procedure and they want it to be done. When we are talking to the

Council of School Administrators, they say this is a good procedure to follow and they are currently doing it.

I want to know what is wrong with the procedure. Where have they gone wrong or where is this bill going wrong?

MR. KIESS: I would like to as an individual see the specific process that these gentlemen -- we have had a principal and a board president speak --

ASSEMBLYMAN WORTHINGTON: And a superintendent.

MR. KIESS: -- and a superintendent speak. Possibly their districts may be some of the districts you want to look to see what is going on for an answer to the earlier question about what kinds of systems exist in the State. They feel that possibly their systems may fit into the general label that you call -- or the legislation calls observation - conference. I am suggesting that there is something better. I am not saying that that is the worst. I am saying it is very traditional, it has been going on for years, it must and can be improved upon, and possibly they have already improved upon it and it is, therefore, effective in their districts.

ASSEMBLYMAN WORTHINGTON: I think the problem here is that there are many districts who aren't even doing that minimal. I think what this legislation addresses itself to is to make sure everyone does at least that much.

MR. KIESS: But you are mandating a specific form by saying observation - conference evaluation.

ASSEMBLYMAN WORTHINGTON: But we are not precluding anything else you would wish to do. And we are not precluding a supervisor hopping around from classroom to classroom and making as many observations as he desires to make or sitting down and talking with teachers. We are not saying you can't do that.

MR. KIESS: But what if a local board of education

within its prerogative, as the policy-making body, establishes a different form of evaluation and they are carrying out the intent of what I think this is, but they are not doing it according to the specific wording of this legislation? Then they are in violation of the legislation because they are not doing the formal observation - conference sequence. They may have a different process, but they are evaluating.

So I am taking issue of the very specific wording where they talk about an observation and a subsequent conference. Too many times we can pull a book off the shelf, the Encyclopedia for School Administrators, and, boom, there is a magic form in there that we can have our secretary run off. Nobody has been involved in the development of the document. The teacher is submitted to evaluation by an instrument they had nothing to do with developing. It was done by somebody who knows nothing about the local conditions. But it does fit within the requirements of this legislation. So then everything is fine. I disagree with it.

ASSEMBLYMAN WORTHINGTON: But in the same kind of evaluative process that you indicated, by establishing behavioral objectives - wouldn't this follow here too that there would be observations and there would be conferences and discussions of those observations and discussions of the results of the behavioral objectives? I don't see how doing what you suggest is going to be outside the purview of what we recommend here.

MR. KIESS: What I am saying, within that point of the legislation, is that it is limiting.

ASSEMBLYMAN WORTHINGTON: I fail to see how it limits.

MR. KIESS: If in fact you are very concerned about those districts, like the example you gave earlier of a teaching principal -- let's take West Cape May in Cape

May County with 110 kids and a teaching principal -- how can that individual follow the mandate of the legislation? It is physically impossible.

ASSEMBLYMAN WORTHINGTON: How does that individual right now certify to his board or tell the board that this is a fine teacher and she ought to be kept, or this is not a fine teacher and he ought to be let go? Is there some procedure here? I think this bill is addressing itself to the teacher and providing some protection for that teacher that is not established now under law and oftentimes, apparently, is ignored by some districts throughout the State. The law isn't designed necessarily to make the administrator's job easier, but to assure some rights to the nontenure teachers that currently the nontenure teachers do not enjoy.

MR. KIESS: Well, the last word, I guess, because I believe I am becoming redundant on this specific point of form of evaluation is that I think I can speak for the Association through our policy, in that we would not quibble with a requirement that local boards of education be legislatively required to develop policy to require evaluations. But to mandate a number and to mandate a specific form is a violation of local prerogative and management.

ASSEMBLYMAN WORTHINGTON: Thank you.

ASSEMBLYMAN BURSTEIN: I just wish to mention that any future questions will be eating into your eating time because I do wish to finish with the witness.

Assemblyman Martin.

ASSEMBLYMAN MARTIN: Mr. Kiess, I have two questions. Going back to the statistics you mentioned before and following up with Mr. Burstein's concern about their meaning - and I too am concerned about their meaning -

I was wondering whether you could elaborate just a little bit or clarify for us the statistics. I was wondering if you might tell us how many of the non-tenure teachers, that is what percentage, are not rehired after their second year, as well as their first year.

MR. KIESS: I don't have a breakdown from that study. I have exactly what I presented to you. But I can submit this in addition to my formal testimony. Some years ago in the State Department a person received a temporary certificate which lasted three years. Within a five-year period, the person had to have successful teaching for three years, after which time they could be issued a permanent certificate. Now that system was done away with. When it was done away with, they cut in half the amount of clerical time involved in the State Department of Education because almost everybody who became a teacher, three to five years later got their permanent certificate. Now we have a standard or regular certificate. They change the names every year. So this suggests that either the colleges are doing a tremendous job in training teachers or teachers are doing a tremendous job in working with their children or the evaluation system that I say isn't too good is in fact good, or that we need to take a very, very hard look at evaluation. And it will not be done simply by mandating a quantity or a specific form.

ASSEMBLYMAN MARTIN: Are you finished with your answer?

MR. KIESS: Yes.

ASSEMBLYMAN MARTIN: That brings me to my second question which deals with evaluation. In view of the fact there has been mentioned here this morning the problem of capricious evaluations, a possibility of it, a likelihood of it, I was wondering whether you can

evaluate under the present system of having evaluation done by a member of the school administration and avoid capriciousness, in other words, because of the closeness of the relationship, or whether this evaluation to be fair and objective would have to be done by somebody outside that particular school system.

MR. KIESS: Part of my response to that would be that that has to depend on the local situation. You can have a situation where a principal is afraid to walk in his own building and you have another situation where there is a perfectly unified staff and they work as a team. So there is no one answer to that.

But as I worked with my committee several years ago, one idea more and more came upon me that possibly evolving from this need is a new position in the field of education and that is a person who is solely trained to be an evaluator. His job is to be an evaluator and that is all that individual does. Fifty percent of my staff are nontenured people and I run the whole show in my own building. I have the responsibility to run the whole show in my own building. It would be almost physically impossible to meet this mandate and meet all of the other things in terms of curriculum development, community relations, human relations with the staff, handling discipline, making sure the janitorial service is correct, making sure that the food services are O.K., handling transportation problems, etc., etc. The implication here is that maybe a new role should be evolving in the field of education, that of a professional evaluator, which then might also make a third party that would be more objective.

ASSEMBLYMAN MARTIN: Thank you.

ASSEMBLYMAN BURSTEIN: Assemblyman Newman.

ASSEMBLYMAN NEWMAN: You stated that you have been sixteen years in the business - six years a teacher, ten



years administrator, and I think you indicated you are a member of the school board also.

MR. KIESS: I was.

ASSEMBLYMAN NEWMAN: Just from your own personal experience - I just want to get this on the record - in all your years in the business, how much personal exposure have you had to a third-year teacher not getting her tenure contract? In the way of numbers, how many can you personally recall that were not given their tenure contract?

MR. KIESS: Zero. I have a rule of thumb that I didn't develop, but I heard of, that ---

ASSEMBLYMAN NEWMAN: From your personal experience, your recollection is zero?

MR. KIESS: Zero. I like to give a person a second chance. But if I feel they are not going to be able to hack it and I have given them proper support and help, I won't recommend them for a third contract. And they will know why because they have had it all in writing ahead of time.

ASSEMBLYMAN NEWMAN: I served seven years on a board and I am personally familiar with two cases out of thousands.

One other thing I have to ask you. We talk about administrators. If we are to believe what we are told by educators generally, the administrators are teachers of teachers. The educators generally have indicated to me that many times in making an administrator they take one of the best classroom teachers in the district and make that person an administrator and some feel that is not too smart. We talk about firing nontenure teachers and tenure teachers for their involvement in Association work. Yet statistically I think you will find many administrators who have been active in the Association and even President of the Association over

the years and demonstrated their leadership and then have been chosen by the Board of Education to become administrators.

Taking all that into consideration, what happens then to an educator that no sooner he gets the title of administrator he becomes a capricious, an arbitrary, a vicious beast? What is it that changes the administrator from the career educator to this person we have heard described here today?

MR. KIESS: Just tradition. Why do kids run out of the building when the three o'clock bell rings? It is the same question. It is tradition - American tradition. It really is.

ASSEMBLYMAN BURSTEIN: Assemblyman Froude.

ASSEMBLYMAN FROUDE: Up until a second ago I didn't have any questions - now I do. One of the things that I am carrying out of here as a result of your testimony, without any adjectives, is that observation and conference as a process limits you too much. I want you to give me two other words that represent a process that you would rather live with or that you could possibly live with that could be substituted. And I will telegraph the message. When you say it is too limiting, I am concerned with to whom it is limiting because if I am a teacher in your school, the only way in which I want you to evaluate me is by observation and the only thing I want from you is a conference, a report on what you saw. In that framework or in that conversation, I think I have suggested to you where my hangup is. If you can alleviate that for me, I would appreciate it.

MR. KIESS: Only two words? Not really just two words, but cooperative development of the educational program in your classroom and ongoing evaluation of the outcome in terms of what you developed.

ASSEMBLYMAN FROUDE: I don't think anyone could argue with that. I agree.

ASSEMBLYMAN BURSTEIN: Assemblyman Hicks.

ASSEMBLYMAN HICKS: I wonder if Mr. Kiess would react to a statement just briefly because I am getting hungry too. It seems that the heart of the bill has really been addressed in this sense, that certain grounds would constitute an unfair dismissal and I haven't heard anything about a hearing from anyone. And another thing that bothers me - the Board of Education has no right of appeal. If all this is true, I wonder if the local Board of Education is not just a procedural thing. I wonder if it is necessary at all since they have no authority to do anything, except be permissive. I think the Board of Education is being reduced to a permissive body. Could you expound on that?

MR. KIESS: I had a little difficulty in following you there.

ASSEMBLYMAN HICKS: Is the validity of the local Board of Education in this instance being put in question and, if so, how, in the opinion of an administrator?

MR. KIESS: You are stating that the implications of this proposed legislation is that the existence of local boards is not a valid concept. Is that what I heard you say?

ASSEMBLYMAN HICKS: I want to know your opinion, sir. I mentioned before the home rule concept.

MR. KIESS: I believe in the home rule concept simply because it is our children that are in the schools. We have the choice of all the other kinds of professionals that we go to; I think we ought to, as parents, have some kind of a say about the educational program our children receive. How else do we do this, except by electing or appointing people to a local board of education to develop policies at the local level for that district for our children.

ASSEMBLYMAN HICKS: One last statement. Would you agree

that if the reasons for an unfair dismissal were outlined, if this bill is passed, and a hearing defined, it would appear that in order to avoid unlimited controversy you would probably need a statement as to what constitutes an unfair dismissal? The bill hasn't said that yet. You haven't said it. My idea is different and her idea is different as to what constitutes an unfair dismissal. Don't you think you might wind up mandating a State norm for what would constitute an unfair dismissal?

MR. KIESS: Isn't that already covered? I believe the Dunellen case covered that in the New Jersey Supreme Court.

ASSEMBLYMAN HICKS: Thank you.

ASSEMBLYMAN BURSTEIN: Thank you, Mr. Kiess.

We will now stand in recess until a quarter of two, at which time I shall give priority in addressing this committee to any school board member who is in favor of the bills and to any teacher representative who is against them.

(Recess for Lunch)

Afternoon Session

ASSEMBLYMAN BURSTEIN: I will call the hearing to order.

Mrs. Irma Leeds? Mrs. Leeds, will you introduce yourself and tell us whom you represent?

I R M A L E E D S: I am Irma Leeds and I represent the Paramus School Board Association, the Bergen Legislative Committee of the School Boards in Bergen County. But mostly I think that I represent the parents in these arguments here today and, of course, as a parent, my interest is mainly concerned with that of the children.

You know when you gentlemen entertain legislation here that is involved in cut-and-dried actions and activities, we kind of lose sight of what the ramifications of these things will be. Of course, Dr. Hipp this morning described a situation which seemed to me to be far away or long ago before my 25 years of active involvement in the schools. As far as I know, as a parent and a PTA representative, there would be no situation where a teacher wouldn't be evaluated every single day by at least the 25 participants that stayed in the classroom with that teacher on the elementary level, and, of course, on the junior high and high school level, many more participants evaluate everything that that teacher does and wears and says. Then a child going home and saying either, "Miss So-and-So was in a bad mood," or, "We had a wonderful day today," again makes for more evaluation.

Then, if we take this a step further, in this day and age, I don't think that there are very many, probably very few, parents who would not upon a complaint of their child, their Johnny or their Mary, call the principal and say, "What's going on in that school today?"

We can take this even another step forward. I, for instance, know that even the substitutes are evaluated by

the same people and the call goes into the principal. The principal who is doing his duty, I am sure would not omit going into that classroom and seeing what happens with every phone call.

With regard to the legislation that we are addressing today, we say, why can't an administrator write down and justify in writing and have a conference with that teacher and put this down so that the teacher knows where he stands. I submit to you gentlemen that a teacher does know and that a principal cannot write down and say, "I got three calls about Miss So-and-So today," and have those three parents come in and sign a complaint when it really is not - what should I say? - a complaint of the magnitude that would require a signature - that would require a formal complaint - without knowing something is wrong there and check it out.

I don't think that this bill in stating that four times a year there should be an observation and an evaluation really answers the problem. Because you know if a person is coming into a room, as the other speakers have said today, for a half-hour evaluation and it is a formal evaluation, a person can put on a very good show. But it is the day-to-day living that makes this tenure period so precious to an administrator and to a parent. Because once this three-year probationary period is up, this person who might have put on four good shows a year or four good experiences or whatever, it is over with. The children are left with somebody who might be temperamental, who might be a very good actress or actor. We don't know. This is why I submit to you that it is very difficult to ask our administrators to put these things in writing. Evaluation, unfortunately - and this is what I understand you are trying to overcome - is a very subjective matter.

I also have another point that I want to make, which is that I, as a taxpayer and parent, sat here today listening to the educators on the administration side as well as the EAP, and wondered why you need all of this evaluation conference and help? Is the New Jersey Education Association asking for legislation for administrators to do the job that perhaps the colleges should be doing or perhaps should be happening during student teaching? I admit maybe this should be stopped before this person gets into the classroom if this person needs so much help. Of course, an interview or two short interviews might again let a candidate in and you might open your doors to somebody who really doesn't get along with the children. I have to put it in basic terms. Maybe the NJEA's emphasis should be in another area rather than asking for legislation to keep people in jobs for the first three years that are on the borderline and perhaps don't belong there.

I am really throwing out more questions to you people when I guess I am supposed to be answering some question. But I do ask you legislators not to continue to bind the hands of the administrators and the Boards of Education who have the best interest of the children at heart and are trying to do a job to the best of their ability.

I thank you and I will entertain any questions you might have.

ASSEMBLYMAN BURSTEIN: Thank you Mrs. Leeds.

Are there any questions?

ASSEMBLYMAN WORTHINGTON: I was just wondering if there were any differences in your opinion between "opinions," "judgments" and "evaluations" and, if so, what are they?

MRS. LEEDS: You know you can go into a classroom and see a good teaching lesson. You can see response from the children. You can see a whole beautiful setup. With the system the way it is, teachers are generally told

beforehand that they are going to be evaluated next week, that the Superintendent of Schools is coming in and the Principal is coming, and they are supposed to present a lesson on Social Studies, etc. You can put on a very good show. But how about what goes on around that show? The kids will respond on the elementary level and even on the high school level, the kids will come in and respond that they like a teacher, etc. But how about evaluating whether a person comes in on time or do they have an awful lot of flat tires or an awful lot of trouble getting gas, like we all do? These are some of the things that should be considered. Are they the first ones out of the building? Do they get out of the building before the kids leave? These are attitudes that I think have to go into an evaluation program also. And the only ones who can really evaluate them are the people who are there day to day. Does that answer your question?

ASSEMBLYMAN WORTHINGTON: No, but that's all right.

ASSEMBLYMAN BURSTEIN: Thank you very much.

Dr. James Kimple.

J A M E S     K I M P L E: I apologize for appearing this afternoon in lieu of Jean Reock who is ill at the moment. She was to speak for Advocates for Education.

ASSEMBLYMAN BURSTEIN: Are you here in their behalf?

MR. KIMPLE: In their behalf, also on my own.

I am a Superintendent of Schools. The name is James Kimple. I have been in this business for about 20 years. Rather than react to the bills as they now stand, I would rather spend a little time and perhaps offer two or three alternatives to something that has taken place here.

We do stand in opposition to 929 and 960. I would express the opinion about the evaluation process as outlined in 929 as being a relatively ineffective kind of a procedure, but in so doing feel obligated to suggest



possibly some other kinds of things.

My own personal objection to 960 is that it is a little bit restrictive and I am going to cite some examples of that a little bit later.

I think the process of observation and then sitting down in conference with a teacher, if we were really to assess the effectiveness of this process, we would find that it hasn't changed the teacher's behavior very much. I think that changing teacher behavior, which is what the improvement of instruction is all about, requires a much more basic, fundamental, on-going, long-term proposition than this.

Let me just offer a couple of alternatives. I think that if we really want to improve instruction in the State of New Jersey that we will begin at the college level as we did in 1967 with Newark State College, in providing internships for college students. Over a period of a year or six months even, we would have a real opportunity to work with these people, really assessing their strengths, their weaknesses and laying strategies for improving their educational performance.

We have used over the years a number of different sorts of techniques which could be expanded, I think, to all of our satisfactions, that being one. At the moment we are engaged in testing a model that was developed here in the State Department of Education called the Spectrum of Teaching Styles where teachers have a great deal of latitude to perform in different kinds of ways. But it helps people understand what the whole behavioral patterns and their effects upon young people happen to be.

Back in the 1950's when I was Superintendent up in Fairlawn where Kay Stilwell is at the moment, we had a process which included teachers, administrators, psychologists,

and the rest, where we went into the teacher behavior in great depth and then laid out strategies which were mutually agreed upon as a process to improve a teacher's performance. We based our pay scales on that. Unfortunately, at that time the top went right out of the scale and it became much too costly.

In our own school district at the moment, we spend a great deal of time with nontenure people in research and development projects where they are capable of writing their own projects, working in the summer to do these sorts of things. We have spent a great deal of time in organizational development work where we have employed teachers, specifically nontenure as well as tenure people in the summertime for six weeks, plus a two-week training period during the course of a school year over a three-year period. This has been extremely successful.

We are currently involved in the process of developing performance appraisal where teachers know exactly where they stand, the reasons why they are doing certain kinds of things, and then following them up and monitoring very carefully the process that is being performed.

One of the things that continues to puzzle me about this business of evaluation and basing value judgments on what people tend to do and what they do do in their own classrooms - and it rather amazes me - is that we really haven't come up with a definition of what teaching is all about. We don't really have one. The State Department of Education has been working for some time in an attempt to develop such an instrument.

Let me speak briefly to 960 and the kinds of things that it would do to a person, let's say, like me. I tend to be a risk-taker. I will take a chance on a teacher if that teacher seems to be the kind of person who will generate ideas and be efficient in the classroom and really work for the good of the kids. But in being a risk-taker, I

sometimes pick up a person or two who doesn't really measure up to the expectations that we had to begin with. If I would be asked to put down all of the reasons for non-reemployment of a person, I would be somewhat hampered. I can give you some examples of this.

At one time, perhaps 20 years ago - not quite 20 years ago - we did not recommend a person for reemployment and had I stated the reason was that we felt that he was using youngsters at the fifth and sixth grade level for his own purposes, we could have been taken to court for slander. We went through a very long series of meetings in the summertime with parents who were highly supportive of that person. Nevertheless, we still dismissed him. Two years later, he was arrested for molesting fifth and sixth grade youngsters in a community about 20 miles away.

I wonder also about those people who the real reasons for dismissal are that they tend to be paranoid - and I think we could document that if we had to - except that it doesn't really help that person and it doesn't help the school system to take that kind of a thing into a court situation.

I could go on and on with a number of situations of that sort where we haven't recommended people for reemployment, not for clearly-cut, good, sound reasons, as we might see them. And I recognize that NJEA and other people are trying through this to correct some of the inequities that do exist. But I think that the corrections are worse than the cure.

ASSEMBLYMAN BURSTEIN: Thank you very much.  
Assemblyman Worthington, do you have any questions?

ASSEMBLYMAN WORTHINGTON: Yes. The kinds of things you propose, Dr. Kimple, of alternate forms of evaluation - do they tend to be costly and time-consuming?

DR. KIMPLE: Indeed they do, much more so in terms of money and in terms of time than anything that is proposed here.

ASSEMBLYMAN WORTHINGTON: That is something that I want to address here. I think the tenor of this bill is to try to get, as I understand it, some districts to do something that they aren't doing now. And you propose alternate ways that are more costly and more time-consuming and we have people complaining about what is being done now, or what really isn't being done now. I think this is where the concept of practicality comes in. We are looking to assure that people get a fair break, that a non-tenure teacher is afforded some kind of process, some minimum kinds of evaluative standards in order that the board can base its continuation of her contract or the discontinuation of it on that kind of a evaluative procedure. I think what you have suggested is very fine. I wouldn't knock that kind of evaluative procedure. But you see less than the minimum is being done now. We would like to insure at least the minimum is being done.

DR. KIMPLE: Well, if I were convinced that the minimum which is proposed here had any real value, I would go along with it. I have no way of knowing and no way of proving that any teacher performance is improved through this process. And if the purpose of this legislation is primarily to improve instruction, as it is worded in here, those very districts which are not now doing the minimum will undoubtedly do the worst possible job of evaluation. I don't even like the word evaluation. I would much prefer to use the word assessment, because the word evaluation is a value judgment. As we are working with teachers for the purpose of improving performance, I think the word evaluation needs to be pretty much dropped out of the vocabulary. I use the word evaluation for the purposes of "hire or fire," but not really for the purpose of

sometimes pick up a person or two who doesn't really measure up to the expectations that we had to begin with. If I would be asked to put down all of the reasons for non-reemployment of a person, I would be somewhat hampered. I can give you some examples of this.

At one time, perhaps 20 years ago - not quite 20 years ago - we did not recommend a person for reemployment and had I stated the reason was that we felt that he was using youngsters at the fifth and sixth grade level for his own purposes, we could have been taken to court for slander. We went through a very long series of meetings in the summertime with parents who were highly supportive of that person. Nevertheless, we still dismissed him. Two years later, he was arrested for molesting fifth and sixth grade youngsters in a community about 20 miles away.

I wonder also about those people who the real reasons for dismissal are that they tend to be paranoid - and I think we could document that if we had to - except that it doesn't really help that person and it doesn't help the school system to take that kind of a thing into a court situation.

I could go on and on with a number of situations of that sort where we haven't recommended people for reemployment, not for clearly-cut, good, sound reasons, as we might see them. And I recognize that NJEA and other people are trying through this to correct some of the inequities that do exist. But I think that the corrections are worse than the cure.

ASSEMBLYMAN BURSTEIN: Thank you very much.  
Assemblyman Worthington, do you have any questions?

ASSEMBLYMAN WORTHINGTON: Yes. The kinds of things you propose, Dr. Kimple, of alternate forms of evaluation - do they tend to be costly and time-consuming?

DR. KIMPLE: Indeed they do, much more so in terms of money and in terms of time than anything that is proposed here.

ASSEMBLYMAN WORTHINGTON: That is something that I want to address here. I think the tenor of this bill is to try to get, as I understand it, some districts to do something that they aren't doing now. And you propose alternate ways that are more costly and more time-consuming and we have people complaining about what is being done now, or what really isn't being done now. I think this is where the concept of practicality comes in. We are looking to assure that people get a fair break, that a non-tenure teacher is afforded some kind of process, some minimum kinds of evaluative standards in order that the board can base its continuation of her contract or the discontinuation of it on that kind of a valutive procedure. I think what you have suggested is very fine. I wouldn't knock that kind of evaluative procedure. But you see less than the minimum is being done now. We would like to insure at least the minimum is being done.

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improving instruction. It sets up a whole different kind of a tenor, a whole different kind of climate, a whole different sort of working relationship between teachers and the people who do the evaluation than does the word assessment, where we know that we are out to really try to help that person improve in whatever needed ways seem to be necessary. I just don't have any faith in what is going to be done under the guise of evaluation.

ASSEMBLYMAN BURSTEIN: Assemblyman Ewing?

ASSEMBLYMAN EWING: No questions.

ASSEMBLYMAN BURSTEIN: Assemblyman Hicks?

ASSEMBLYMAN HICKS: Dr. Kimple, I would like to repeat a question to you I asked of some other gentlemen this morning. If this bill becomes law, in your opinion, sir, what would be the grounds for unfair dismissal?

DR. KIMPLE: What would constitute grounds for unfair dismissal under this bill?

ASSEMBLYMAN HICKS: Yes.

DR. KIMPLE: Frankly, I don't know.

ASSEMBLYMAN HICKS: Thank you.

ASSEMBLYMAN BURSTEIN: Are there any further questions? (No questions.)

DR. KIMPLE: I would, if I may, just make one further kind of a comment. I think that this business of education is so important that we can't leave to chance or to minimal kinds of endeavors the opportunity to improve the educational program throughout the State.

I have a very strong feeling that if we could counsel youngsters, counsel young people, at the college level or even before, to go into other areas once we determine that they wouldn't make rather good teachers, we would do a far better job than we would if we let them continue to prepare for a vocation for which they are really not suited. I think we need to devote a great deal of time, effort and

money to the preparation of young people and the selection of young people before they ever get involved in the school districts.

I think it is too late to do it at that time. I also think that we haven't spent anywhere near the amount of money that we need to spend on training people to work with other people. It is the most significant thing we can do. Thank you very much.

ASSEMBLYMAN BURSTEIN: Before you leave, sir, if I may, Mr. Kiess, who was the last witness this morning, suggested the possibility of establishing a new category of a person within the school system called an evaluator. If you don't like that term, as you indicated, I will call him an assessor, except that that sounds like a tax collector. But do you feel that there is room, in the light of what you have admitted in answers to previous questions that there is an insufficiency about the way in which we do it today -- is there room for that kind of category of individual?

DR. KIMPLE: Oh, Ed and I used to work together and I think we would probably disagree on that particular point. I don't really think that there is a category of evaluator for a school district. I think that the task is much too complex. I think it involves far too much human relations, too much understanding, too much close contact, for one person to be able to do this in a school district.

Let me propose something else. If we are really going to do a job, it seems to me that we are going to require training for people all up and down the line, starting with members of Boards of Education and starting with the Superintendent and the Principals and all the rest, so that people do have some confidence, trust, and some value placed upon each individual in the system. I think that the situation where a Board of Education would dismiss teachers without some kind of a good reason, other than



speaking up as a member of an association is atrocious. This does exist. I know that it exists. But I think we need to take a look at a lot of legislation and make provision for a lot of different things we haven't even begun to think of at this point.

ASSEMBLYMAN BURSTEIN: Thank you very much, Dr. Kimple.

Mr. Ralph Faris.

R A L P H F A R I S: Mr. Chairman and members of the Education Committee, my name is Ralph Faris. I am an Assistant Professor of Sociology at Brookdale Community College in Lincroft, New Jersey.

Originally I had planned to read a statement, but since I have handed it to members of the Committee and since after hearing the testimony of members of Boards of Education and other individuals concerned, who are opposed to this bill, I would rather try to defend some of the aspects of this bill which I think are important and to offer you a different perspective on evaluation systems as they are presently used by some school systems.

Brookdale Community College does use an evaluation system. I think it is a good system and has been working for the last five years. They have been using it for the last five years. They evaluate faculty members twice a year. It is a college, so if it doesn't pertain to a particular school district, elementary or junior education, I think it can be extended. If we are talking about an evaluation system that has to be incorporated in order that we are better able to decide what teachers we want to retain and on what basis we want to do that, I think that the Brookdale evaluation system is an excellent one to use. However, I am not that interested in defending Bill 929 as I am in defending Bill 960, which, in fact, asks administrators who are in charge of hiring and firing

to use those evaluations in making up their mind as to who they are going to keep and who they are not going to keep. In this respect, I am sad to say, Brookdale Community College has chosen not to use those evaluations - has chosen, for example, to fire five teachers whose evaluations unequivocally show their fine training and teaching performance. I am one of those five faculty members. It is for that reason that I am here today to support both of these bills. I happen to believe very strongly that evaluations can work, that although they do involve an extra cost to both the taxpayer and the administrator, I feel it is well justified in terms of the results of those evaluations.

I might add that I really don't think you can offer an argument of cost here. What are we talking about in terms of costs? If you talk about a military defense budget that is \$87 billion and you are talking about maybe hiring an extra secretary to do the paperwork on evaluations or even an extra administrator, I think that the cost is miniscule compared to the advantages that accrue to the school system that utilizes evaluations. I say "utilizes evaluations" because I have in front of me the Brookdale Evaluation Form and in the event there are people here today, including Board of Education heads, or what have you, who are unsure as to what they ought to include in an evaluation form, I am fully prepared to give them the one that we use. I would like to add that it is to the mutual satisfaction of both faculty and administrators at Brookdale. So I don't think any argument can really be adduced as to what sort of evaluation system one ought to use. It should be something that is settled on your local level. If that is what you want to do, let them develop it on a local level.

I think all Bill 929 does is ask you to develop some objective means of measuring faculty performance. That is only fair and consistent with an open and democratic

society. I think it is time that the smokey, back-room deals went out the window and maybe 929 will go a long way towards insuring that.

In so far as Bill 960 is concerned, I think we have to ask in terms of the arguments presented here today in opposition to it, what are they afraid of? The argument was advanced that it was the court battle that one would be afraid of because of the possible litigation that might result. I can't think of a better reason for enacting Bill 960 than for such a case. If the Boards of Trustees or the Boards of Education are acting unfairly or unconstitutionally or unethically in dealing with faculty members who have given x number of years of their life to their particular school system and done it well, according to certain evaluation systems, it seems to me that the burden of proof is then on the Board of Education to produce reasons why that faculty member should not be retained.

The reason this is important, I think, is that it has a bearing on the issue of academic freedom. If no reason has to be given — and quite frankly you know what happens in rather conservative school districts where faculty members who are involved in union activities or faculty association organizing activities to those individuals. You know how certain individuals politically in this country feel about organizations in general. It is for that reason that I think, among others, that Bill 960 is a viable alternative to allowing the School Boards to exercise their demagoguery as they have been doing for hundreds of years in this country.

This whole issue reminds me of a statement that Ehrlichman made before the Watergate Committee. He was asked about a document that he had signed asking certain individuals to break into Ellsberg's headquarters and getting information, by scrupulous or unscrupulous means, whatever they found necessary. Senator Ervin asked him why he would ask members

of his staff to do something illegal. And he looked at Senator Ervin and said that he didn't think the word unscrupulous meant illegal. O.K., acting unfairly toward a faculty member by discharging him unethically may not be illegal, but it sure as hell ought to be, Mr. Chairman. I certainly think it should be, precisely because of the constitutional framework of our country because of the deteriorating patterns of values in the country at large anyway. We are not asking for something that is unfair; we are asking for reasons for dismissal. Therefore, I think that faculty members and Board of Education heads ought to develop a rational, objective system for judging the performance of faculty members.

The last thing I would like to say - and then I will let you ask questions - pertains to the argument that you take away the discretion of the Board of Education when you enact these bills or when you propose bills of this nature. What do you mean by discretion? Why is it that when we talk about constructing evaluations and passing legislation that would insure that, that the argument is made that that is ambiguous, that the evaluation system is ambiguous - it doesn't specify how the evaluation system ought to be constructed? Yet when we talk about discretion, no one wants to define what we mean by discretion. When the shoe is on the other foot, the Board of Education and the Board of Trustees doesn't want to discuss what they mean by discretion.

I can testify as to what discretion means at my college. And I assure you that it doesn't in any way resemble ethical patterns of interaction between individuals or objective, rational, constitutional, democratic actions between individuals in the same society.

I urge you not to respect an argument that suggests that discretion ought to be left in the hands of the Board

of Education officials or the Board of Trustees. I think the teachers that are here this morning and the teachers that have been writing you for the last year and a half since they have heard of this bill are testimony to the fact that there are more than zero and, in fact, a hell of a lot more than two faculty members who have been discharged unfairly in the United States, and especially in New Jersey.

I think if one wanted to, one could very easily construct a random sample of the members of the teaching profession in New Jersey and come up with a lot of faculty members who have been discharged unfairly. If you wanted to do it on a national basis, I am sure that you would come up with a much higher figure than zero or two people. I think you have more than two people in this room, two teachers, who must testify to some degree of unfairness on the part of Board of Education people and Board of Trustees people in particular in my case.

I unequivocally and unreservedly ask you to approve this legislation on behalf of myself and the other faculty members at my college who have been unfairly dismissed and not given any reasons and whose evaluations showed the contrary. I thank you for your attention. (See page 110A)

ASSEMBLYMAN BURSTEIN: Thank you.

Any questions?

ASSEMBLYMAN NEWMAN: Mr. Faris, I don't think there is any question that some Boards of Education and I am sure some College Boards also very jealously guard what traditionally was theirs over the years and is now no longer theirs to guard and they find it very difficult to adjust themselves to 1973, particularly in the area of collective bargaining. I don't think there is any question about that. But I think by and large, we are getting there on both sides of the bargaining table.

You point out there an evaluation form which you think is a good one. I think I interpret that from your remarks and your kind gesture and willingness to turn it over to the Committee or anyone else who wishes to use it. Is that in fact a form that was negotiated or agreed upon by the bargaining agent as well as the board of trustees of the Brookdale College or is that an arbitrary and capricious document prepared by the leaders of the Board of Brookdale College?

MR. FARIS: This document was constructed in accordance with - or I should say jointly in accordance with the Board of Trustee's policy and with the Faculty Association at my school. It is a document that we have approved of. I don't say that both sides like it 100% but we have come to a relative agreement regarding its capability of measuring performance of faculty members.

ASSEMBLYMAN NEWMAN: Would I be right in assuming that that particular form that you had before you, not having had the benefit of seeing it, would not necessarily be applicable in other community colleges throughout the State of New Jersey?

MR. FARIS: I think it would be applicable in any school system anywhere, especially because it contains objectives for measuring performance of teachers in any situation, whether in a college classroom, a high school or elementary classroom. And I further state that there are objective means of measuring that kind of performance. That is to say if you're interested in measuring it. I have a feeling that there are people who are not interested in that.

ASSEMBLYMAN NEWMAN: I don't want to get into the merits of that, but one further question.

If you have successfully, on the local level, sat down with a bargaining agent or the management team, whatever, and came up with that conclusive document that you think is relevant to evaluations in your particular facility, and you did it on a local level, would that not lead toward some thinking to allow it to be done on a local level by each bargaining agent and employee? The previous witness testified to the fact that there are approximately one-third of the school districts in the State of New Jersey who have already entered into some sort of agreement with the bargaining agent as to the evaluation and the forms of same. And I wonder how you feel about taking from the bargaining table that which has already been demonstrated - we have demonstrated the ability to get at the local bargaining table. Are we really doing someone a favor who has the ability to acquire this same type of legislation we're speaking of at the local bargaining table in exchange for something on the bargaining table that represents the interest of the taxpayers, rather than run to the Legislature to acquire what you're not willing to pay for at the bargaining table? How do you feel about that generally?

MR. FARIS: Well, I think it depends on what you intend to use these evaluations for and the very procedure that was used to construct them. If we're saying, for example, this is just a phony kind of arrangement between faculty associations or whatever bargaining unit is there, collective bargaining unit, and the board of trustees to facilitate getting by a piece of legislation, then of course it's going to be worthless.

If you're talking about an evaluation form that's going to be used as a primary basis for retaining faculty or not retaining them, I think then

you're talking about something that can be - the information of which you can put on the table and have the taxpayers look at.

I'm not afraid of this form and neither is the Faculty Association of Brookdale Community College nor is the Board of Trustees. We're willing to let the taxpayers, or anybody that wants to, look at this - that's part of what open education is supposed to be all about - and have them comment on it, either through their Legislators or through us specifically, formally, or what-have-you. But I think that's what education can develop towards, if you will, if we're willing to.

If we're going to insist that bill 929 is really dangerous because it takes the power out of the hands of the boards of educators, then, you know, maybe objective evaluations are not the way to go because you clearly want arbitrariness - not you personally, I mean the boards of trustees or boards of education. Maybe they do want to be arbitrary and capricious and whimsical, and so forth. And therefore, maybe the evaluation system is just a kind of joke. But I assure you that it works in my College and that it could be improved upon, of course, but that it has tremendous possibilities and that it is working toward a much more democratic solution to the problem of education in general.

Just one other thing. One of the people who spoke in opposition to this bill this morning stated that he felt that the evaluation system, as it's constructed, shows that really - I think you got the idea, if I may, that teachers weren't doing their job because students come out not being able to read or write, etc. I think, if you want to be strictly scientific about it, no cause or relationship has ever



been established between quality of teaching and pupil performance. And that statement is in error, at least on several bases that I know.

And second is that you can have students coming out of a school system who don't know how to read and write and that may be specifically a function of the amount of appropriations to school systems; it might be specifically a function of the social class, socio-economic class and background of the students involved; and it might even be a reflection upon the kind of educational policies that a board of education is responsible for, not the teachers.

So, I urge you to pass both of these bills, or to approve them.

ASSEMBLYMAN NEWMAN: Thank you.

Mr. Chairman, we will not have any more remarks about my long questions in view of that long answer.

ASSEMBLYMAN BURSTEIN: Assemblyman Worthington?

ASSEMBLYMAN WORTHINGTON: Mr. Faris, were you evaluated with this technique or this form?

MR. FARIS: Yes, I was evaluated six times in my three years at Brookdale. All six of the evaluations were highly positive and laudatory and were, of course, disregarded in the case of retention.

So I think that bill 960 has to come after 929 because it's a guarantee that if they are going to disregard evaluations they are going to have to come up with some reasons - okay, let the community decide - that are fair enough to dismiss a teacher. In my case, the community hasn't decided that.

ASSEMBLYMAN WORTHINGTON: Then you feel that both of these bills in conjunction are necessary.

MR. FARIS: Yes, I think they work hand in hand. They are inseparable.

ASSEMBLYMAN WORTHINGTON: And 929 would not really function without 960?

MR. FARIS: There's no way it could.

ASSEMBLYMAN HICKS: After reading your credentials, Mr. Faris, I must say they come very, very high. I like them very much. I would like to ask you a question anyway.

Of the five that were let go in Brookdale College, how many were retained?

MR. FARIS: Of the five that were let go?

ASSEMBLYMAN HICKS: No. Five were dismissed, they didn't renew their contracts. How many contracts were renewed? How many gained tenure?

MR. FARIS: I believe in the Institute, we have it broken down according to an institute, there were 12 people up for tenure. Seven made it and five did not, as far as I can ascertain. But I can get you the accurate statistics.

ASSEMBLYMAN HICKS: That's close enough. That's a little better than 50% anyway.

MR. FARIS: Yes. But I insist that we don't really know why, since no reason was given in either case, either for retention or for dismissal.

ASSEMBLYMAN HICKS: Are you aware that perhaps, if these two bills are made law, it wouldn't change that status at all since, according to Title 18A (P.L. 1971, c. 436), this would not pertain to community colleges?

MR. FARIS: Yes, I'm aware of that. However, I've been told that it might be possible in the long run for these assembly bills to be applicable to the college level.

Secondly, I might add that I am not in this room today for the purpose of advancing my own interests

here. I am here in the interest of teaching and quality education in the United States. And I certainly feel that - you know, I would be more than willing to have you extend it to the community college level or college level, if that's your preference. However, I think the more important thing is to start to move in the right direction in education. I certainly think both of these bills do so, admirably so, in New Jersey.

ASSEMBLYMAN HICKS: Thank you, sir.

ASSEMBLYMAN BURSTEIN: Thank you, Mr. Faris.

MR. FARIS: Thank you.

ASSEMBLYMAN BURSTEIN: Before we go any further, I want to point out, it's a quarter of three and there are approximately 17 more witnesses listed to be heard. I would appreciate it, therefore, - those who are to give testimony this afternoon - that you be as pointed as possible. And I would also ask the Committee members to make their questions as pointed as possible so that we can get everybody in.

With that admonition, and not directed to you, sir, I call on Mr. Oxfeld.

E M I L O X F E L D: I can tell you, as a professional occupation, that admonition was unnecessary. When I speak for free, I'm very brief.

ASSEMBLYMAN BURSTEIN: I am sure the officers of the NJEA well know that.

MR. OXFELD: This may be their only opportunity to have that free treatment, so they better make the most of it.

ASSEMBLYMAN BURSTEIN: Would you introduce yourself, Mr. Oxfeld, please?

MR. OXFELD: Yes. My name is Emil Oxfeld. I am a Lawyer in Newark. My professional preoccupation

for some 34 years has been the representation of groups of employees, be they unions, associations, independent groups, and what not. And my interest, really, in 1960 is the fact that it tends to give recognition to the stature of a group of people who have occupied an almost chattel position in our culture and civilization.

I have been flabbergasted over the years at some of the cruel treatment - and I use the term advisedly - that has been given nontenure teachers, and that without any malice on the part of their employers.

For a variety of reasons, nontenure teachers have been given treatment such as the most unskilled worker in a factory would not be given. And all that I see in 1960 is finally the recognition that public employees, while they have certain rights and responsibilities different from employees in private industry, are nevertheless human beings, they are people with families, they are people who have undergone a long period of training and orientation and have dedicated themselves to a profession. And all that they ask, and what this bill contemplates, is that they be given some recognition of the fact that they are people. So that when something is done to them they at least have some reason for what is being done.

Now you know years ago, many years ago, some of our most celebrated Americans outstanding in jurisprudence, like Oliver Wendell Holmes, could say that no one has a constitutional right to be a policeman. Well, we have departed from that philosophy. We now say, no matter what profession or occupation you undertake, there are certain minimal standards that inhere in the very concept of humanity. We don't deal with people without giving them reasons or telling them why we do certain things.

Now, what 960, it seems to me, does is say to everyone in this profession, we know we're engaged in a common task, we know we're engaged in a common enterprise, education of the young. Now it's just possible that you don't fit into the scheme of this particular district and we're prepared to tell you why.

Now, 960 doesn't say that having given the reasons - now, unless of course there are some constitutional impediments, such as we're discharging you because you're Catholic or because you're Black or Jewish, or something of that sort -- but 960 doesn't say when it's all over that, if we feel your personality is discordant or you don't know the difference between a Petrarchan sonnet and an Elizabethan sonnet, whatever the technical reason may be, we're letting you go, that can't happen. That can still happen, even under 960. But what it does say, at least, is, you're a human being, you've spent several years or one year or six months, you don't fit into the scheme of things here and this is the reason why you don't fit into it.

Now, you may gain as a result of our elucidating the reasons, you may gain in stature. And the State of New Jersey may gain as a result of this experience because, if you go elsewhere, you may be able to eliminate this difficulty.

Now 960 doesn't even say that a board of education has to be right about it. They can be negligent, they can be stupid. So long as they don't invade some constitutional ground, there isn't much you can do about it. Even after 960. But what 960 does say, before you throw me out into the street, please tell me what your thinking is, why we haven't measured up to your expectations, and let me gain by that.

Now the companion bill is intended, of course, to lay some basis for this and to give some ground work for it. But, you know, in private industry today we have in most factories a 30 day probationary period; we may have a 60 day probationary period. Nowhere in private industry is there the probationary period that you have in public employment. And I'm really scandalized that in a civilized state like New Jersey it should have taken so long for some recognition to be given to the fact that public employees are entitled in some measure to the same kind of humane and civilized treatment that people in private industry are entitled to.

I don't want to minimize the achievement of people in private industry but certainly public employees, especially the teaching profession, are engaged in about as sensitive and as important a business as any of us are. I don't for one moment believe that I, who am a lawyer and as you gentlemen perhaps know, specialize in civil liberties and constitutional law, - I don't think that I do a more important job than a teacher trying to teach the minds of the young people. Perhaps my job isn't as important. And all that 960 says is, you take a person, maybe a very young person, maybe a very inexperienced person, but that person has said my life work will now be in education, maybe I don't quite come up to the standards of this particular district, maybe some superintendent doesn't like my work, or some principal, or someone, -- all 960 says is have the elementary decency and courtesy, if you will, to tell me why you are deciding that I don't fit on the team.

You take the picture of a basketball coach, he has to pull a player out of the game. He will put his arm around the young man and he will explain to him,

you know the other fellow is out-hooking you, he's out-dribbling you. He doesn't make it a traumatic experience when he takes the player out of the game. If he's a good coach he explains why at that particular moment.

If a baseball coach takes out a pitcher who has given up ten runs, he doesn't dismiss him with a curt movement of his hand and say, you're a bum or your fast ball is slower than my gumchewing. He takes him out with humanity and dignity, so that the fellow the next time up will try again.

Now this is what 960 is attempting to do. I think it's high time we do it, that we say to these young men and women, you are a human being for whom we have respect and we are about to engage in a common educational experience. We don't think you quite made it and this is why you didn't make it.

Once they say that, as I say the coach can be all wrong, the principal may be all wrong.

This is not a tenure act. I've heard it said that this is instant tenure. It's nothing of the sort. This does not change the distinction between a tenure teacher and a nontenure teacher. I spend a large part of my life in the Commissioner of Education's Office explaining why or attempting to defend, as Mr. Newman knows, tenure teachers. This won't do it. This is a different kind of thing. All it says is, we are prepared to tell you why.

Now, it is true if in that disclosure it should turn out that there was some constitutional impediment or some statutory invasion, as for example, we're letting you go because you are just too active on behalf of your association, or because you have decided to join some organization of this kind or the

other, then, of course, that disclosure would be important. But I assume we would want that disclosure to be important. We don't want hidden reasons. We want the truth and decency to rule. That is what 960 by and large does. It removes the nontenure teacher from the position of a chattel and restores him to the position of a human being.

Now I am ready to answer any question you may have, mindful of your admonition that you want me to be brief.

ASSEMBLYMAN BURSTEIN: Thank you.

Respecting 960, paragraph 4 provides for a hearing before the Board of Education, in accordance with the outlines of the preceding paragraph 3. Isn't that a case of the Board reviewing its own act?

MR. OXFELD: No, because -- well, that may be so, but the important thing about it is that it says in effect to a Board, if you are going to take an action, be prepared to establish the validity of the action.

Now it doesn't set standards. See, if I were re-drafting the bill and I were trying to be gung-ho about it, I would set up certain standards. This doesn't set those up.

ASSEMBLYMAN BURSTEIN: As a follow-through of that very comment, in paragraph 5 it talks about a determination, down on lines 12, 13 and 14, a determination "whether or not the determination of the board was supported by substantial evidence or violated any board policies or rights of the teaching staff...", again without definition. Do you find that a defect of the structure of the bill?

MR. OXFELD: Well, I would say that I don't know that I find it a defect. I could draft a more ambitious bill undoubtedly. I think this is a beginning of what we are trying to do. Certainly if we began to set



standards and to define the criteria by which such an action would be justified, then we would be coming closer to, frankly, what I would like. But, as I say, this bill is not overly ambitious, although it represents a profound advance. But it doesn't attempt to do everything whole hog. Nontenure teachers are not going to become tenure teachers as a result of this bill. But, by the same token, it does mean that persons taking a rather significant action, terminating the employment of a person who may have been in a district for three years, three very important years -- You know, one of the things we must remember is that people don't act in a vacuum. While this man or woman is teaching, he is also living. He or she may be having children or he or she may be getting married. He or she may be buying a house. He or she may be setting his roots in the community. All that we are saying to that person is that two or three years of your life have been dedicated to our purposes, but you don't quite match what we have in mind; we deem it minimally significant to say to you, this is the reason why. Now, if it should turn out, for example, that there is some discriminatory feature, for example, if the board is departing from its normal standards to select some individual for, shall I say, abolition in that district, then there may be some recourse. But I assume anyone would be willing to admit that is the American way of handling things. We want the same standards to be applied to all people alike. We don't want someone to say, "Well, you are a south-paw; we don't like south-paws in this area." We would want the reason to have some validity and some significance.

For example, as I say, if the Chairman of an English Department decided that this teacher who never learned the distinction between two kinds of sonnets or the fact that John Milton wrote iambic pentameter or

something of that sort, and if that is important to the Chairman of that department, fine and dandy. That's all right. That will be an admonition to that teacher to learn the fundamentals of his trade, which we want. But on the other hand, we wouldn't want the Chairman of the department to say, "We are letting you go because you don't greet me with a bow to the floor every time you come in in the morning." That would be the kind of thing we would then attack.

This is what I think basically this bill does. I really call it a full humanity bill. It is a recognition of the fact that nontenure teachers are not chattels; they are human beings, and they are people involved in an occupation which is important to the State of New Jersey, and it to some extent eliminates the distinction between public employment and private employment, a distinction which should never exist.

ASSEMBLYMAN BURSTEIN: If I understand your testimony correctly, Mr. Oxfeld, you view 960, at least, as giving no more rights to the nontenure teacher than heretofore existed. In other words, as I understand some of the Federal cases, at least, - and some of them are New Jersey cases - a deviation from constitutional standards would still allow, under present law, absent the adoption of 960, the right to go into court and allege the transgression of that Constitution.

MR. OXFELD: Well, not quite - not quite. You see, I suppose what you are having reference to is the Sinnderman Case and the Roth Case, and cases of that sort. Unfortunately, in the State of New Jersey, our nontenured teachers don't rise to the level of the right protected by the Sinnderman Case because we, by statute, have taken people out of the ambit of that protection. We have said in a whole series of cases interpreting the Education Act - and I am thinking primarily of Katz against the Gloucester

County Teachers, and so on - that nontenure teachers aren't even entitled to a reason. They are not entitled to anything. They are lower than the low. And this is the strong objection which I am sure all of us who are engaged in some way, peripherally or directly, in education have. We object to the fact, very strenuously, that a nontenure teacher today is less than dirt, and I hate to use that kind of language, but I must be objective and fair about it. That is true.

A nontenure teacher may be dismissed by a wave of the hand, and I find that extremely arbitrary and unfair today. What this bill does is to say, before we let you go, we are going to give you a reason - you may not like the reason - you may not agree with the reason - but in all candor and in all fairness this is how we feel. As I say again, unless that reason invades a constitutionally-protected right or statutorily-protected right, there isn't much that can be done about it because there are no standards.

This, contrary to most thinking, is not a very revolutionary kind of legislation at all. It is a much-needed piece of legislation to give to a certain class of people rights which practically every other employee in private industry enjoys today, and, by the way, on a much smaller program. You walk into a factory and you are employed for 30 days, and you have established a relationship with the employer. He has 30 days in which to determine whether he wants you or not. Now it is true - and very often, we agree, in this respect -- an employer will come to a union and say, "You know, I have a 30-day probationary period. I don't know much about this fellow. I haven't had a chance or my foreman hasn't had a chance to look at him, etc. But if we are going to have to abide by the contract, we are going to have to let this fellow go. If you give us 30 more days,

we may decide to keep him, if we can have a longer period." And we will do that. Ninety-nine percent of the time, the union or whatever the collective bargaining agent is will come to the individual employee and say, "Look, this is the situation. Do you mind if we extend the probationary period so you get a 60-day probationary period." In some of the very skilled crafts where there are years of apprenticeship, we may extend that to 90 days. But nowhere is there a three-year probationary period in any field.

You and I both know - we passed the bar. That's it. We are now full-fledged members of the legal profession. Years ago when I came to the bar, I had to take a Counsellor's exam three years later. You know we eliminated that. And I suppose you may have had a similar experience. We have even eliminated that.

All we are saying for teachers is no more of this distinction between counsellors and attorneys - we have had an Ethics Committee - we have had a Character Committee - we have had a method of ascertaining your scholarship by the bar examination - you have passed the bar - you are in. We are not even going that far with nontenured teachers. All we are coming is half way up the line in giving to teachers some of the minimal rights that all the others of us enjoy in our various professions. And that is what 960 is intended to do.

ASSEMBLYMAN BURSTEIN: That was interesting, but it still didn't answer what I asked. That was: Today, if you had a nontenured teacher who was not offered a contract renewal because of racial considerations and you could go into court and prove that, could you not sustain that cause of action today without this bill?

MR. OXFELD: Yes.

ASSEMBLYMAN BURSTEIN: O.K.

MR. OXFELD: We have done that and I am sure you are familiar with some of the decisions by the Commissioner, himself, in which it has been found --- I say, the Commissioner, but there is one case the Sayreville - Miller Case where the Commissioner upheld the non-renewal of a tenure-teacher job, and the State Board reversed the Commissioner in that respect-- you know, the Rockingham Case, which is a recent one, where a hearing officer found that the real reason for letting the particular teacher go was that teacher's adherence to the local association.

Yes, you can do that. For example, we could show it was a result of racial bigotry or ethnic bigotry. Yes, we can do that. But those are extremely difficult cases to prove. They are rather exceptional.

I am thinking, Assemblyman, of the man or woman who comes and is not involved in that kind of outstanding discrimination, but does a journeyman's job and then is let go. Now it may be for reasons of economy, and this does not change in any way the reduction in force possibilities under the Education Act, about which so much is being written today. This doesn't change that. This is a question of doing individual justice, of saying to the individual concerned, "You have taught here. You have worked here. For some reason or other we find that we don't want to reengage you. Now this is our thinking on the subject." And if that thinking does not involve, as you have pointed out, a constitutional evasion or some statutory evasion, there is nothing that the teacher is going to be able to do about it, except that we have found - and I am sure you will agree - when people have to give their reasons, they tend to be a little more honest or sometimes it compels them to think out the problem a little bit more. If they can't by the wave of the hand dismiss someone, if they have

to say, "You have been deficient in this respect or that respect," then they begin to think and they do a better comparison and they say, "You know, maybe I was wrong about this. Maybe this man or woman does stack up fairly well again others. He may not be an Einstein, he may not be a John Dewey, but he or she is doing a fairly decent job." That is what this bill is designed to do.

This is, and again I repeat, a basic humanitarian gesture in the direction of the nontenure teacher.

ASSEMBLYMAN BURSTEIN: One final question, if I may, Mr. Oxfeld: You are a well-known practitioner in labor law and labor negotiations. And I would pose this to you: In light of the fact that you have had a tremendous increase in the unionization of the teaching profession and a different situation than heretofore existed a decade or two decades ago - and certainly in the times when some of these cases were decided - I would ask you whether the whole concept of tenure may not be an anachronism. What is your view on that?

MR. OXFELD: In a brief period?

ASSEMBLYMAN BURSTEIN: I have about 30 seconds left for you.

MR. OXFELD: Well, my own philosophy on this is that the whole question of tenure and the whole question of permanency of employment, be it with respect to teachers, be it with respect to factory workers or others, is that the sinners here have been the supervisory people. I have always said - and I may be wrong - that when a young man comes to my office to apply for a job, I can tell with the first case he handles whether he is really going to be a good lawyer or not. I can't tell how he is going to work out in every iota or scintilla of predictable matter, but by and large I can tell whether

he has the stuff. Now if supervisors, be they principals, department chair persons or others, will evaluate and observe and do the job they are supposed to do, we don't need three years to determine whether a teacher has the stuff to make it in a particular district or not. To some extent, that is almost a confession of bankruptcy on the part of the supervisory force to say it requires that period of time.

I would say that all persons once they enter into an employee-employer relationship should never be let go without just cause and that any employer should be fully prepared and happy to demonstrate the justness of his determination.

Now I recognize we are dealing with very sensitive positions. It is difficult unless you are professionally trained in some instances to evaluate the performance of a lawyer or a surgeon, and perhaps even of a teacher. But certainly within a fairly-limited time and with attention paid to the problem, those in charge should know whether that person has the stuff. That doesn't mean that people don't change. People do change. Good employees can become bad employees. But when they do, we should be able to prove it.

So I have an altogether different idea of tenure concepts. In our State we have changed in the State Colleges the minimum period to five years before the acquisition of tenure. And I recognize too that there are different problems. The Chancellor talks in terms of flexibility, etc., and I certainly would not want to limit our educational system. But by the same token, a teacher who teaches reading or writing or arithmetic, that professional ability should be able to be adjudged with a fair measure of efficiency in a much shorter period.

You see the whole question of tenure is a misconception. The average person thinks that tenure means that someone has a life-time job. Well, really they have no more of a life-time job and shouldn't have it than you legislators have. You put your careers on the line every couple of years. You go to the public and say, "I have either performed or I haven't performed," and you can be out. The just cause is the ballot box. We say the hearing should be the ballot box for the teacher. If this teacher hasn't performed, you should be able to say - one, two, three. If it is an attendance deficiency, that is easy to demonstrate. If it is a punctuality deficiency, that is easy to demonstrate. If it is an over-aggressive personality who can't cooperate with the department, there should be objective evidence of that.

Now, someone will say, "Isn't that going to tie us into a whole host of litigation, etc.?" It will and it should. Just as we determined in this country that every person was entitled to counsel under the Gideon versus Wainwright decision - that was a full-employment bill for lawyers - but we determined that that was a basic, elementary right for every person charged with a crime - to the same extent shouldn't we give to teachers the same right that we are giving to persons charged with crime the highest kind of professional representation that the Nation is capable of, no matter what the cost is, because that is an essential of citizenship, it is an essential of being an American? This is what we are saying here too.

Once you engage a teacher-- remember no one has to hire a teacher. That is a voluntary act. Recommendations can be checked. School records can be checked, etc. Once you engage that teacher and once



you have had a minimal period to observe that teacher, you should have the obligation of sticking with that person, training him, living with him, educating him. It is an educational process on both sides and an older more experienced person should be able to train and develop the potential in every teacher.

This whole question of tenure, I think, is a misconception. I don't suppose we have time at this point to go into it. But with respect to this bill, this bill will say to administrators, will say to principals, department chairmen and others, "You must be on your toes. You can't hire, yourself, in your office and come out two and a half years later and with the wave of a hand destroy the life of an individual." And that is what this is all about.

ASSEMBLYMAN BURSTEIN: Thank you. I'd love to hear your longer answer.

MR. OXFELD: Invite me.

ASSEMBLYMAN BURSTEIN: If I may impose on you, I will ask if any of the others have questions; perhaps your erstwhile opponent, Assemblyman Newman, has some.

MR. OXFELD: I don't think he was my opponent. I think Mr. Newman was a very truthful witness - I have said so before - and I don't know whether his testimony hurt me or helped me, but I recognize a truthful person, and I think he is such.

ASSEMBLYMAN NEWMAN: Only you and I know what you are talking about.

MR. OXFELD: You mean no one else knows the truth?

ASSEMBLYMAN NEWMAN: Just the Commissioner. At what point, speaking about that, at what point would you give this clerk, this new lawyer you hire, his first case? At what point as an employer, would you give him tenure rights in your office, assuming that you were

going to relate the public sector to the private sector -- at what point does this lawyer who walks into your office get tenure from you?

MR. OXFELD: The way I feel about it, Mr. Newman, is that the minute I agree to engage him and I, therefore, establish a relationship with him, that he and I now are engaged in a joint enterprise in which I have assumed certain obligations. Before I hire him, I look into his background, I look into his scholastic background, I ask him questions about his working habits, and I explain to him the duties of the job. In my office, for example, it is a minimum of 100 hours a week and it is a day and night job and I don't stand on ceremony about 9 to 5, and that kind of stuff. That, by the way, is not much different than a teacher's job if that person is a wholehearted teacher. From then on, once I engage him, we let a couple of weeks go by and he begins to know something about my office. After all, all law offices are different. Our working habits and my individual habits may be different. Once we establish that relationship, I am wedded to him. Now that doesn't mean there aren't divorce courts - there are divorce courts. And I reserve the right to divorce myself from him as he reserves the right to divorce himself from me, but only for substantial reason. If I want to come in and say to him, "Look, you have now messed up a case in which a client has lost substantial rights," I am prepared to demonstrate that to him. I am certainly not going to say to him, after he has been there a while, "You know, I have decided maybe I could look around and get somebody better." I can always get somebody better. There is no such thing as a perfect lawyer any more than there is a perfect teacher. We don't look for comparable abilities; we look for a demonstrably good job. Once

this relationship has been established and we have both assumed joint responsibility, I expect him to live up to it and I certainly intend to live up to it.

ASSEMBLYMAN NEWMAN: In the private sector in relation to the public sector, we talked about probationary periods. You have indicated to us that all 960 does is address itself to the fact that the employer must tell the employee why he or she is not being retained. If that were really the case, I don't think we would be here. I don't think you intend us to believe that is really all 960 does.

MR. OXFELD: Let me interrupt. I do intend for you to think that and I do think that is all 960 does because I don't see any standards established.

ASSEMBLYMAN NEWMAN: I agree with that.

MR. OXFELD: The bill provides for recourse for nontenure teachers - two different descriptions of recourse, either binding arbitration or going to the Commissioner, which they only enjoy now where the employer has agreed to the arbitration. He can't force arbitration. It's purely a voluntary relationship.

ASSEMBLYMAN NEWMAN: But the teachers still under this bill, 960, have recourse to this arbitrary and capricious decision we have been hearing about all morning.

Then I want to make a comparison. The probationary period in the private sector may be 30, 60 or 90 days. My question is: From your experience in the private sector, when an employee works in the private sector and at the end of the 60-day probationary period, the employer says to the union, "He has not lived up to our standards," what recourse does that employee have in the private sector?

MR. OXFELD: Again, unless there is a constitutional evasion of some right, none at all. Let me say to you, you have put your finger on a very important part of 960. You say the nontenure teacher might have recourse to an arbitration proceeding, but only if the employer, the board, had agreed to it. If 960 becomes law, Mr. Newman, as you know -- in many of these collective bargaining agreements in which teacher associations are parties, we have

two kinds of arbitration, binding and advisory arbitration. Now I suspect that if this bill became law, most boards of education would become rather reluctant to have binding arbitration with respect to the various reasons with which a board might satisfy itself it was justified in terminating a nontenure teacher. But that is something between the parties to work out, something that they will grow up with and live with as their experience develops. And I think that is fair. It may vary from community to community, and I think that is fair. We are not trying to stereotype or strait-jacket anyone. This makes voluntary the relationship between the parties, but a more meaningful relationship between the parties.

ASSEMBLYMAN NEWMAN: Mr. Chairman, I have another two or three questions. If we were to hypothetically take the situation where a board of education notified a teacher that he or she was not to be rehired, and, in fact, did state the reasons, and felt that they were justified, and the teacher decided to appeal that to the Commissioner - assuming they didn't agree on binding arbitration - would you consider that in the broad sense to come under the category of administrative charges?

MR. OXFELD: Well, as I understand 960, you are not amending the Education Act in every respect. It only has limited implications. I would assume that the Commissioner -- in fact, I know how the Commissioner's office works -- and unless there is a clear and explicit amendment to the Education Act, I don't think the Commissioner would pay much attention to a teacher's plea that he had been let go because the Chairman of the Department didn't think that he punctuated an English sentence properly. I think that would be unfortunate. If, for example, some particular administrator decided that good punctuation was the hallmark

of education, I think that principle would still obtain.

Now if such an administrator did adumbrate that kind of principle, he or she might find himself in difficulty with his local community, but that is where it should be. Public opinion should have some impact on that kind of judgment.

At the present time, if you make that decision, there is nothing anyone can do about it.

ASSEMBLYMAN NEWMAN: The point I am making - if, when a board of education takes this official action, at a duly-announced public meeting -- I am just asking you for some free legal advice -- is it your opinion or is it not that those charges and that action taken by that board of education in informing that employee for reasons stated in the resolution or whatever -- could that in your judgment be considered as administrative charges against that employee?

MR. OXFELD: It wouldn't be administrative charges, Mr. Newman. What it would be would be requiring the appellate procedure provided by this bill. It has some of the indications of an administrative charge because you are before the Commissioner. It lacks the essential qualities of an administrative charge because I don't think this bill permits the Commissioner to say, "Well, that reason is sheer nonsense and I will not uphold that kind of reason." I don't think this does quite that. I wish it would, but it doesn't. What it does do is simply shed the light of day upon the reasons being given and no more. This is what this bill does. In other words, if, in fact, that is the real reason and a principal is prepared to stand by it and say, "Yes, I am the kind of disciplinarian or grammarian who requires this kind of adherence to good usage of the English language, and I am prepared to let go any teacher who doesn't adhere to it," that serves a double function. It means that

people who come to that school district better ground themselves in the rules of good grammar, and future teachers who can't adhere to that should not apply. It also means that in that particular school district, the inhabitants are going to know that they have a person who is a stickler on good grammar. Now they may not like that. They may think that there are more important essentials of education than the question of whether you separate correlative clauses with a comma. If they think there is more to education than that, they will bring pressure on the principal not to use that reason. But that is precisely what we want, isn't it? Don't we want to open up the field of education so that everyone in the district knows what it is that is motivating the administrators - what is making them tick?

To some extent what this bill does is to enable all of us to understand what makes the educational system in that particular district tick, what it is that the administrators are trying to do, and what it is the superintendent is trying to do in that district. And, if they like what he is trying to do, fine. If they don't like it, public opinion will be enunciated in a proper manner.

ASSEMBLYMAN NEWMAN: Our job here is to try to evaluate the effect of the legislation on the State generally and collectively.

MR. OXFELD: Mr. Newman, I certainly don't intend to mislead you. You are undoubtedly, if this bill becomes law, going to increase the amount of litigation in the State. The question is whether it isn't shameful and scandalous that we haven't been able to have that kind of practice brought into the open.

ASSEMBLYMAN NEWMAN: In addition to the legal expenses, which I am sure - I'm convinced at this stage of the game is going to be a frightfully expensive step --

MR. OXFELD: Coming from Brick Township, you shouldn't object to that, Mr. Newman.

ASSEMBLYMAN NEWMAN: Not only in Brick Township, but throughout the State. As a matter of fact, we like to think of Brick Township in the light that if the rest of the State would watch us, they might learn something. However, there is currently on the books - and you are well aware of it - a law in this State that provides that if any teacher is suspended or dismissed in excess of 120 days while waiting for a decision by the courts and/or the Commissioner, that that employee go back on the payroll.

MR. OXFELD: Only a tenure teacher.

ASSEMBLYMAN NEWMAN: I beg your pardon.

MR. OXFELD: Only a tenure teacher, and you don't provide that here.

ASSEMBLYMAN NEWMAN: That is my next question. Is it your opinion that this nontenure teacher, charged before the Commissioner or a board of education exercising their right of appeal to the Commissioner, can in any way, shape or form be led to think that that 120-day bill applies to them?

MR. OXFELD: You are asking me now, Mr. Newman, to ---

ASSEMBLYMAN NEWMAN: You just answered me before.

MR. OXFELD: What?

ASSEMBLYMAN NEWMAN: You just said to me it doesn't apply to nontenure teachers.

MR. OXFELD: It doesn't apply to nontenure teachers. But I would be foolhardy to predict what the New Jersey Supreme Court is going to do.

ASSEMBLYMAN NEWMAN: I agree, because you will be in court trying to say that it does.

MR. OXFELD: I would - of course - exactly. I would be trying to say that it did apply and I don't

want at this time to prejudice my future argument by telling you how little I think of them at the present time.

ASSEMBLYMAN NEWMAN: One more question, Mr. Chairman, and I am finished. Let us build a hypothetical situation then. In previous testimony it was said that there are 35,000 nontenure teachers in the State of New Jersey. If we were to take a figure of 10 per cent of those, which I think is high, not receiving their contracts, we would be talking about 3500 teachers per year. In my generosity this afternoon, we will use the figure of 3000. If we took 3000 nontenure teachers annually who are told by the board of education that they are not to be rehired and each and every one of them were to then file an appeal, and if, in fact, that appeal was to come under the heading of administrative charges, and if, in fact, after 120 days because the Commissioner would never in a million years be able to address himself to 3000 of these cases - he doesn't have the staff, the room or even the paper to type them out -- after the 120 days, with the 3000 people coming back on the payroll and 3000 other teachers taking their place throughout the State of New Jersey while waiting for the opinions to come back -- then I think we would have one heck of a chaotic situation. I don't think the bills address themselves to what could happen as well as they could.

MR. OXFELD: Mr. Newman, I have never accused you of lacking imagination and I have never before been more confirmed in my judgment than just now. I tell you, Mr. Newman, that your statistics are completely in error. If, based on the statistics you just gave, 300 cases arose, that would be an awful lot. Do you know what I spend most of my time doing today, Mr. Newman? I spend most of my time explaining to rank-and-file people - and I represent some two or three hundred



unions - why the judgment of the officers of the union is correct in not recommending that their cases be taken to arbitration or to appeal. Do you have any idea of what a budget would be required to handle 3,000 cases? If you had a broad-based income tax and the NJEA got every cent of it, they couldn't handle that many cases.

I am telling you here and now, Mr. Newman, that the thing you fear will not take place. Responsible leadership just doesn't lightly take any case up on the long, tortuous road of litigation. It costs us thousands of dollars to litigate a case. I am not just talking about my fees, high as they may seem to certain people in this room. Litigation is extremely expensive. I tell you if one out of a hundred of those cases really reached the litigation stage, that would be a lot. But it would be important that one hundred do reach the litigation stage because that is how we determine the principles that should apply. I say to you again, I have no doubt there would be a significant increase in litigation, the same as there was when the United States Supreme Court determined that every person charged with serious crime was entitled to counsel. Do you know how many cases had to be reversed and had to be started all over again? Do you know how much litigation has been caused by the civil rights act? Do you know how much litigation has been caused by no-fault divorce? And all of these corrective legislative devices increases to some extent, certainly in the beginning, the amount of litigation. The question is: Is it right? Is it just? Is this an ideal whose time has come? This is the point. Sure, I can visualize there will be some increase. But I will tell you something - you will get a more proficient administrative staff - you will get a

more proficient supervisory staff and you are going to get much better education in every single school district in this State if this bill becomes law. The kids are going to benefit. The children are going to get a better education in this State if this bill becomes law. And we may eliminate a few lazy supervisors and administrators who think that they can sit in their ivory-towered igloos. And I use the term "igloo" advisedly because the force of law is behind their discriminatory, non-thinking processes at the present time.

Yes, there will be more litigation. Some of it will be totally uncalled for. We are not free of the lunatic fringe in the teaching profession by a long shot, any more than the legislators are free of the lunatic fringe by a long shot. But this is a cost of civilization. We have lawyers who are disbarred. We are going to have teachers who are going to bring totally-uncalled-for cases. But that is the price we pay for democracy in America. We don't line people up and shoot them. We tell them why first.

ASSEMBLYMAN BURSTEIN: I assume that nobody else has any questions. (Laughter.)

ASSEMBLYMAN WORTHINGTON: I do have a statement. Something which you said, Mr. Oxfeld, today frightened me because I must confess, after sitting here and wracking my brain, I can only come up with the rhyme scheme of the Spencerian sonnet, the first six lines, and after that I am lost.

MR. OXFELD: I will tell you how I remember it. One goes: abbaabba cdecde - a-b-b-a-a-b-b-a c-d-e-c-d-e. The other goes: a-b-a-b c-d-c-d e-f-e-f g-g. (Applause.)

And for that, I was a Phi Beta Kappa.

ASSEMBLYMAN BURSTEIN: Well, I must say this is probably turning into one of the more unusual public hearing we have had in this Chamber.

Did Assemblyman Hicks have a question?

ASSEMBLYMAN HICKS: Yes, Mr. Chairman. Mr. Oxfeld, you made an analogy of the private sector of industry as compared to the teacher. I may be wrong and I have nothing to base my assumption on, but I wonder if IT&T, General Motors, Bell Telephone have any lifetime executives?

MR. OXFELD: I don't travel in those rarefied circles. So it is difficult for me to say. Most of the time, I gain entrance by the side door to those establishments.

ASSEMBLYMAN HICKS: Just guess at it, sir.

MR. OXFELD: I doubt if they are lifetime, but I assume they have some very long-term employment contracts, and if the relationship is terminated, some very sweet and handsome pension and option rights are involved. So when they do terminate an employment, it doesn't come with such sorrow to the employee.

ASSEMBLYMAN HICKS: I was thinking of Former Governor Cahill and some of our former colleagues in the Legislature before the last election. When you mention the teachers should have just as much tenure as the legislators have, it couldn't be very much, could it?

Section 2 of this legislation has a penalty to force a local board of education to grant tenure with no consideration for merit, but merely because of an administrative error. Question: Do you feel this penalty is in the best interest of the children of this State?

MR. OXFELD: Well, that, of course is no different than the provision at the present time in the Education Act. You know that tenure can be conferred even under the present sections if notice is not given prior to -- is it May 1st or something -- that that then confers reemployment rights. So in that respect, this bill is no different.

ASSEMBLYMAN HICKS: You didn't answer my question, sir.

MR. OXFELD: Are you asking, can things happen because of mistakes? Of course.

ASSEMBLYMAN HICKS: No, sir. I asked: Do you feel this penalty, as outlined in this bill, is in the best interest of children in the State of New Jersey?

MR. OXFELD: I don't think it is a penalty. You are viewing it as a penalty. I don't view it as a penalty.

ASSEMBLYMAN HICKS: This act, sir, then is in the best interest of the children?

MR. OXFELD: Of course - wholeheartedly.

ASSEMBLYMAN HICKS: Another question to you, sir: Would the bill be acceptable from your point of view if it read, teachers are entitled to hearings before the board of education, the commissioners, etc., etc., without mandating tenure if this rule were applied of having four valuations?

MR. OXFELD: No. You see, we are dealing with a situation in which judgment performs an important part and should perform an important part. It seems to me that there is a great disservice done -- and your query really puts a finger on the most important problem: What's in the best interest of the children? It seems to me there should be a spur and a stimulus and a compulsion to administrative and supervisory forces to get in there and evaluate them and give them the benefit of their judgment.

I want you to remember, we talk about evaluations as though they are examinations. That is not their purpose. An evaluation is intended as a constructive experience on the part of the evaluator and the evaluatee. They should talk about what the evaluator finds significant in a teacher's performance, where it is deficient or where it has been helpful - what should be limited and what should be emphasized. Therefore, I think the

evaluation part of this proposed legislation is extremely important and I think it must be continued and accompany 960.

ASSEMBLYMAN HICKS: What you are saying is that you would be satisfied if employment was mandated because of an administrative omission.

MR. OXFELD: I don't find that so horrifying. We all pay prices for our mistakes.

ASSEMBLYMAN HICKS: "We," in this case, being the children.

MR. OXFELD: No, the children wouldn't be paying a price because I don't assume, if an evaluation was missed, that necessarily an incompetent teacher was kept on the staff. I don't believe that at all. As a matter of fact, you must remember that there will now be a series of evaluations. While the bill talks about four, there is no reason why there can't be more and why they can't be appropriately spaced, certainly more at the beginning of a teacher's career.

So I don't find that so horrifying. Yes, I won't deny that on occasion you are going to get an incompetent teacher kept because perhaps of this administrative error. But, my lord, we have appointed felons to the bench. We may even have appointed or elected them to higher posts than that.

ASSEMBLYMAN HICKS: That still doesn't justify it, sir, even though it has been done. You are talking philosophy and getting philosophical, but when it's time to vote on this bill in the House, we deal with the facts, and the facts are that a teacher can be appointed to a job -- Take, for example, a school board in Cape May that has one principal and 127 students, and no one to do evaluations properly unless we appropriate some money to do this with, and if they don't do this, a teacher is appointed to the job automatically. All I

am trying to do is protect the teacher and, even more important, the youngster that is subject to the educational system.

MR. OXFELD: Let me suggest to you, sir, if that principal omitted the necessary evaluations, as a result of which a teacher was appointed whom any significant sector of that school population thought was incompetent, that principal wouldn't make that mistake twice. And that might not be a bad idea.

ASSEMBLYMAN BURSTEIN: Anything further? (No questions.) Thank you, Mr. Oxfeld.

I would like to call Mr. James Craffey.

J A M E S J. C R A F F E Y: Mr. Chairman and members of the Senate and Assembly Education Committees: I won't take too much of your time.

I am here on behalf of 24 school boards in the Northeast Bergen sector. We have a legislative coalition and I have been designated to represent the coalition here today.

We are in disapproval of Assembly Bill 929 and stress vigorous opposition to Assembly Bill 960.

I don't want to repeat any of the arguments or points of view that have been presented earlier. But no school board in the Northeast Bergen area does not have provisions for evaluations. In fact, at the high school level, there are perhaps about six evaluations and observations given to each teacher in the early years.

Is it in order to ask the committee whether there are any school districts in the State that do not call for evaluations?

ASSEMBLYMAN BURSTEIN: We are here to hear testimony and really not answer questions posed by you. I would appreciate it if you would just make your comments on the bills and then answer questions posed by members of the committee.

MR. CRAFFEY: Fine. I have a letter here from the Westwood Regional Board of Education and I would like to read this letter into the record as an indication of the position taken by all the board in the Northeast Bergen District.

(Reading)

"Please be advised that the Board of Education is unalterably opposed to these bills. This Board of Education has always subscribed to teacher observations, evaluations and follow-up conferences.

"State law should not mandate what is local prerogative, opinion and authority. If discrepancies do exist in the evaluative process, they should be resolved at the local level and not by State law.

"This Board of Education objects to a guaranteed hearing of a nontenured teacher. This proposal would also diminish local authority and would place unnecessary encumbrances on boards of education. Teachers of our school district are observed and evaluated a sufficient number of times. With each observation and evaluation, followed by a conference, a teacher is certainly made aware of any deficiencies which may exist and precludes the need for an appeal process.

"The Westwood Regional Board of Education would appreciate having its position to Assembly Bills 929 and 960 brought to the attention of the New Jersey Assembly Education Committee at its special hearing."

Thank you.

ASSEMBLYMAN BURSTEIN: Thank you, sir.

Are there any questions?

ASSEMBLYMAN FITZPATRICK: I would just like to ask the gentleman a question. Earlier today we had a man testify that he was evaluated, he was evaluated in written form, all evaluations were excellent, and yet the man

was still denied tenure. The way the law reads now, he doesn't have to have an explanation. Your boards of education may do it, and I think it is admirable. I think what the intent of the bill is is to make sure all boards of education operate as you do and that reasons are given when a nontenured teacher's employment is being terminated.

MR. CRAFTY: This, to me, would come under the terms and conditions of employment and would be a negotiable instrument. There is a hidden danger to the teacher because of certain, let's say, disclosure of records. I think the handling of the dismissal of a teacher who has not achieved tenure protects the individual, but from the information that we have gleaned from the school boards that I am representing here today, the reasons why a teacher is not rehired are made known to the individual. These are not made known at the public hearing. We can only take action at a public hearing. So whatever is said at a public hearing certainly doesn't reveal the true reasons for a dismissal or for nonhiring. And, by virtue of doing this, we are protecting the rights of a teacher and not hindering her further employment.

ASSEMBLYMAN FITZPATRICK: O.K. Thank you.

ASSEMBLYMAN WORTHINGTON: Just for clarification, I don't think there is anything here in the proposed bill which would require that these reasons be made public unless that teacher wanted them to be made public. That is to say, if the teacher, as I understand the bill, asks for reasons of the board why her contract is not being renewed, the board then presents her with the reasons. If she desires to make them public, that is up to her. If she desires that they not be made public, she certainly has that option.

MR. CRAFTY: I can appreciate your comments, but it is being done at the present time too and there



doesn't seem to be any reason why we have to go into a formal procedure above and beyond the board of education, and the boards of education subscribe to an evaluative process, and bring the case up to the Commissioner of Education with, as the previous gentleman testified, the hidden expenses involved in this thing. At this point, the boards of education are deluged now with grievances and you get the feeling that you are a part-time or practically a full-time arbiter rather than a policy-maker.

ASSEMBLYMAN BURSTEIN: Thank you very much, Mr. Craffey, for your testimony.

Mr. William Rosenberg.

W I L L I A M     B.     R O S E N B E R G: I am William B. Rosenberg from Somerville. I am Vice President of the Somerset County Vocational-Technical Board of Education and Vice President of the New Jersey School Boards Association.

Mr. Chairman and members of the Assembly and Senate Education Committees, the New Jersey School Boards Association has been asked to testify on Assembly Bills 929 and 960, supplementing Title 18A. We would like to begin by emphasizing that you cannot understate the importance and far-reaching aspects of the legislation being considered here today.

I recall some time ago, I heard Mr. Justice Douglas of the United States Supreme Court discuss questions in general facing this country, and this was during a time of great repression, and I will never forget when he said that what the country has to fear is not Communism, Naziism or any other "isms", but what we have to watch out for in the United States is mediocrity. His words, I think, are bearing fruit because we see much of the legislation, particularly these two bills, have a tendency to put a premium on mediocrity.

The best interest of the children of New Jersey are paramount in the minds of Boards of Education, the Legislature and, we hope, the teachers, and we think they are. Most teachers are dedicated, competent and serving as best they can. It seems to me the purpose of these two bills is not to favor these dedicated teachers, but to favor the mediocre and the incompetent.

The New Jersey School Boards Association has in the past with little deviation opposed the mandatory nature of legislation that encroaches upon the authority, or indeed, ability of the local board of education to carry out the charge given it either directly or indirectly by the citizens of this State. However, we recognize that there are special circumstances that may necessitate a change in posture. The New Jersey School Boards Association as the voice of board members from around the State has assumed a leadership position supporting an evaluation process as a necessary adjunct in developing a quality instructional program. We sincerely believe it is the duty, as well as the responsibility of the board of education, to direct the effective evaluation of all its staff so as to determine, among other things, if the continued employment of an individual serves in the best interest of the community, and more importantly, its children. So important was this issue to the Association membership that they established a committee to study "Staff Evaluation and Its Relation To Tenure and Compensation."

The final report the that committee was issued in May of 1972 and distributed to all boards of education. A copy of the committee report is also being made available to each member of the Assembly and Senate Education Committees. As exemplified by this committee investigation and other research efforts, the New Jersey School Boards Association recognizes not only the necessity of evaluations but the importance of the evaluation process as an aid in the improvement of educational instruction.

Nevertheless, the NJSBA must adamantly oppose this specific piece of legislation for the following reasons:

- (1) Although the concept of evaluation is essential, it is unnecessary and inflexible to prescribe a specific number of evaluations for all non-tenured teachers. The school board and administration should have the prerogative to determine the number of evaluations for each teacher on an individual basis. Not all non-tenured teachers are inexperienced. Where one teacher may only need one evaluation a

year, another may need more. If a board operating with only its present administrative staff is required to perform four observations, evaluations and follow-up conferences for all its non-tenure teachers, it could well be forced to evaluate some teachers too often and some not enough.

The New Jersey Education Association itself recognized the need for flexibility in its own procedures for the formal evaluation of non-tenured staff members when they prescribed:

*"Every non-tenure member of the NJEA Professional Staff shall undergo formal evaluation at a meeting or meetings to be held by February 15 of each year. The term 'formal evaluation' shall mean a conference between the staff member and his director and/or immediate superior using jointly-approved procedures, interview outline, and form for written report. Other formal or informal evaluations may occur as necessary and appropriate."* (Article XII, B.1, NJEA Staff Agreement)

As you will note no specific number of evaluations are required.

- (2) The Association strenuously objects to legislation that would make the lack of four formal evaluations of non-tenured teachers the sole basis for renewal of a contractual commitment. Any attempt to alter the conditions of the probationary period during which time the board must draw upon diverse criteria to choose the best qualified personnel must also be opposed. This legislation provides, as a penalty for noncompliance, that the board rehire a non-tenure teacher with no consideration of quality of instruction, but only because the board did not meet the provisions of the act. It is not sound public policy to rest such an important decision as the contract renewal of a non-tenure teacher, simply on the ground that the tenets of an act had not been met. It is inequitable to burden a community's educational system with a staff member whose continued employment was not based upon performance, but a lack of procedural accuracy.

In addition, with this provision, a technical deficiency appears. Under circumstances where the conditions of the act had not been met with an employee in his/her third year of employment the board would be compelled to honor a fourth year of

employment. Thus, tenure would be granted by default. Such a case erroneously exalts procedure over sound educational policy.

- (3) The Association opposes legislation which, when enacted, places an unexpected tax burden on a local school district in a year for which funds had not been previously budgeted. The effective date of this proposal does not allow for budgetary considerations. There is no provision made for an appropriation to cover the cost of additional administrative staff that would be necessary to adequately carry out the provisions of this act, with its requirements for four observations, evaluations and conferences of all non-tenured teachers.

- (4) We recognize the evaluation process is essential to both the teacher and board of education as a means of measuring the growth and direction of educational quality.

We note with interest, however, that there is a lack of guidelines with respect to what constitutes an effective evaluation. The proposal also ignores the fact that supplemental training may be necessary to acquaint administrators with the most recent developments in evaluation technique. Funds should be provided so that the State Department of Education can conduct seminars and conferences for the purpose of dealing with this involved and sometimes sensitive issue.

- (5) The unqualified requirement for at least four evaluations per year gives rise to a serious technical deficiency. No differentiation is made between non-tenured teachers that are employed for a full year and those that are employed for only part of the year. Under this proposed legislation, a teacher employed at mid-year during a semester change would still have to be evaluated four times, and if such conditions were not met by April 30th, the board would be compelled to offer re-employment for another full year.

Two undesirable conditions could arise out of this situation:

- (a) The board would have to complete four evaluations in a time span that would allow little time for improvement between each evaluation  
or

- (b) The board would be administratively unable to complete the required number of evaluations, and thereby, be required to rehire the teacher.

Again we must emphasize that this proposal does not permit discretion or flexibility at the local board of education level in an area where such is an important ingredient for success. This proposal, as drafted, does not accrue to the benefit of teachers or aid in the striving for educational excellence.

If the Legislature is sincere in its desire to advocate changes in the quality of public education through the evaluation process, it must not only consider the evaluation of teachers but the evaluation of program effectiveness. In other words, whether our children are really learning.

Incidentally, our school is embarking on a process of one and five year follow-throughs on our graduates to see how they are doing and what they are doing in the fields for which they were trained in our vocational schools.

The second bill to be considered is Assembly Bill No. 960. This bill has been referred to by many - and you have heard it this afternoon - as the instant tenure bill. As this phrase denotes, this legislation has the potential of creating an imbalance in education's employer-employee relations.

Out of the long history of the relationship between employers and employees has grown the necessity for protection against arbitrary, capricious or discriminatory discharge. In the case of public employment, further protection was necessitated as a result of "spoils" politics. In recognition of this problem for a class of employees, namely teachers, the New Jersey Legislature adopted statutory protection against unreasonable discharge in the form of tenure laws. However, the Legislature at the same time recognized that the public was entitled to a probationary period during which they could evaluate and choose those employees they wished to make permanent.

This should give the Boards the right to discharge those who do what has been referred to as a journeyman's job, a mediocre job, in other words, without having to go through the giving of reasons and so forth.

From these conceptions was developed the statutory notion which explicitly permits the attainment of tenure only after three years of continued successful achievement and implicitly permits the denial of such continuation for any reason or no reason at all.

This proposal is directed very clearly at extending the protection of tenure of employees during the probationary period and effectively changing the status of non-tenure teachers. While the Association has no objection to an employee knowing the reasons for non-renewal, as he/she should through the evaluation process, we can find no reason why an employee should be permitted an appeal on any basis except a violation of constitutional rights. This legislation is unnecessary if its sole intent is to provide reasons for the non-renewal of non-tenure teachers, because the evaluation process should clearly supply those reasons and an avenue for appeal on constitutional questions has already been established. On the other hand, this legislation is objectionable if its intent is to erode the balance between job protection and the public's right to a probationary period.

In addition to the conceptual difficulties with respect to this proposal, there are other serious inherent deficiencies.

- (1) No grounds for what constitutes unfair dismissal are prescribed. In the absence of such specific tests, we are left with the reality that an employee could challenge dismissal on grounds not at all germane to what we believe should be the only criteria for appeal – those involving the abrogation of constitutional rights.
- (2) There are several difficulties encountered with respect to affording the opportunity for non-tenure re-employment disputes to be within the sole discretion of an arbitrator. The provision in this proposal which permits binding arbitration to be invoked in such cases creates the following problems:
  - (a) Such a provision disenfranchizes the long standing principle derived from statutory authority that boards of education as public employers must maintain inherent managerial prerogative in matters concerning educational policy. The New Jersey Supreme Court underlined this perception, when in the *DUNELLEN* "Triology", it opined that a board of education cannot legally agree to submit to arbitration the soundness or validity of its determination in cases involving major educational policy. There is little disagreement that the continuation of employment of a person charged with the prime responsibility for instruction is a *major educational policy decision*.
  - (b) It erroneously exalts an arbitrator over the Commissioner of Education, who has been long recognized as the State's educational leader and a person imminently

qualified to pass upon the fitness of teachers to continued employment. Unfortunately, in more cases than not, an arbitrator is a person outside the field of education and whose educational expertise concerning teacher qualification is suspect.

- (c) Many school district contracts preclude from arbitration the determination of continuation of employment of non-tenure personnel. This proposal would nullify such clauses and mock the negotiations process.

The New Jersey School Boards Association contends that such a provision is wholly untenable and removes from the board an important means by which it can create an effective educational setting.

- (3) Boards of education usually meet in concert once a month. Even if boards were to meet once a week, it would be difficult to adhere to the requirements with regard to both the return documentation certifying reason for nonrenewal, or providing for a hearing. It is unreasonable to assume that due consideration could be given to an important matter in such a short period of time. This provision may in effect compel boards to make hasty judgments, especially since the breach of the timeliness must result in re-employment of individuals in question.

In talking about time, too much of the time of our Boards of Education today are spent in negotiations and getting budgets passed. And we are hopeful that some day the Boards of Education may spend more time on questions of where are we going, why, how are we doing, etc.

- (4) The provision which compels the local board of education to re-employ a teacher solely on the basis of not properly meeting the time prescription is contradictory to the policy of hiring the best qualified teachers for our children. Furthermore, this section would remove the board's right and responsibility to grant tenure in a situation where an employee has completed three years of employment and where the time requirements of this act had not been met. A sanction such as this seriously impairs the ability of the board to judge re-employment on merit.

- (5) Providing for hearings at the board of education level is impractical. Where in the past it was judged that too many peripheral influences were brought to bear in tenure dismissal proceedings at the board level, the Legislature specifically removed such authority from the board and placed it with the Commissioner of Education. The Department of Controversies and Disputes within the State Department of Education was developed specifically with the necessary manpower, facilities and expertise to conduct hearings arising out of disputes concerning school law. The Association believes it unwise to provide for hearings at the board level. This is particularly true if one were to consider that the potential number of hearings in large districts could be staggering. The position of the board member is part-time and in the case of districts with a substantial number of faculty members the number of non-tenure nonrenewal hearings to be held in a month's time would be virtually impossible to conduct. This aspect is particularly important since the penalty for noncompliance is re-employment of the staff member.

In conclusion, the Association believes A - 960 to be unnecessary. Its intention is suspect, in that, the provisions specifically point in the direction of establishing a tenure situation where it does not presently exist. A - 929 would seem to have meritorious intention but is too restrictive and inflexible to be of real value. On the surface, both proposals appear to be forthright and reasonable. Unfortunately, however, because of the penalties imposed for noncompliance and the provision for hearings to be afforded non-tenure personnel, serious question is raised with respect to the real intent and magnitude of this legislation.

The Association believes that by and in large the system has functioned satisfactorily, although it would seem some procedural modification of the tenure dismissal process is necessary. The overwhelming majority of local boards of education have approached cases involving nonrenewal of non-tenure teacher contracts with dispatch and careful consideration. There is no justification for the major changes that could result from the enactment of A - 929 and A - 960.

ASSEMBLYMAN BURSTEIN: Thank you, Mr. Rosenberg. On 929, you have dwelt upon the inflexibility of the four-time evaluation per year. What I would like to know from you is - and you point out in connection with that that there are frequently teachers who are experienced teachers who are going through a probationary period nevertheless, having come from some other district - what significance does that have numerically in the State?



How many are there in that category?

MR. ROSENBERG: I don't know of any figures as to how many nontenure teachers there are and of those how many have had prior experience. There are some figures that have been thrown around. I have heard figures such as 30,000 nontenure teachers. Whether this is a correct figure or not, I don't know.

ASSEMBLYMAN BURSTEIN: What I am trying to get at, however, is whether or not the criticism you make of A 929, at least in that respect, has significance from the standpoint of whether or not an administrator could do a thorough job with the evaluation process because there would be some evaluating too little and others too much. Is that a significant criticism in your view?

MR. ROSENBERG: I think it is. For example, in our school district, which is a comparatively small district, we have at least five to ten new teachers each year, which means the nontenure teachers would probably be about fifteen to twenty. If all these teachers are to be evaluated four times a year, that would be sixty to eighty evaluations a year. This would place a great burden on our principal and/or our superintendent, depending on who would make the evaluation. Many of the teachers out of this group have had prior experience and they have come from other districts and four evaluations should certainly not be necessary for them.

ASSEMBLYMAN BURSTEIN: Does that mean that that is not happening now in your school system; that is to say, that those inexperienced or fresh teachers in the system are not having at least four evaluations a year?

MR. ROSENBERG: I don't know if they are having at least four. I know they are having periodic evaluations because we get reports if teachers are not working out satisfactorily much before the end of the first semester.

We do have periodic evaluations now.

ASSEMBLYMAN BURSTEIN: Thank you.

ASSEMBLYMAN HICKS: Sir, if this bill were passed, what would be the difference between a tenure and non-tenure teacher?

MR. ROSENBERG: I don't think there would be much of a difference because, as I read the act, if a non-tenure teacher does not like the reasons that were given to him for the failure to renew the contract, he would be entitled to appeal to the Board of Education. Then he would be entitled to a hearing. If there is a hearing, he would certainly be entitled to appeal to the courts. Consequently, I don't see that he would have any less rights than the tenure teacher has now. If a tenure teacher is discharged, it has to be for good cause and the tenure teacher has the same rights that the non-tenure teachers are given under this act. I fail to see any difference between the two.

ASSEMBLYMAN HICKS: I would like to ask you what grounds in your opinion would constitute an unfair dismissal or conversely - either way you want to take it?

MR. ROSENBERG: Are you talking about a tenure or a nontenure teacher?

ASSEMBLYMAN HICKS: Nontenure.

MR. ROSENBERG: I would say the only grounds that a nontenured teacher should be entitled to have heard would be if constitutional questions were raised. We are talking about the cruel treatment of nontenure teachers and the journeyman's job they are doing, but the educational system is not just the teachers. The educational system is primarily for the students. We have three major interests here: One, the pupils, which you might say are the end product; second are the teachers, who you might say in a sense are the production line who are turning out this product; and, finally, you have the public, which

is determining what type of policies, what type of programs, we want in the schools.

Now it could be that you have an excellent teacher who is not good in a particular school system because he does not fit in with the particular program or the particular philosophy of that individual school district. For example, the needs of our vocational district are entirely different from the needs of the high schools which are academically oriented. Someone might be an excellent teacher in the one district and might be a poor teacher in the other district. And this should be left up to each individual district to determine - Is this teacher fitting in with our program with our philosophy of education? He might be an excellent teacher some place else, but not fit in this particular district.

ASSEMBLYMAN HICKS: One other question and I will be through. This doesn't mention money or appropriations of any kind. Do you feel that if these two bills become law that it would mandate of necessity a great amount of money be appropriated to implement them? If so, would you care to guess how much money?

MR. ROSENBERG: I think it would require a lot of money - how much specifically, I don't know, except I think it would be a great amount, because, as one of the prior witnesses said, there would be a lot of litigation if these bills were enacted. Not only would there be a lot of litigation, but I think every school district would have to have additional personnel and additional administrators to make these evaluations. I could see a whole new field of education - and that would be that professional evaluators would perhaps go from district to district making evaluations. It opens a whole new ballgame.

ASSEMBLYMAN HICKS: Thank you very much, sir.

ASSEMBLYMAN WORTHINGTON: How would this proposed bill abrogate the school board's responsibility?

That vocation board you were talking about, why couldn't the vocational board still say to that teacher, "Harry, you are not doing the job in the vocational school and, therefore, your contract isn't being renewed"? I don't see why you still don't have that opportunity.

MR. ROSENBERG: Well, if the teacher is unhappy with that decision, under this bill, he would have the right to take an appeal. He would have a right to have a hearing. And the way I read the bill, it would be up to the board to prove why he is not doing a job. Then, if the thing eventually gets to the Commissioner and to the courts, I think they will be the final arbiters and determine whether the board had just cause to decide that this teacher is not doing a job.

ASSEMBLYMAN WORTHINGTON: Don't you still have the right, as the Vocational Board, to explain to a teacher why he is not being rehired? I don't see how this right is being abrogated by the bill?

MR. ROSENBERG: I read the bill differently than you do, Assemblyman.

ASSEMBLYMAN WORTHINGTON: Let me take another tact. You equate journeymen with mediocrity and I think there would be a lot of people who would disagree with that. Most specifically, if you and I could determine a way that would be mutually acceptable to evaluate and rank all of the teachers in the State, from one to however many there are, it would seem to me that they would fall under the general curve of probability. So you would have some who are extremely good. You would have at the other extreme some who aren't real good. And the general run of the teachers would be that great proportion in the middle who are average teachers.

Now regardless of what you do and what input you have in changing the construction of teachers, you are still going to have that same normal curve follow, whether you

evaluate this year, ten years from now or forty years from now, you are still going to get that same pattern of teachers. So any given board is going to have to work within the confines of the journeyman teacher because it is impossible for any board to hire just one spectrum, just the very finest, the best, because there aren't that many of them around. It is a very limited percentage.

I contend that boards of education are going to have to respect the journeyman educator and I think you are going to have to work with that journeyman educator. And if he doesn't perform up to your expectation, I think it is part of the job of the board to help that teacher grow in his professional attainment. I just think it is a specious kind of argument to think that any one given board can hire exclusively from one end of the spectrum.

MR. ROSENBERG: Can Mr. Reid respond to this before I do?

MR. OCTAVIUS REID: Thank you. Talking along the line of the bell curve, which you suggested as an example of the categories into which teachers fit, the way I understand a bell curve is that it has two sloping ends, one is the very high and one is the very low. If we assume that the bell curve you speak of also has the very low end and if we assume the way the psychologists usually speak about it, that that low end represents about 10 per cent of the total and if further you take the approximately 93,000 public school teachers, 78,000 represented by the NJEA, 15,000 represented by the AFT, and take 10 per cent of them, that is 9,300, it would seem to me that is 9,300 teachers that a board ought to have the right to take some critical review about and to suggest that they don't fit adequately into their own system.

If you would like to take that number and compare

it with what actual practice has been in this State, I can give you specific statistics, which we will supply to you if you would like, a survey of tenure cases from 1961 to 1972 which shows a total of 37 charges involving inefficiency, incapacity or unbecoming conduct. Now out of these - and I would just like to break these down for you a minute - in the area of inefficiency, there were only four cases found in which the basic charges against the teacher involved allegations of inefficiency, and in three of these the charges were dismissed. In the area of unbecoming conduct, involving corporal punishment, there was a total of thirteen tenure cases and only one of those was actually dismissed. Several of the others resulted in reduction, but only one in which the tenure was actually lost by the teacher involved. In the area of unbecoming conduct, not involving corporal punishment, there was a total of twenty tenure cases and in twelve of the sixteen, charges were sustained; the penalty imposed was only dismissal from the district, which still left the teacher with a license to practice elsewhere. In the other four cases where the charges were sustained, the penalty involved only a reduction in compensation.

It seems to me thirty-seven - and you take this over a period of ten years - we can suggest that the actual number of teachers was much greater than that 93,000, probably closer to 120,000, representing all those that have taught during that time. I would suggest if you divide 37 by 120,000, it is a nominally small percentage which suggests that the bell curve doesn't really exist but rather is kind of skewed from average to supreme, or at least outstanding.

There have been statements made before that if someone is O.K., that is just fine. I think the public has a basic and inherent right to try to seek better. The

fact you are O.K. may be O.K. in some quarters, but it seems to me if a board says it can do better, it has an inherent right, it has an obligation to the public which it serves, to try to seek better.

It seems to me in previous testimony, for example, there were some analogies made to the electoral process in this State, in fact to the legislators specifically, and the fact that the public had an opportunity to exercise its right in expressing its displeasure with the job that you have done.

Well, there is a very interesting comparison between that and the teacher and it really seemed to me that it was a very eloquent argument - a humorous one too - really for renewable tenure, which we don't have now. Because, you see, you as a legislator come up every two years, the Senators every four, but a tenure teacher never comes up for renewal. There is never a vote of confidence as to whether or not they have performed adequately. But, instead, it requires a board to certify charges to specifically spell out what they find to be wrong, where they think the incompetency is, and then to have that case heard.

In the case of the nontenure teacher, the thing we have the greatest concern about is this complete turn-about of the argument. We talked before about the American way of life and the American right and having the same standards for everybody. I would agree and, if we had the same standards for everybody, we would dump this bill right now because what this is going to do is provide rights for teachers no other American citizen has. For example, what is the reason why a nontenure teacher has an inherent right to a contract? Now a contract, at least the way I have always understood it in this country, has been one of a mutual agreement between two people. And during the course

of that three-year probationary period, we say, we would like to have you teach, specify what it is, and pay you a certain salary. For that, we expect you to try to provide some conducive learning experience for our children. At the end of that year that contract is null and void. It is dead. It is expired. Now it becomes our choice at that point to decide whether we wish to issue another one. What we are suggesting by the implication of this legislation is that the non-tenure teacher has a right to that contract and the only way that teacher will not get that contract renewed is if you can prove - if you can prove - that they should not get it.

Why is the onus being placed on the public? Because that is what the board represents, the public. Why does the community have to prove that it cannot give the contract back to you. It seems to me that what we ought to have is the reverse. It seems to me that a board of education member - and when I served on one myself, the question I asked of our administrators when they came to us for renewal of contracts was, not just did you evaluate. Of course, we asked that and we also knew it, and we would ask the basis for why they were being let go. But the next thing we wanted to know after that was, particularly when you are getting to the point of approaching tenure, which is a lifetime contract, I don't care how you knock it -- ten teachers knocked out of tenure in the last eleven years. If you want to count the number over the last 50, it is phenomenally small - 1/100th of 1 percent - of the total in the State. So there doesn't appear to be a categorical nominal kind of ejecting of teachers on all sorts of unbiased causes as people might lead you to believe. But at that point, the question we would ask, as the managers, as those who contain the right of the public to



seek the best they can possibly get, is: Justify to me why that individual should get tenure, not the reverse. Don't justify to me why we shouldn't let him go. Why should the public be sitting there saying to its people, to that staff, you have a right to this contract - it is up to us to prove why you shouldn't stay? No, it is up to that teacher to prove why he should and the way in which he should prove it is by his competent performance in the classroom.

If you get stuck with one incompetent teacher as a direct result of a procedural error on the part of a board of education - and let's just say that is an elementary teacher - an elementary teacher teaching one class of 25 kids and stays there for the next 20 years - that is 500 kids whose lives could be ruined. And you tell me that this is a protection for kids? It is not a protection for kids. What guarantee do we have, for example, if we have those four evaluations, that that necessarily is going to improve what happens with those kids? The question is: Is it evaluation for evaluation's sake? Does that become an end-all in itself or is it a means to an end? It seems to me that evaluation is supposed to be a means, a means to assure that kids learn, not a means to insure that more teachers are kept.

We heard someone say, for example, that one guy never fired any of his teachers - he kept all of them. I don't necessarily consider that a laudable trait. It seems to me that somewhere along the line there has got to be a problem.

ASSEMBLYMAN WORTHINGTON: Thank you for your dissertation. You have sort of ranged far afield from the thrust of my question.

MR. REID: There were some points I thought we had to bring out.

ASSEMBLYMAN WORTHINGTON: It would seem to me that the whole probationary period is a period, in fact, where many of these teachers who don't measure up to Board of Education standards are let go and seek other kinds of employment. So I suggest to you that indeed it is true that that curve is somewhat skewed, somewhat skewed toward the employment of better teachers, not skewed the opposite direction.

MR. REID: What you are suggesting then is there are no incompetents. Is that correct?

ASSEMBLYMAN WORTHINGTON: What's that?

MR. REID: Are you suggesting then that there is no one on the lower end of the curve?

ASSEMBLYMAN WORTHINGTON: No. What I am suggesting is that in this whole process of a probationary period, many people who start out as teachers shake out of the process and do not become tenure teachers. And many of them would be normally on that lower end of the scale. So the curve in effect then does become skewed and it becomes skewed towards the employment of better teachers. So when we are talking about journeymen teachers and we equate journeymen with mediocrity, I think it does a disservice to many good, fine journeymen teachers across the board who would be proud to be called, perhaps, journeymen teachers. Rather than journeymen being here equated with mediocrity, it should be equated with something much finer than mediocrity.

MR. REID: I think you just stated the case yourself, sir, when you say that there is a weeding out process that takes place and that as they approach tenure, the boards gradually begin to sift out the dead wood. Is that not correct?

If that is true, then what you are suggesting is that, by the time we get to tenure, we have a lot of those that are performing at an average level, but an

acceptable level. That may very well be true. That is not our concern in speaking to this legislation. Our concern is removing the right for us to sift out that dead wood in the three years.

If we start back from day one with the assumption that the teacher has the right to that contract first and from the day they start employment it is then the board's responsibility to try to prove that they want to get rid of them, instead of the teacher's responsibility to demonstrate competence, we have reversed the argument.

ASSEMBLYMAN WORTHINGTON: I don't agree with your first premise here that this bill is to give them the right -- Excuse me.

ASSEMBLYMAN BURSTEIN: Assemblyman Froude?

ASSEMBLYMAN FROUDE: I think you are going to stop me too. These journeymen teachers that we talk about become the journeymen administrators that I am concerned about right now. What I am concerned with is how we can get them to document the job that they are being paid to do. I for the life of me, as I sit here, cannot help but wonder why all the fuss and feathers over four evaluations. Do you have any evidence - do you have any figures that can enlighten me as to what would be considered standard evaluation procedures by board members - by school board members who are members of your association for nontenure teachers? Don't you claim to evaluate people four or five times?

MR. REID: Of course we do. Let's speak to something that I think we are all aware of and it has been stated a number of times today and I think we are getting a little bit tied into what is being referred to as formal evaluations. Now at least three of the individuals who spoke before spoke to the informal evaluation which they considered to be of even considerable more value. You

are speaking about it being ominous to conduct four evaluations. I am not even speaking to that. What I am saying is that for an effective evaluation, it should be an ongoing continuous kind of thing. For example, in my own school district where I served as board president, you had people going in, working with teachers. I can point to various districts around the State where they are in there on a weekly kind of basis, doing a demonstration for them, critiquing for them, doing the kinds of things that are meaningful.

When you speak about four, you hang on the number and you say it sounds rather small - why the opposition? That is not the case. When we spoke on the word "inflexible," we weren't speaking of just the number; we were speaking of the type that is specified here. There are other approaches. If we really believe that we are going to try to help a teacher, we are not just going to do it by specifying the formal number of evaluations, but instead we ought to be looking at something else besides just evaluation, itself, like the accountability on the other end. The evaluation might be perfect, but what is happening with the kids? If nothing is happening there, then the evaluation means nothing. That in itself, the formal setup, is not the only measure.

ASSEMBLYMAN FROUDE: I would like to raise a question because I agree with the concern you register about the number of people who have been proven to be inadequate in the public schools of this State down through the years. I am not sure we are going to agree as to why that number is as low as it is. My question has to do again with this evaluation procedure. What kind of documentation does your association advocate as being absolutely essential before a teacher can be removed?

MR. REID: That is something that all across the State varies within every district because for me to

s t a t e, for example, one specific set of criteria and list now ten points that would be adequate would be to completely negate any differences among the various 605 school districts in the State. What, for example, is going to be required in evaluation and in that evaluation you are attempting to say what is an effective teacher in that system, right? That criteria in Alloway Township way down in the far southern country in Salem is going to be totally different than what is required, for example, in Willingboro, totally different, or what is required in Newark.

The point we are trying to bring out to you is that evaluation system, number one, is not spelled out in the bill. We all know it is going to be an arbitrable thing for a whole variety of reasons once it comes up. But it is whatever you can agree to in terms of what is the specific goal of that district, what are the problems you have in that district, what kind of kids do you have to reach, and from that is where you develop the criteria, which is the reason why it is of necessity something that must remain as local discretion.

Most of all, it is not the concept of evaluation that is being opposed, and I hope you understand that very clearly. We do believe in evaluation. But one of the real hooks in both of these things is the penalty that is being imposed, the sanction that is being imposed, by whatever semantical guise you want to define it. You are saying that you want to remove the decision from a local board to determine who they keep for life in contact with their kids.

I am sure - and you must know this yourself - you can walk into a classroom, and everyone here will admit it, and after a period of time you can tell if there is something going on between that teacher and those students. You can feel it. You can describe it any

way you want, but you know when real instruction is taking place and you know when it is not. But that is not the kind of thing that you spell out in specific terms like "he punched somebody in the nose" or "he fondled a kid" or any one of the other nice sorts of things that would be obvious causes. They are subjective professional judgments.

We believe everybody has to have their constitutional rights protected. But management also has to have its rights protected in terms of professional judgments, and that's the public's.

ASSEMBLYMAN BURSTEIN: Any further questions?  
(No response.) Thank you very much, gentlemen.

Because of the lateness of the hour, I would appreciate that anybody testifying now not repeat that which has gone before. If you have new points to make, please make them as briefly as you possible can.

Carol Sulovski.

C A R O L S U L O V S K I: Chairman Burstein and members of the Assembly Education Committee, I am Carol Sulovski from West Orange.

I am a nontenured teacher who will be most affected by the passage of A 929 and A 960. I am here to give testimony which I hope will factually support the need for these bills. At present, I am completing my third year of teaching in the West Orange School District and am, therefore, eligible for tenure. I teach Physical Education on a split schedule, one school in the morning, a second school in the afternoon. I have a Bachelor of Arts degree and am certified by the State of New Jersey to teach Health and Physical Education in grades K through 12, as well as Driver Education, and have completed a Master's degree in Physical Education with five credits beyond that level.

Recently, I have been informed that I am being dismissed. During this school year to date I have not been observed nor have I had a conference on my performance with the individual who most strongly recommended my termination. My previous two years' evaluations and class observations have been very good. My personnel folder has in it commendations and notes of appreciation from community people as well as the administrators for whom I work. Yet the individual building principal who urged my termination has neither observed nor evaluated me. That building principal announced to another principal that because of my active involvement in the Teachers Association and in many local issues within the district that I posed a threat to him and, therefore, in no way would I be able to work in his building. He told that same principal that if there was an opening in his school, he could have me because I am a good teacher. He said he would not stand in the way of my tenure unless I had to remain on the split schedule or teach full time in his school. Then he would in no way grant me tenure because he didn't want me in his school under any circumstances.

Last year I had been repeatedly warned by the principal in my other school, out of apparent concern for my professional future, but always off the record, that if I didn't get out of the Association activities and lay low and do everything I was told, whether it be right or wrong, I would not have a job. In his opinion and that of my director, the best thing I could do would be to bow to the other man's every wish, regardless of their effects on my students or myself.

Since I have received notification of termination of employment, no one has seen fit to give me any valid reason for that termination. I have attempted with my Association representative to meet with the building

principals who supposedly had something to do with my evaluations and my recommendation. They have been ordered by the Director of Personnel not to speak to me on any matter regarding my termination or dismissal and under no circumstances to confer with me, with my association representative or any other witness of my choosing. Continuing in my attempt, I set up numerous appointments, which were either ignored or outright refused.

I then sent a letter to the Superintendent of Schools, outlining my questions and alleged injuries. His formal reply to my letter was that I have no right to a grievance because I am a nontenure teacher and, therefore, he would not meet with me and my Association representative to discuss any of these issues. My representative then called the Superintendent of Schools and requested a meeting, which the Superintendent denied.

If this pattern continues as it has in the past few weeks, I can only assume that when next I request a meeting with the Board of Education, it too will be denied. Then where do I go? Apparently nowhere.

I would like to make it very clear to you that I am fearful of my future. But I am not frightened for any small reason. Since the day that I was told that I would be terminated and I began to ask questions and seek some answers, I have been told by several management individuals that, "You should be more concerned with putting bread on your table than trying to win this case or fight us. If you don't back off, you will never work in the State of New Jersey. Mr. X and Mr. Y were going to recommend you very highly for your next position when asked and even contact their friends to help you find another job. But now that you are pushing this issue this far, they will do nothing for you and you will run into some big problems."



I have been told by a building principal that I was being used by the local association, that they would win something and I would lose everything. That same building principal warned me to drop the issue whether it was winnable or not and find a job some place else before it was too late. And if all of these statements didn't hit below the belt enough, I was told that I ought to consider my child first and they well know that I am the sole support of that five-year-old child.

These things happen to me. They happened yesterday, the day before and the day before that. By the actions of the administrators under whom I work I have been made to feel that I am nontenure first and a teacher second.

I know of similar situations that existed in my district in prior years. I plead with you to put these bills out there and pass them into law so that nontenure teachers who follow me are reinstated to first-class citizenship and are at least guaranteed due process of law, and, more important, that school administrators be held accountable for their actions.

It must seem ludicrous that we must come before you to seek your support and passage of legislation that will guarantee nontenure teachers a minimum of evaluations. It appears that ours is the only profession that has to resort to legislation for its own evaluation because its employers refuse to perform their duties. As you can see from my testimony, unless you legislate it, it will never be done.

It must also seem ludicrous to you that I must come before you to implore your support of a bill that would guarantee me the same constitutional rights as my fellow Americans. The fact that I came before you today and that the bills have been proposed should be enough to express the frustration that faces every nontenure teacher each and every day.

The problem of improper evaluation and the absence of the right to know and due process for nontenure teachers, shortchanges the children, the parents and the taxpayers of the State of New Jersey. This should and must be remedied. Nontenure teachers need A 960 and A 929 and we need it now.

Mr. Chairman, thank you for allowing me to appear before you and I will try to answer any questions that you have have.

ASSEMBLYMAN BURSTEIN: Thank you, Miss Sulovski. I am overcome by an overwhelming urge to be taught physical education right now. But we will pass that by and get to some questions.

I take it that you are now in your third year as a nontenure teacher, is that correct?

MISS SULOVSKI: Yes.

ASSEMBLYMAN BURSTEIN: In the first two years, how many times were you formally evaluated, if at all, and by whom?

MISS SULOVSKI: Well, both of my principals and my director are supposed to evaluate me.

ASSEMBLYMAN BURSTEIN: Did they do so?

MISS SULOVSKI: Yes. One principal evaluated me, say, four informal, one formal; the other one, one formal. In the second year, there was a total of one formal evaluation by both of them. And in the third year, no evaluations by one and one formal evaluation by the other one.

ASSEMBLYMAN BURSTEIN: The second year, you say there was only one formal evaluation?

MISS SULOVSKI: Yes.

ASSEMBLYMAN BURSTEIN: Would an informal evaluation be one where they would come around and observe you in the classroom?

MISS SULOVSKI: My understanding of a formal

evaluation is when both of the principals send their evaluations in and then it is compiled with the director's remarks. The informal would be in the classroom.

ASSEMBLYMAN BURSTEIN: Subsequent to the formal evaluation, were you given any kind of a written statement from the evaluators as to what they found?

MISS SULOVSKI: Yes.

ASSEMBLYMAN BURSTEIN: And they presented that to you for your own viewing, is that correct?

MISS SULOVSKI: Yes.

ASSEMBLYMAN BURSTEIN: And in the third year, the current year, I take it, you say there has been only one formal evaluation since the beginning of the current year. Is that also correct?

MISS SULOVSKI: Yes.

ASSEMBLYMAN BURSTEIN: You were notified as of when about the nonhiring?

MISS SULOVSKI: February 15, and that took them a week to do.

ASSEMBLYMAN BURSTEIN: And I take it also from your testimony that there was no formalized reason given to you, that is to say, in writing - the specifications?

MISS SULOVSKI: No.

ASSEMBLYMAN BURSTEIN: Just that you were not being rehired?

MISS SULOVSKI: Yes.

ASSEMBLYMAN BURSTEIN: And since then, you have described the series of efforts on your part to try to ascertain the reasons, all without success?

MISS SULOVSKI: Yes.

ASSEMBLYMAN BURSTEIN: Any questions?

ASSEMBLYMAN NEWMAN: I would just like to say that I think it goes without saying, Mr. Chairman, the failure to renew a nontenured teacher in the third year, such as this witness described, does impose a great hardship on her seeking employment in other districts. She has

to state that she did not get a tenure contract. These are the actual situations to which we have to address ourselves that are very definitely the problem. Of the 93,000 teachers - how often does it happen? You indicated you worked for two administrators?

MISS SULOVSKEI: Yes.

ASSEMBLYMAN NEWMAN: And one of them gave you the news. Was that without any official action by the Board of Education or the Superintendent of Schools, just arbitrarily given verbally?

MISS SULOVSKEI: Neither of them gave me the news. They left that job to the Director.

ASSEMBLYMAN NEWMAN: The Department Chairman?

MISS SULOVSKEI: The Director of Physical Education, yes.

ASSEMBLYMAN NEWMAN: Did he tell you one administrator was not going to recommend you?

MISS SULOVSKEI: Yes.

ASSEMBLYMAN NEWMAN: What did the other administrator do?

MISS SULOVSKEI: He would have recommended me, but since it was a joint decision -- well, I don't know how this final decision came about. That is what I was trying to find out.

ASSEMBLYMAN NEWMAN: You haven't had the answer. You haven't had any word from the Superintendent as to whether he is going to support the administrator.

MISS SULOVSKEI: The Superintendent has denied me a meeting with him.

ASSEMBLYMAN NEWMAN: On the basis you are a non-tenured teacher and not entitled to it?

MISS SULOVSKEI: Yes.

ASSEMBLYMAN NEWMAN: Thank you.

ASSEMBLYMAN FROUDE: Do you have the right to go in and inspect your personnel folder or file or whatever

you call it?

MISS SULOVSKI: Yes, I do.

ASSEMBLYMAN FROUDE: Have you done that?

MISS SULOVSKI: Yes.

ASSEMBLYMAN FROUDE: Are you able to say to us that all of the evaluations, all of the written evaluations, resulting from formal evaluations are positive?

MISS SULOVSKI: Yes, sir, they are.

ASSEMBLYMAN FROUDE: There is nothing negative in that file?

MISS SULOVSKI: No. In the final evaluation, the whole first paragraph described me as a very good teacher, that I knew my subject area - I related well with the students - I participated well after school by giving programs after school and extra-curricular activities - and yet I was not going to be rehired or not granted a tenure contract.

ASSEMBLYMAN FROUDE: When an evaluation was made and a copy was entered into your jacket, were you given your own personal copy of that?

MISS SULOVSKI: Yes. When we are evaluated, there are two copies. We sign them both and I get one and one goes in the file.

ASSEMBLYMAN FROUDE: And the very same people who made these evaluations are the ones responsible for recommending, at least, no new contract?

MISS SULOVSKI: Yes.

ASSEMBLYMAN MARTIN: Did you ask the School Board about this matter?

MISS SULOVSKI: We are in the process of doing that now. We haven't heard from them yet.

ASSEMBLYMAN MARTIN: Did they indicate when they would give you a reply?

MISS SULOVSKI: No.

ASSEMBLYMAN WORTHINGTON: Miss Sulovski, who spoke

to you concerning your association activities?

MISS SULOVSKI: It was an off-the-record thing, like "come in and let me tell you what is going on" by the one principal. And he told me that the other principal did not like the fact that I was involved in the local association and that, if I didn't slow down or get out of it entirely, I would not get tenure. That was the end of last year, and I followed his direction.

ASSEMBLYMAN WORTHINGTON: What have your local association activities been? Were you an officer of the association?

MISS SULOVSKI: No, not on the local level - on the county level.

ASSEMBLYMAN WORTHINGTON: And it was the county activities ---

MISS SULOVSKI: No, it was the local. The principal said that the county level didn't bother him, but the local level did.

ASSEMBLYMAN WORTHINGTON: What was your activity on the local level?

MISS SULOVSKI: Well, I chaired the selling of tickets for a legislative dinner or a charity ball - you know, nothing where I came in and turned over the district.

ASSEMBLYMAN WORTHINGTON: Thank you.

ASSEMBLYMAN HICKS: I'm sorry, but I didn't get your name.

MISS SULOVSKI: Carol Sulovski.

ASSEMBLYMAN HICKS: Miss Sulovski, what would have happened if you had been notified that your contract was not going to be renewed?

MISS SULOVSKI: What would have happened?

ASSEMBLYMAN HICKS: What would you have done?

MISS SULOVSKI: I have been notified that my contract

will not be renewed.

ASSEMBLYMAN HICKS: You have been notified, ahead of time, it is not going to be renewed, right?

MISS SULOVSKI: Yes.

ASSEMBLYMAN HICKS: The point I am trying to make is this: You saw your evaluation - they gave you a copy of it. They evaluated it and you evaluated it. It is just a matter of who had the last say or did you assume ---

MISS SULOVSKI: No, sir, I don't know why I am not being rehired. That was my question.

ASSEMBLYMAN HICKS: I am a strong advocate that teachers should be told. That part of the bill is very, very good and I really buy it. People should be told. But after you are told is the part that causes all the controversy, I think - your right to appeal. Do you feel that, since you weren't told, you should be employed by a school board or educational system as a teacher?

MISS SULOVSKI: If they would consider me an inferior teacher or inadequate, I could accept that. But for two and one-half years they have been telling me I am a good teacher and that I do a good job and I relate well with the children and I teach them what they are supposed to have. I just can't understand why they can't tell me why now after two and one-half years I am not being rehired.

ASSEMBLYMAN HICKS: Did you work in two school districts?

MISS SULOVSKI: No, one school district - two schools within that district.

ASSEMBLYMAN HICKS: Thank you.

ASSEMBLYMAN BURSTEIN: Thank you very much, Miss Sulovski.

Robert Parsons.

R O B E R T     P A R S O N S:     Mr. Chairman and members of the Committee: I am at a loss really as to where to start and where to end on my presentation because I do not want to beat a dead horse.

I am a teacher in the Princeton Regional Schools and I have taught there eleven years. I am also a parent and I am also a taxpayer. So I guess you can take my representation pretty much anyway you want because I cover the spectrum.

I would like to speak particularly to the need for evaluation and the need for the teacher to know why. There seems to be no conflict with the State School Board representatives that if a constitutional right is violated, then there should be some recourse under the statute or under, at least, the 14th amendment to the Constitution of the United States.

However, the problem that the teachers face is one of not knowing whether their constitutional rights have been violated, in that we cannot get just cause, and this is the problem. The boards can sit on it, refuse to talk about it, and state in public that they are not by statute entitled to discuss personnel matters - and that's the end of it. I think this is what these bills attempt to remedy.

In practice, the nontenure teacher upon dismissal is advised not to make waves and to leave quietly. Most do because they know to do otherwise would result in a very unfavorable recommendation. With today's employment situation, few dismissed teachers can afford such a fight. I have been involved in three fights similar to the ones that have been mentioned. The first one - I will just briefly go through it - the man was observed September 21, 1971. On April 10th he received his notice of non-renewal and at the same time his evaluation from the principal, who had not set foot in his classroom. He



was entitled to two observations under the contract. It was aggrieved. On the advice of the Board attorney, the second observation was made. However, there wasn't very much room for growth because it was made on the last day of school.

The next case dealt with a teacher in his third year who was called a fine teacher, serious and earnest, etc., etc., in October, and in February was not recommended for reappointment by the principal of one school, a similar situation to the one we just heard about in that he worked for two different principals. He was not supported by one principal; he was supported by another. He was supported by his Department Chairman. He is no longer employed in my district, but he was advised just because he failed to meet the high standards for tenure appointment, his failure should not discourage him from pursuing a teaching career elsewhere - and that is a quote. However, he wasn't able to get this appointment elsewhere until it was certain he had dropped all his appeals to our Board - the same attorney was involved.

Case number three is current and involves a teacher in her fifth year of service in our district who I happen to work with as a team teacher. She was there two years. She was offered a contract for the third year and she went to graduate school. When she finished graduate school in one year, she came back and she has been there the last three years. Now this last year, she taught in a different school under a different supervisor because in Princeton we have some staffing problems due to a phase-out in the regional district and staff has been reshuffled. So this girl has worked one year under the current supervisor, was not recommended for reappointment, and she has retained counsel. The reason she retained counsel and the reason I am active as an association leader is so that we can find out whether or not her constitutional

rights have been violated. We have filed three or four grievances - I think two more went in today - to have somebody tell us why. And that is the sum and substance of these bills.

These cases have made it clear to me that the terms "justice," "fair play," and "just cause" do not yet apply to the nontenure teacher. I feel it is not possible for a board of education to make a rational, fair firing decision without hearing a fair, intelligent presentation by both parties and then making their decision on that, with both the employee and the supervisor represented.

The rest of what I had in my statement referring to the divine right of kings, etc., etc., etc., has already been said by others and not in conjunction with my statement. The only thing left is whether or not the boards and the administrators are going to share their crystal balls with the teachers so that we too can see the image as to whether or not the person is qualified to teach in that district. Because of this, I would hope that these bills are reported, either that they share their crystal ball or that they do submit to third-party intervention. Thank you.

ASSEMBLYMAN BURSTEIN: Thank you, Mr. Parsons. Are there any questions?

ASSEMBLYMAN HICKS: Just an observation - don't you think, sir, that until the State of New Jersey begins to look at teacher education, teacher employment, teacher tenure, as an isolated issue separate and apart from and not at all like the non-public sector of employment, it is going to be very difficult to make decisions in this regard.

MR. PARSONS: I think that the Legislature has attempted to look at these issues, maybe not to the

extent that you would like to see it, sir. I don't know how you break them out of context. If I did, maybe I would run for the Legislature. But I think we have to deal with it. I think that you are making an attempt to deal with it. I think this bill is an effort in that direction. I don't know whether I have answered your question or not.

ASSEMBLYMAN HICKS: I am a teacher myself. I don't work at it now, but I am a teacher. I have a degree in teaching. A lot of my friends are teachers by the hundreds. What I am saying is this - again just an observation - in the private sector of employment you are hired - you are given a contract and you work accordingly. A teacher is a vital part of our American way of life. A teacher deals with our children which are so important. So when a teacher is hired, the benefits the teacher receives, the tenure laws that apply to them over the whole country are so strict - are so binding - that's a better term I think - that until you isolate the teacher benefits from those in the private sector, it is difficult to decide on these matters when you consider all the benefits both statutory and contractual he or she receives. He is like anybody else and he shouldn't be treated as a second-class citizen. I don't feel he is treated as a second-class citizen.

J O H N     B R Y N D Z A: My name is John Bryndza. I teach Social Studies in Lincoln Junior High School in West Orange, the same system as Carol Sulovski.

I am here to speak on behalf of my wife who was unable to come to Trenton today due to a matter which I will allude to later. I think that I would like to start off by clearing up a point with Assemblyman Newman. First of all, Assemblyman Newman alluded to the fact that this may have been an isolated case. In West Orange, at least, cases like this are not isolated. The particular school in which Carol has a problem this year, my wife had kind of a similar problem last year. Last year, in the particular school, five nontenure teachers were fired.

I would like to make one point about the firing. I have heard a lot of statistics today demonstrating that x number of teachers -- x number of nontenure teachers are rehired and x number let go. The way things usually happen in my district is this way: My wife was not fired; my wife was not dismissed. My wife was intimidated into resigning. O.K.? I think that is a very, very important point to make.

When my wife received her evaluation last year - she was a French teacher in her second year - she disagreed with it. She thought that there were comments made out of context, comments that bore no relationship to the kind of teacher she felt she was, and, by the way, the kind of teacher that my principal felt she was. She had done her student teaching in French at my school.

There were no avenues for her to pursue at that particular time. It was said to her by her principal, "If you are going to make waves, you will not get a good recommendation." In a conference with my own principal, my wife was told to drop the issue, not to fight it, that by making waves, she had no possibility of

obtaining another job. I am talking about somebody about whom it is difficult for me to be objective. I am talking about someone who received excellent evaluations from her student teaching supervisor and the principal for whom she worked in her student teaching capacity. I am talking about a person who invested two high school years, four college years and graduate work in French. I am talking about a person who got good comments from parents and other school administrators. Yet she was let go. And on a very personal, very emotional level, it did a lot of destruction to her own image as she perceived herself as a teacher.

What is interesting here are the subsequent developments in this case. My wife did resign. So did the other four teachers or three teachers involved in that school. The Board of Education had no knowledge that she was dismissed. It was pure resignation. However, her evaluations from her building principal did raise some questions about her ability to develop as a superior teacher. Yet he could go into no explanation of why that particular situation was true because she did not have the right to question his judgment. Example: In her evaluation, it read, Mrs. Bryndza did not participate in extra-curricular activities. That was a false statement. Upon advising the principal with the fact that she was Vice-Chairman of the Ski Club, the principal said, "Well, the Ski Club hasn't gone on many trips this year. There hasn't been any snow." That is an absurd statement for an individual to make.

Her evaluation read that she was a good classroom teacher. Her evaluation read that she had no respect or little respect for administrative building concerns. Translation: My wife left her classroom door unlocked one day and it went on her permanent evaluation.

Anyway she resigned. Subsequent to that, it was

felt by the association, the local association of which I am now an active participant, that in fact this matter involved a reduction in force, that the administration wished to cut out one job in the Language Department throughout the system and this would be my wife's job. When she heard about that, needless to say she reacted very emotionally to it. To this day, she does not understand - and it subsequently turned out to be true that one job was cut out - why that principal could not tell her the truth, that in fact the job was to be cut out because enrollments were dropping and it was to be her job - fine. That is not difficult for a person to accept. It is difficult for a person to accept, however, trumped-up charges and erroneous evaluations in order to facilitate certain administrative decision.

Subsequent to that, my principal said to my wife that he would give her the best recommendation that he could for a job. Fine. The Personnel Director in the local school system got my wife a job. He called her and said, "Dianne, there is an opening in a private school in Union teaching French. Are you interested?" She said, "Yes." He gave her the number. She called the principal, had a conference and got the job. She couldn't take it, however, because we learned at that time that she was pregnant and a few weeks ago we had an addition to the family, which is why she was unable to attend today.

This year, in a conversation that I had with the building principal who was instrumental in her resignation - I called him about an unrelated matter - the first words out of his mouth were, "Jack, I got a letter from Parsippany Board of Education. I gave Dianne a very positive recommendation."

At a meeting this year, the Board President whom I know - he knows me - came up to me and said, "Jack, there is one situation I will never understand. I

would have thought that" - and I am paraphrasing what he said as best I can - "I would have thought that a person involved with you, since I have a lot of respect for you as a teacher, would have done a good job as a teacher in West Orange. I will never understand what happened." It is difficult for him to understand. He doesn't know because my wife was not dismissed - she resigned. Possibly if 960 were operative, Boards of Education would understand, would be aware of capricious, arbitrary decisions such as were made in my wife's case.

I have been intimately involved with the case of Carol Sulovski and similar tactics are being used on her.

ASSEMBLYMAN BURSTEIN: Thank you. I just wanted to say that I would appreciate it if we could move this along. I would also appreciate it if the Committee, unless there is some compelling reason, would forego questioning at this point so we can get to some of the other witnesses who have been patiently waiting all afternoon.

Thank you very much.

Audrey Cummins.

MR. O'BRIEN: Several witnesses have agreed to combine their testimony, Mr. Chairman.

ASSEMBLYMAN BURSTEIN: Can you let me know who they are.

MR. O'BRIEN: They will tell you when they come up.

A U D R E Y C U M M I N S: Mr. Chairman and members of the Committee, I am Audrey Cummins of Lakewood and I bring with me Mrs. Edyth Fulton, who is --

MRS. FULTON: I am a teacher in Lakehurst.

MS. CUMMINS: Thank you very much for hearing me. I have some information here that you might like to have. It is a copy of a newspaper article that appeared.

In the Lakewood School District, on March 27, 1972, 18 nontenure teachers, all of whom had been told by their building principals and immediate superiors that they would receive contract renewals for the '73-'74 school year, were informed by certified letters which they found waiting in their mail boxes when they got home on a Friday afternoon, March 27th, that despite their building principals' recommendations for contract renewal, the Superintendent of Schools was not recommending them for contract renewal and that they had better seek employment elsewhere. These 18 teachers were never given any reasons. Flat refusals to state reasons came from the Superintendent and the Board of Education.

I quote from the newspaper article - and I have copies for you gentlemen - this was the Ocean County Daily Times of April 12, 1972. "Interesting figures on the teacher firings were given by Dr. Irving Lewis, a board member. He said that board members had given Dr. Macklin, the Superintendent, permission privately to dismiss up to 20 per cent of the nontenure teachers. That is more than the 15 per cent Dr. Macklin sought prior approval on. Dr. Macklin came up with a 12 per cent dismissal figure, said Dr. Lewis." And the editor of the paper makes this editorial comment, ". . . which makes us wonder whether there is a quota system involved. We favor quality, not quotas."

Those 18 teachers were not dismissed on the basis of classroom evaluation or immediate superiors' recommendations. No reason was ever given to them. Apparently, according to a board member in a public statement which was not refuted by the Superintendent or any of the other board members at the time, they just decided to arbitrarily eliminate up to that percentage.

Gentlemen, let me clarify one point which I am sure somebody would like to ask. The teachers who were



incompetent or performing poorly in the classrooms had already been notified by their respective building principals of non-renewal of contract. This was over and above the normal attrition based on supervisors' and building principals' recommendations.

Therefore, I come to you and beg you to please report this bill out. It is essential.

One final brief comment - the gentleman who told you about his wife resigning - the reasons your figures are so low when you put statistics on a table is that many, many teachers are presented with the option of "give me your resignation or you will have on your record forever that you were fired." And that can be a powerful argument to somebody who needs to be able to find employment elsewhere.

Mrs. Fulton.

EDYTH FULTON: Thank you. Due to the lateness of the hour, I will try to be brief and yet I want to do justice to a case that happened in my district, a district of 31 teachers. I say that the rhetoric here today has been most impressive. But I think it is time to get down to real people.

ASSEMBLYMAN BURSTEIN: Mrs. Fulton, I hate to interrupt, but if it is another situation that you are going to describe whereby a nontenure teacher who had been given prior to the last year favorable evaluations and then was not given a contract renewal ---

MRS. FULTON: No.

ASSEMBLYMAN BURSTEIN: It is not that situation?

MRS. FULTON: A first-year teacher.

ASSEMBLYMAN BURSTEIN: In any event, I would ---

MRS. FULTON: All right. I will point out some things that I think are different.

ASSEMBLYMAN BURSTEIN: Please, just give the highlights because we must move along.

MRS. FULTON: All right. A young lady was hired three days prior to school opening, due to the fact that a gentleman who had had the job given to him called the school system sometime during the summer and said he would not be taking the job. She took the job even though her application had stated she preferred lower-grade levels, but was talked into taking a seventh and eighth grade, a class that was in the school system known to be a very difficult class to handle. She was told by her staff members and her administrator that she would receive help. She had one 20-minute evaluation in November, at which time she had a consultation. Our contract did call for one evaluation of not less than 20 minutes in length with a discussion to follow. Then teachers can make comments if they agree or disagree. She did not at her discussion disagree with what he said. He pointed out several strengths and weaknesses and said he would be back. He did not notice motivation in the interview, but realized it was a review for a test and so he would return for a more favorable situation.

She received no more evaluations, no more visits. In March, she received a certified letter at her home stating her contract would not be renewed. She was given no reasons. We have negotiated a fair dismissal procedure in our district and we availed ourselves of that. We had a hearing before the board -- a meeting before the board because they did not choose to ask questions. We merely stated her case. She had a working relationship with the administrator, did not take part in any Association activities, did not know why she was not being rehired, had had no really unfavorable evaluations.

The Board came within one vote, we understand, of reinstating her and giving her a second chance, as has been mentioned today. However, they do pay their

administrator a rather large salary to do this kind of job and felt if they did not take his recommendation, they would really be inundating the process that they had set up. So she lost her job. She is now gone from the district.

The following year, during negotiations, we brought this up as a matter of concern, that this shouldn't happen to a teacher on the basis of a 20-minute evaluation, to doom a career - and that's what you do today when you do not renew contracts. You doom a person's career who has spent perhaps four years in college and graduate work to become a teacher. At any rate, we were only able to secure two evaluations, due to the fact, as you obviously can see, one administrator with 31 teachers does need some help, and we feel perhaps the board should give him that help. However, this didn't help the girl. It didn't help us to secure more evaluations.

What I am saying is that the board said to us, even the State does not mandate that we give you more than one evaluation. We are giving you two. We feel this law must be enacted to give fair procedure to nontenure teachers.

I would just urge you to get this bill out of committee. We don't ask to do the evaluating based on the teacher's performance and tell you that he or she is a good teacher. But we do ask that the administrator be made to do the job for which he is hired and give us a law that will give the nontenure teacher the opportunity to be evaluated as to her or his merits.

I will agree also with the fact that a popular method in our district has been to call a teacher in and say, "if you resign, I will give you a good evaluation," and that has been done too. Thank you.

ASSEMBLYMAN BURSTEIN: Thank you both very much.

MS. CUMMINS: Thank you, gentlemen; are there any questions?

ASSEMBLYMAN EWING: Are you a teacher?

MS. CUMMINS: Yes, sir, I am. I am a classroom teacher in Lakewood.

ASSEMBLYMAN EWING: When you said the Superintendent said she would be marked as being fired, would it actually be marked that or just not rehired?

MS. CUMMINS: I am not sure exactly. "Recommended for non-renewal," I imagine would be the words put on it.

ASSEMBLYMAN EWING: You stated here though that he told her she would be marked that she had been fired from her job. And I think there is a great deal of difference between having been fired and not rehired.

MS. CUMMINS: There is a definite difference between being fired and not being renewed. Unfortunately, most people equate non-renewal with firing.

ASSEMBLYMAN EWING: But the record doesn't state that.

MS. CUMMINS: No, it probably wouldn't sir.

ASSEMBLYMAN BURSTEIN: Anything else?

Thank you both very much.

Thomas Kusick.

T H O M A S     K U S I C K: Members of the Committee, in the absence of Chairman Burstein and in the interest of time, we will go ahead with our presentation.

This is Miss Agnes Trione from ---

MISS TRIONE: -- the Audubon School District.

MR. KUSICK: We are going to combine our testimony.

A G N E S     T R I O N E: I would just like to make one point that I don't feel has been brought out today, that in the interest of tenure teachers, these bills have some ramifications also. My district has experienced high-level administrative changes in the last seven years. We have had four Superintendents and my elementary building

has worked under six principals. Last spring the administrative upheaval affected me. I was denied a summer school position which was mine for five summers previously.

I challenged the decision and met with our newest Superintendent and during the discussion, I requested access to my file. What a shock -- six years of service reduced to one formal evaluation, a couple of sentences from a former principal, and my request for three personal days' leave when I was married.

Apparently, even though I was observed by all six principals, my total teaching performance was only evaluated on one occasion for which a record was made. A 929 would have guaranteed me a minimum of twelve evaluations when I received tenure. Each new superintendent and principal would have had a reasonably complete record regarding my teaching ability.

At the local level, we have tried for five years to require written evaluations. The remedy lies in legislation. Boards must be mandated to keep accurate and numerous evaluations of staff in the district. Others will testify today how lack of evaluation affects contract renewal. In the case of our district where we have a revolving-door administration and lack of stability and continuity on the Board of Education, we are realizing other problems. Judgments on promotions and assignments to positions cannot be made on a substantive basis if the record is not complete. The result of this has been instability on the administrative staff and declining faculty morale. It is my belief that A 929 would help stabilize the situation.

The climate in my district has been extremely impersonal and I feel that teachers seeking employment elsewhere will be unable to supply capable references and, as already mentioned, unable to supply written evaluations.

My teachers need this legislation now. Last week, Superintendent Number Four indicated to some teacher that he will not be in the district next year.

T H O M A S     K U S I C K: Gentlemen, the point that I would like to make to you today - in our district we have a minimum of two evaluations for nontenure teachers. We also have a grievance procedure which ends in binding arbitration. I think this is an important point in these two bills that are before you in committee.

A teacher in question last year in our district was at this point in time refused to be rehired by her building principal. Through the grievance procedure, in violation of the evaluative processes, we did manage to get a hearing with the superintendent. In presenting the case, we found out that each of the evaluations indicated no reason for not rehiring this teacher. She had brought credit to the district by winning national recognition with her extra-curricular activities with a squad of students. She had increased the grade achievement of her students in her extra-curricular activity and she did relate well with the students that she taught. And I think the clincher to this whole thing was that this same teacher who was not recommended by the building principal had been endorsed by this very same building principal for a "teacher of the year" award for the secondary schools. Had this not existed - had this grievance procedure and minimum evaluation procedure not existed - heaven knows what would have happened to this teacher in our district. And from the stories that have been put before you today, I know it is happening elsewhere.

I implore you, gentlemen, please move this bill favorably from your committee. Thank you.

ASSEMBLYMAN WORTHINGTON: Where are you from?

MR. KUSICK: I am from East Orange - a teacher

there in the district.

MS. TRIONE: And I am from Audubon in Camden County.

ASSEMBLYMAN HICKS: Was that teacher rehired?

MS. TRIONE: He is thinking of resigning at the moment. That is the latest we have. He is thinking of resigning.

ASSEMBLYMAN HICKS: Was he rehired?

MS. TRIONE: No. He has a poor evaluation.

MR. KUSICK: Was that question directed to me?

ASSEMBLYMAN HICKS: To you, sir.

MR. KUSICK: Yes, the teacher was rehired. This was a decision made based on the evaluations by the building principal and when the superintendent was presented with this nomination that had to be signed by the building principal for "teacher of the year," it was rather ludicrous that this would even come about. This, I might say, did happen without the knowledge of the Board of Education and, if it had proceeded to the Board level, it would have been most humiliating for the Board, knowing that their administrators were not doing the job that they were hired for.

ASSEMBLYMAN HICKS: I thought before that the lady over here had a very, very valid case and I thought that she was discriminated against. But how viable a force is the Department of Controversies and Disputes? Did you go to this department?

MR. KUSICK: No, we didn't need to go to Controversies and Disputes. We had it resolved in the district, simply because we had the machinery there to handle the situation. We do have a minimum of evaluations written into our contract. We do have a grievance procedure which culminates in binding arbitration. And it is simply because of these two instruments in our district, which are also components of the bill, that we were able to resolve this thing without going further.

I might add that in our district, which at the time there were 725 people and roughly a turnover of 20 percent, there was only one nontenure teacher who appealed. And I am sure of the 20 percent, there were more than that that were not renewed.

ASSEMBLYMAN HICKS: The point I am trying to make really is that I wonder how many of these people who have been discriminated against have taken advantage of the route of the Department of Controversies and Disputes? You must be aware that it is there, whether you use it or not.

MR. KUSICK: Yes, I am aware it is there, but it is for tenure teachers primarily.

ASSEMBLYMAN HICKS: Isn't it available to you?

MR. KUSICK: For a tenure teacher, yes, sir.

ASSEMBLYMAN HICKS: O.K. Thank you.

Miss Kathleen Ruffer.

K A T H L E E N     R U F F E R: Mr. Chairman and members of the Assembly Committee, we also choose to speak together.

My case has been stated in many ways, many times, this afternoon, with one exception. I was recommended for my tenure contract by both my principal and my superintendent. A 1300-signature petition was presented to the Board of Education and still the Board voted against me. This is the sum total of the situation that occurred. I taught in Vernon Township in Sussex County

ASSEMBLYMAN BURSTEIN: Any reasons given by the Board?

MISS RUFFER: Their reason was "to upgrade the school system." They credited me with being a less-than-average teacher, thought I have a facsimile of the formal evaluation by my principal. It is an 87-item evaluation. Of these items, five were rated outstanding; 36 were rated very



good. This totalled 41, which the Board stated were to the positive in my case. There were 27 items rated good, 7 items rated satisfactory, and 11 items rated "needs improvement," totalling 44, which were rated to the negative. Good and satisfactory were counted as negative evaluations in my case.

ASSEMBLYMAN BURSTEIN: Sir, do you have anything to add?

T E R R Y J E C K: Yes. Mr. Chairman, my name is Terry Jeck and I serve as the legislative chairman for the Monmouth County Education Association, representing some six thousand teachers in Monmouth County. I have also served as a local leader in Howell Township, which is in Monmouth County, and in my background I have some varied things which time necessitates eliminating.

However, I appreciate the difficult job you are confronted with and we are in a subjective area. But one thing which is not subjective and which is on the record and will be transcribed by your reporter is a statement made in opposition to this bill that a teacher known to be a child molester was let go and the local authorities did not want to give the reasons. I think you heard that; I heard it. It was also said that there was a subsequent arrest of that teacher for molesting children some place else.

Passage of this bill will preclude the possibility of that ever happening again. I think the reason they didn't want to get into the reasons with that individual was because they were afraid of a suit and that has been a recurring theme today - this will lead to litigation. Well, I am also a parent and should my child be in a room where the Board of Education or any of its agents know that the teacher is molesting the children and fails to act properly because of fear of suits, then the State of New Jersey is faced with a problem.

This bill is not a special interest bill. This bill truly will help children. Do you want education to continue in this atmosphere where nontenure teachers must be more afraid of their principal than afraid of not doing the right thing for children? And sometimes that is in conflict.

ASSEMBLYMAN BURSTEIN: Excuse me, Mr. Jeck. I appreciate your comments and I hate to interrupt anybody who is speaking. But I want to deal with specific incidents, as Mrs. Ruffer just gave us. I do want to finish off with those teachers who are here.

MR. JECK: Mr. Chairman, I would hope that you extend the necessary time to give everybody the opportunity to speak because we have all waited all day.

In appreciation of your problem, I will be specific.

In the course of my activity in Howell Township, I have been involved in the representation and the defense of at least 11 or 12 nontenure teachers who were dismissed, many of them arbitrarily, none with reasons given.

One case stands out in my mind - a case that we lost - and I hope it will support my position that good administrators have nothing whatsoever to fear from this legislation. I went in to see a local building principal with a non-tenure teacher and that building principal did not take the position that all others had and continue to do, that we don't have to give you any reasons. He had what he felt was a poor teacher on his hands and he had tried to help her consistently and continuously. And after two hours of speaking with her and me, that teacher told me after that meeting that she did not wish to press the issue.

I don't think that this committee should yield to any special interest group. But my contention is that -- and I wish I could go into detail on all the people, but

it would be monopolizing the time.

ASSEMBLYMAN BURSTEIN: I understand your point and I really must cut you short. I know the point you are trying to make. We can understand what the problem is. But I do have other people to get to.

MR. JECK: I am sorry, Mr. Chairman, I have waited all day and was kept to about two minutes. I feel I have some valid points to make.

ASSEMBLYMAN BURSTEIN: Well, what are they?

MR. JECK: They are this, very simply - if a supervisor or principal wants to dismiss me, I want that principal to dismiss me based on educational reasons. And if you want to help the children of New Jersey, you will help to define what is good teaching. Right now there is no definition of what is good teaching. You can fire non-tenure teachers from now until the cows come home and you will have no problems if they are being fired because they are not good teachers. Due process is a wonderful thing and it will help education as it has helped every other area of our life. Thank you.

ASSEMBLYMAN BURSTEIN: Thank you.

Joe Rufus.

J O S E P H R U F U S: Mr. Chairman and members of the Assembly Education Association, I will keep it very brief.

When I assumed the presidency of the Manville Education Association two years ago, at one of the first meetings that I had with my executive committee, they mandated that I do not give any committee chairmanships or make any faculty representatives out of my nontenured people.

I will mention a case that I came across last year. Late in March or in early April, a first-year teacher was given her first observation and evaluation. I'm sorry I have that wrong. She was given her observation. A couple of days later she was called in for the evaluation.

At that point he asked her for her resignation and she was told before he would give her the evaluation in writing that he would give her time to think over her resignation.

Gentlemen, we need these two bills passed into law and we need them pretty quickly. Thank you.

ASSEMBLYMAN BURSTEIN: Thank you, Mr. Rufus.

MR. RUFUS: Do you have any questions?

ASSEMBLYMAN BURSTEIN: Are there any questions by members of the committee? (No questions.)

Earl Murphy.

E A R L M U R P H Y: I am Earl Murphy, Vice-Principal in charge of supervision. There are many reasons for good supervision, but I will go back to two instances which happened in my early teaching days which I believe had a great bearing upon them. One is this: For one year, my second year in teaching, I was observed every day for about 5 minutes, 15 minutes, or so. At no time during that year was I ever called in or taken aside in a room and told I was doing a good job, a poor job, a mediocre job or whatever it might. It was a very frustrating affair. It led to uneasiness many nights and many days and very much frustration.

The second incident: Some years later, probably in my seventh year, the principal filled out a 4-page form. She had never been in my room, neither had she talked to me about any of my teaching experiences, but we met in conferences and she knew things about me and my teaching that I don't know how she got them because if you are not on the scene, you can't do it.

I must confess right now, although I am responsible for supervision and hiring and firing of teachers in my department, I am not given the time to do the job adequately and I feel you cannot dismiss a teacher

for any reason whatsoever unless you have given them proper evaluation.

I don't think some of the things that were said previously by other speakers in regard to costing too much money in any district have any bearing on this. A person's life is at stake. They have spent four years in college - they have gone through practice teaching. If they have gone through practice teaching, they have gone through purgatory in some respects because some of these teachers are really put through the mill. If they are good enough for that, I can't see them not fitting in any situation at all, if given the proper supervision, because supervision is the thing which either makes or breaks a teacher. I don't see any other way out.

I believe these bills will do a great deal to give justice and end some of the practices which you have heard about today.

ASSEMBLYMAN BURSTEIN: Thank you.

MR. MURPHY: I want to thank you very much for the opportunity of appearing before you.

ASSEMBLYMAN BURSTEIN: Madeline West.

M A D E L I N E     W E S T: Gentlemen, I would like to be very brief. I am the first student that has spoken. I feel that it is a moral issue that has been raised and this Committee is sitting to make ammendments to an inadequate bill.

My request is this, that if the bill is passed, it be made retroactive to January 1st so that these teachers who are involved this year will be able to have some satisfaction and some recourse instead of letting them be the last to go under an inadequate bill.

ASSEMBLYMAN BURSTEIN: Thank you.

Mr. Lawson.

R O B E R T   K.   L A W S O N: My name is Robert K. Lawson. I am Chairman of the Student Union for Teacher Defense, at Brookdale Community College.

Let me preface my statement by remarking that whatever I can say regarding faculty malcontent at the school would be most inadequate in light of Mr. Faris's, I think, rather eloquent testimony. What I am going to say reflects student opinion, which I feel is of equal import.

I am here today as a spokesman for seriously concerned students at Brookdale Community College, and in terms of my remarks, students in general, in that this situation is found on campuses across the nation - the unethical, unprincipled termination of faculty contracts.

The predicament to which I have alluded that exists at our college, is simply this: five instructors have been fired with no explanation being given as to why.

ASSEMBLYMAN BURSTEIN: Excuse me. Again I must interrupt. These bills are not directed to college faculty. And I wonder if you might direct your remarks to the bills themselves.

MR. LAWSON: What you are saying is the bills will have no effect upon college faculty?

ASSEMBLYMAN BURSTEIN: That's correct.

MR. LAWSON: Even publicly-funded colleges?

ASSEMBLYMAN BURSTEIN: It doesn't make any difference.

MR. LAWSON: I see. Well, what I would like to say then is, using this situation, which I think reflects situations in public schools, you might see the importance of the two bills, because the same situation is happening on college campuses as well. So if I may continue, thank you.

ASSEMBLYMAN BURSTEIN: Again if it is going to be repetition of what Professor Faris has testified to before, I would appreciate it sincerely if you would

skip over it. We have gotten the full import of that.

MR. LAWSON: Well, I think the importance of what I have to say, while it does somewhat reflect what Mr. Faris has said, is so deeply ingrained in my comments that I cannot possibly sift it out.

If I may, without further ado - and this is wasting time - continue, thank you.

Under the present law, as you know, reasons need not be given, although the law in no way stipulates that they cannot be given. As a result, five educators who have consistently received positive evaluations from their Deans, and in some instances promotions, will be left unemployed with only a marred record to show for three years of dedicated academic service. I have personally examined the files and the evaluations of these teachers and, in my opinion and in their estimation as well, no legitimate reasons exist for their termination of contract.

Clearly then, this situation and others like it necessitates the legislation of Bill A 960 to rectify the present problem and to prevent any future injustice. Bill A 960 would effect positive results, not only on the faculty level, but with the students as well. A higher quality of education could be provided by teachers who will no longer have to live in fear of administrative reprisals for exercising their general constitutional right to speak. In short, true academic freedom would have specific legal protection. Students will then be allowed to be exposed to all sides of an issue or ideology, not just the position supported by the administration.

We do not want to be dependent upon the ethical and moral values of a college president for the determination of who should or who should not teach. We cannot sit back and hope that he will execute justice. Bill A 960 must be passed to insure a deserving teacher security.

If an educator is to lose his job, he should be informed of the ethical reasons for the action, if they do exist. In addition to this, we believe that to further insure quality education, it is necessary that evaluations of teaching ability and potential be required. Bill A 929 would accomplish this and achieve some important goals. Critical judgments, if made by those in position best suited for faculty observation, would by pointing out inadequacies, facilitate self-improvement on the part of a teacher.

Moreover, a legitimate criterion upon which to base judgments of teachers would, to a degree, provide security in that a teacher's job would no longer be subject to the whims and wishes of a biased administration.

It is at this point that the two bills tie in together. With evaluations being mandatory and reasons for termination of contract being required, no college president or administrator, for that matter, would have the power to fire five excellent instructors for political purposes and get away scot-free, as has happened at Brookdale.

I would just like to say that I vehemently urge that legislative action be taken to correct this travesty of justice.

Thank you for allowing me the time to speak.

ASSEMBLYMAN BURSTEIN: Thank you.

Are there any other persons who wish to be heard?

MR. CLARK: I am a board member from Howell Township. I put in a request to speak.

ASSEMBLYMAN BURSTEIN: Mr. Clark, please be brief. I can't even speak anymore. I can't articulate.

I wish to say this is going to be the last witness. If anyone wishes to present testimony additionally or be heard, there will be a meeting of the Assembly Education Committee, at which these bills will be discussed, either



on Thursday, March 21, or Thursday, March 28, and you can get the exact date at which this will occur from the Legislative Services Agency, asking for Paul Muller. He will be able to tell you.

H A R O L D     C L A R K:    My name is Harold Clark. I am a member of the Howell Township Board of Education and I am for both bills that you have before your committee. I, as a board member, working inside the board, can testify and verify a lot of the facts that were stated here today by your teachers about how they have been let go.

I will state an incident which I think is very important. I worked on the Personnel Committee in Howell Township in 1973 when five teachers for no apparent reason were let go, simply because after a week of personnel hearings, none of our administrators or principals came up with anybody to be let go. Our Board President at that time made the statement, "Do you mean to tell me, out of 257 teachers, there is no one to be fired? You leave this room, come back, and tell us who you want to let go and we will back you 100 percent," at which time, when the principals and administrators came back into the room, they had five names of people they wanted to let go. Then the Board President instructed the administrators to try to talk the people into resigning. Three of these people did resign. Two fought it. None of the five people were ever given a reason why they were let go. Two young people's careers have been destroyed.

I asked the administrators and principals to document all the evidence that they had presented to us verbally and sign it. None of them would put in writing what I had asked for.

Howell Township does evaluate all our teachers, not only nontenure but tenure teachers. These teachers'

evaluations were anywhere from good to excellent, but they were still let go.

I think that both bills are very good bills for the simple reason it will force the administration and the principals and supervisors and the boards of education in the State of New Jersey to do their jobs properly, which they do not do now.

I was told by older members of the Board that this has been common practice for years. I have been told by Board members throughout the State that I have talked to that it is common practice in their areas to let teachers go without any reason - without giving them a reason. So it is not a thing that is happening in one community or isolated instances. This was five teachers at one time that were let go with no reason and forced into resigning or fight for what they believed was right. And the two teachers that are fighting for their careers right now are just about busted because the Board of Education did not do their job, the administrators did not do their job.

Your bill will not only help the administrators and supervisors and principals, but it will most definitely help the children in the State of New Jersey. And this is what the whole thing is about - educating the children and giving them the best education. We don't want our teachers to have to go into their classrooms and worry about how they are going to satisfy their principals or supervisors for three years. Our principals and supervisors should be helping these people, not letting them go after telling them through the years, which I can verify with documentation, that they are good teachers, and then in the third year tell them they are no longer wanted and come up with a lot of reasons before a board of education why they don't want them in

the system. I don't think this is fair to anybody.  
And the people that are getting hurt is not so much the  
teachers, but it is the children within the township.

I believe the teachers should have the right to  
know why they are being fired and should have public  
hearings.

ASSEMBLYMAN BURSTEIN: Thank you.

I declare the hearing at an end. Thank you very  
much for attending.

(Hearing Concluded)

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March 11, 1974

IN DEFENSE OF ASSEMBLY BILLS NUMBERS 929 AND 960

RALPH M. FARIS

I come here, today, to offer this committee five solid reasons for recommending the above mentioned proposed legislation to your colleagues in our state government: Faris, Krimper, Theirs, Johnson and Penna. For these are the names of five faculty members of Brookdale Community College in Lincroft, New Jersey, whose contracts for the 1974-75 academic year are not being renewed, and to whom no reason has been given for such arbitrary dismissals. But, the knowledge that these five teachers have been perfunctorily dismissed does not, in and by itself, convince one of the merits of the proposed bills before us. However, a brief but complete history of the educational arena at Brookdale which resulted in these firings will, I believe, underscore the widespread and urgent need for Bills 929 and 960. I am, therefore, going to relate to you the details of my academic performance at Brookdale and the subsequent decision made by our top administrators there regarding my candidacy for tenure; I will use my case, here, simply because it not only characterizes the situation of the other four faculty concerned, but also because it typifies the treatment received by thousands of teachers across the United States today.

I came to Brookdale Community College(BCC) fresh out of graduate school in 1971 with the expressed intention of participating in what appeared to be an honest and open attempt to create a totally new, successful, and student-centered philosophy of education. Beleiving BCC to, at the time, a democratic humanistic and community-based institution, I dedicated myself completely and unequivocably to the tasks and goals of a new educational approach. In the years that followed, I received many appraisals of my performance here and in order that you might better understand the need for the proposed bills I must share the content of those appraisals with you now:

- (1) in the three years of intense and active teaching at BCC, I received six formal evaluations by my four immediate superiors up to and including the Vice-President of Academic Affairs. This formal evaluation system was jointly established by the BCC Faculty Association and the BCC Administration and according to BCC's Board of Trustees' Policy, is to constitute "the primary basis upon which recommendations for tenure are made." 1 All six of my evaluations, by administration admission, were highly positive and laudatory of my performance as a teacher, and you have my permission to verify this contention and any others I make here by checking my personnel folder at BCC.
- (2) believing my performance as an instructor to be "an asset to the college" and "exemplary", I was, last year, promoted to assistant professor with the recommendations, once again, being signed by all four of my superiors.
- (3) demonstrating their continuing and growing confidence in my ability and performance, my administrators appointed me Sociology Team Leader, after I had served as acting Team Leader for more than half a year in a most satisfactory manner.
- (4) moreover, all four of my superiors continuously and glowingly assured me that I would be given tenure at this college, even as late as January 31, 1974, basing their confidence upon their formal evaluations of me which required, as well, formal observation of my teaching skills.

- (5) according to BCC Board of Trustees' Policy, "while these written performance evaluations of instructional staff members shall be the primary basis upon which recommendations for tenure are made, the professional growth, scholarly achievement, and personal development of a candidate shall also be used in determining who shall be tenured."<sup>2</sup> Moreover, this same board policy requires that "There shall be positive and tangible evidence that the candidate is truly superior in his job performance. There shall be positive and tangible evidence that the candidate is fully committed to the philosophy, goals, and learning systems model of the college. There shall be tangible evidence that the candidate has made contributions to the college through participation in committees, service activities, community programs, etc., and is committed to a continuing contribution to the growth and development of the college."<sup>3</sup> This policy further states that "other factors including the availability of funds, present and/or projected full time enrollment, continuance of a program, and/or programs shall be reviewed by the President when preparing to nominate teaching staff members as candidates for tenure."<sup>4</sup>

It is to the details and dimensions of this fifth stipulation that I must, obviously turn:

- (1) professional growth and scholarly achievement - I have translated, from German to English, six articles in the last three years, for publication in a six volume philosophical journal, and have published my own book on philosophical categories just this year; in addition, I am in the process of completing my doctorate at a nearby graduate school. I am, as well, an active member of several, professional sociological associations and editorial boards.
- (2) positive and tangible evidence of superior performance - I refer you to my formal evaluations and highly enthusiastic student response and evaluation sheets as well as
- (3) contributions to and participation in BCC, etc.- during the last three years, I have officially participated in the following:
  - (a) committee to select a new dean of the Human Affairs Institute
  - (b) committee formed to develop proposals for obtaining grants from the National Endowment Fund for Humanistic Studies.
  - (c) co-founder of the Current Affairs Forum on campus to promote an active student interest in current political economic and social issues of the day.
  - (d) speaker (to commence in May, 1974) for a special course entitled "Meet the Professor", offered by the Community Services Division of BCC.

- (e) member of a panel from BCC which addressed a community group in Marlboro, New Jersey on child rearing theories and approaches.
  - (f) advisor to the Children's Psychiatric Center in Eatontown, New Jersey in conducting a survey of Monmouth County's need for outreach clinics in several districts.
  - (g) participation on a television panel (Cable TV Channel 12 in Eatontown, New Jersey) discussing current crises in the U.S.
  - (h) written numerous articles for the BCC official newspaper The Stall.
- (4) enrollment and/or financing considerations - the sociology team has not only carried a maximum number of students for the last three years but has consistently drawn an overload number of students as well. Moreover, the proof of our continuing and increasing enrollment can be found in the fact that, despite losing three sociology teachers in the last two years, despite not being allowed to replace those lost members, despite being assigned unqualified instructors from other teams whose students loads were dramatically low, the sociology team has shown an overload of students right up to and including this Winter Semester; thus, no argument can be made that the sociology team isn't pulling its own load.
- (5) students at BCC, through students' evaluations of my performance, through the many petitions signed on my behalf, and through their appearance at Board of Trustee meetings and committee meetings such as this one here, today, have demonstrated their unanimous and unreserved approval of my services to BCC and their determination to see me retained as a permanent staff member.

From the preceding, it must be apparent to you now that the administrators at BCC have acted, in dismissing not only myself but four other fine and outstanding faculty members, in blatant disregard for any objective, rational or ethical observations of our teaching performance. They have given us absolutely no reason for our dismissal; they have even violated the basic tenets of their own educational philosophy established by the Board of Trustees. These same administrators have seriously maligned our

personal and professional integrity by the very silence which has characterized their entire handling of our dismissals. They know that New Jersey State Law requires them to give no reason for dismissal of non-tenured faculty, even if morality and ethics would insist they do so. This same law allows administrators to ruthlessly abuse the First Amendment rights of teachers as well as to force teachers to comply with educational policy which is authoritarian and unworkable.

We, the five fired, faculty members of BCC, strongly urge you to recommend the proposed legislation for adoption by our state government. To do so would insure that administrators, too will have to demonstrate their competence by rationally, objectively and humanistically dealing with the individuals charged with the responsibility of educating our young. To do so would indicate that New Jersey's State Government desires to move decision-making out from under the burden of a Watergate infested shadow. To do so can only reflect positively upon the ethical standards embraced by this legislative body. Thank you very much for your attention.

Sincerely yours,

*Ralph M. Faris*

Ralph M. Faris  
Assistant Professor of Sociology  
Brookdale Community College  
Lincroft, New Jersey 07738

on behalf of:

Professor Warren Theirs  
" Ron Krimper  
" Ross Penns  
" Evelyn Johnson





**New Jersey  
School Boards Association**

407 West State Street, P. O. Box 909, Trenton, New Jersey 08605

DR. MARK W. HURWITZ  
Executive Director

LETTER OF TRANSMITTAL

FOR THE

REPORT OF THE AD HOC COMMITTEE TO STUDY STAFF  
EVALUATION AND ITS RELATION TO TENURE AND COMPENSATION

SUBJECT: THE REPORT OF THE AD HOC COMMITTEE TO STUDY STAFF EVALUATION  
AND ITS RELATION TO TENURE AND COMPENSATION

FROM: EMORY J. KIESS, JR., CHAIRMAN

TO: MRS. MYRA MALOVANY, PRESIDENT, NEW JERSEY SCHOOL BOARDS ASSOCIATION

Delegates at the annual meeting of the New Jersey School Boards Association held in Trenton on May 15, 1971, approved an amended resolution from the Upper Township Board of Education, Cape May County, to direct the Association to institute a study of staff evaluation including its relationship to compensation and to tenure. The resolution was referred to the Association's Ad Hoc Committee studying resolutions 2 and 3 because of the resolution's general relationship to the charge of that committee. The Ad Hoc Committee subsequently formed a subcommittee to direct an intense study into the area of staff evaluation. Membership on the Committee was broadened to insure that the group would be broadly representative, and, after the interim report made to the Delegate Assembly last December, the subcommittee was established as a separate ad hoc committee.

Starting in July, 1971, and continuing throughout the summer, fall and winter, the Committee met frequently to consider its basic charge. Quantities of research materials were gathered and a survey of practices in other states was conducted. Outside consultants were identified and contacted to assist the Committee at each step of its investigation.

The final report of the Committee is hereby submitted for your consideration and for whatever action which may be approved by the Executive Committee, the Board of Directors or the Delegate Assembly of the New Jersey School Boards Association.

The board members of the Committee are to be commended for their dedication to the tasks assigned. So too are the Committee consultants who provided the necessary expertise and information to enable the Committee to move wisely and carefully in a difficult area.

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**New Jersey  
School Boards Association**

407 West State Street, P. O. Box 909, Trenton, New Jersey 08605

**DR. MARK W. HURWITZ**  
Executive Director

**FINAL REPORT OF THE COMMITTEE TO STUDY STAFF EVALUATION  
AND ITS RELATIONSHIP TO TENURE AND COMPENSATION**

**Emory J. Kiess, Jr., Chairman**

**PREPARED FOR THE ANNUAL DELEGATES MEETING**

**MAY 13, 1972**

**CONCLUSIONS**

1. In light of the current pressures, demands and problems in public education the New Jersey School Boards Association should urge each local board of education to review critically its staff evaluation policies in light of this report.
2. Not only is it a board's responsibility and a necessity to require effective evaluation procedures for all staff, it is also necessary for boards to evaluate the effectiveness of those procedures.
3. The New Jersey School Boards Association should urge local boards to set as a high budgetary priority the provision of resources necessary to implement an effective evaluation system. This should include the specific allocation of manpower for this purpose.
4. The New Jersey School Boards Association should actively seek legislation to replace existing laws that guarantee career tenure with renewable tenure. Legislative efforts should also be made to lengthen the probationary period for non-tenure teachers from the present three years to five years.
5. The New Jersey School Boards Association should promote the various instructional models requiring new staffing patterns that could link performance evaluation to compensation in a practical way.
6. The New Jersey School Boards Association should urge local boards to consider as part of this evaluation program the provision of continuing educational opportunities for staff to help insure that evaluation procedures can lead to improved instruction.
7. The New Jersey School Boards Association should draft and disseminate a sample policy on staff evaluation embracing the policy elements outlined in this report.

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## INTRODUCTION

Measuring the improvement of school children in all areas of learning is so difficult that evaluating teacher performance may be the only way that boards of education can be sure that what is supposed to happen for children actually does happen

A resolution submitted to the New Jersey School Boards Association's Delegates Meeting in May, 1971 by the Upper Township Board of Education (Cape May County) requested that the Association institute a study committee to consider whether the present tenure system for teachers and other public employees should be abandoned and an alternative system of compensation and advancement proposed. During debate on this resolution, it was pointed out that the Association had recently completed an ad hoc committee study on tenure and certification and the report of this committee had been accepted by the delegates at the previous meeting in December of 1970.

A reason advanced by that committee for not recommending Association opposition to teacher tenure at that time, was their belief that too many boards needed to take further steps to fulfill their responsibilities for evaluation and to provide for in-service educational opportunities to support their teachers and increase their chances of success. As a result, the delegates amended the Upper Township resolution to propose an ad hoc committee study of teacher evaluation and its relationship to tenure and compensation. The Committee altered this charge to "staff" evaluation because it felt that evaluation systems had to be considered in total, embracing all personnel rather than considering teacher evaluation in isolation.

## ANALYSIS OF CURRENT STATUS OF TEACHER EVALUATION

Review of the literature indicates that most of what the previous Association committee said concerning evaluation still holds true. Numerous projects are underway attempting to find new ways to measure the effectiveness of education. More and more school districts are attempting to define the teacher's job in terms of behavioral objectives that can be measured. However, such districts are a very small minority while the vast majority of districts utilize more traditional forms of evaluation because of the great difficulty of defining these behavioral objectives and of developing ways to measure them.

Traditional evaluation is based on some number of observations by superiors utilizing some form of checklist or narrative reporting form. At this point, conversation usually takes place between the teacher and his

superior and a signature is usually required of the teacher to verify that the procedure has been carried out. In many cases, the teacher who disagrees with the evaluation is offered opportunity for rebuttal.

It appears obvious, after reviewing a myriad of different types of evaluation systems, that total objectivity and fairness depend not only on the evaluation procedure, but also upon the evaluation capability of those personnel administering that procedure. Few school systems utilize professional teams of evaluators or make special efforts to train their administrators in evaluation techniques. In few instances did the Committee even find districts which employ a rigorous system for evaluation of their administrators. Perhaps this accounts for increasing pressure from teachers to legislate their involvement in the process.

It seems equally obvious that boards have both legal right and obligation to require evaluation of all personnel in the system. Indeed, in this age of "due process," the position has been advanced that boards need the protection of a system that can be equally applied to all employees to support board actions and to avoid possible charges of arbitrary or capricious action.

While a system of performance evaluation adopted unilaterally may well fulfill the objectives of control and supervision, in today's circumstances, it seems highly questionable if any evaluation system can be successful in achieving the goals of stimulating improvement of teacher performance or even of maintaining a standard of teacher performance unless teachers are involved constructively in developing the process. Indeed, it seems doubtful that these goals can be achieved at all over the obstacle of career tenure as it presently exists for teachers in New Jersey law. The interests of boards today would seem to be best served by development of a comprehensive evaluation policy leading to development of flexible procedures allowing for staff participation with sufficient checks and balances to insure a maximum degree of fairness and equal application. Nonetheless, with or without teacher cooperation or modifications of the tenure law, a board must have an evaluation system with which to back up its decision-making and to determine how well its own goals for the children it educates are being met.

It was also agreed that a board must give greater attention and support to helping the staff to improve and to become successful. The board must take a greater responsibility for the provision of continuing educational opportunities to enrich the professional experience of all staff and to provide a framework within which staff members can be required to make those efforts that will help them improve in the areas called for by evaluation.

#### POLICY

Any evaluation system must start with definition of the purpose of that evaluation. It is with this "why" of evaluation that the board must

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start in the development of its policy. Evaluation is not a simple task. Appraisal of the teaching process, while it requires skill and expertise, is both essential and possible.

The American Association of School Administrators' circular, Evaluating Teaching Performance, lists ten different purposes for evaluation in order of greatest frequency of current use:

1. To stimulate the improvement of teacher performance
2. To decide on reappointment of probationary teachers
3. To recommend probationary teachers for permanent status
4. To establish evidence where dismissal from service is an issue
5. To select teachers for promotion
6. To decide on reappointment of permanent teachers
7. To qualify teachers for regular salary increments
8. To qualify teachers for longevity pay increments
9. To qualify teachers for acceleration on the salary schedule
10. To establish qualifications for merit pay

In addition to such administrative purposes as listed above, staff evaluation helps the board to fulfill its responsibilities --

to the State by providing a basis for determining the effectiveness of the school program;

to the local taxpayer by providing a basis for assuring the effective and efficient utilization of resources;

to the school staff who have invested their education and their time in the local school system and should have reliable assurance for their future;

to the students by focusing staff efforts on the ultimate criterion of student benefit;

and to the administrator by providing a procedure which gives force to his authority and by which he can exercise his responsibility for the effectiveness of the staff assigned to him.

There are many different types of evaluation procedures. Procedures may vary considerably depending upon the purpose as spelled out by the board of education's policy. It is in terms of the purpose that the procedure is both devised and evaluated. In addition to stating purposes, board policy should also clearly delineate who is to be evaluated and who is to be held responsible for that evaluation, along with the type of reported information the board expects to get back.

The committee believes that an adequate evaluation policy should contain the following elements:

1. A statement of goals and objectives, such as those in the previously stated list, which view the evaluative process as a means for improving teacher performance and the quality of instruction in addition to any other purposes the board wishes to select.
2. A statement delegating to the chief administrative officer the prime responsibility for developing, organizing and implementing a system-wide program for continuing evaluation of all employees including evaluation of the performance of the evaluators.
3. A statement of support by the board that it will provide the resources required to implement an effective evaluation system.
4. A statement requiring a periodic report from the chief administrative officer on the adequacy of evaluation procedures in terms of the purposes stated in the policy and in terms of sound procedural guidelines.
5. Statements of any other correlated policy positions such as:
  - a. A statement enlisting the cooperation and advisory involvement of all employees in the development of the evaluation procedure;
  - b. A statement that the evaluative process be carried out on a continuing basis and include opportunities for both formal and informal evaluations;
  - c. A statement that any evaluation procedure implemented should be of a formative nature and open to continuing review, modification and improvement;
  - d. A statement indicating that expectations for individual performance should be proportionate to earnings;

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- e. A statement of mutual assistance requiring continuous professional improvement of all staff and committing the board to assist in making continuing educational opportunities available;
- f. A statement that evaluation begins with recruitment of personnel.

While none of the hundreds of policies examined by the Committee contained all of the above elements, the Committee recommends that the Association develop sample language for such a policy and make it available to local boards.

#### PROCEDURE

The Committee concerned itself primarily with two different types of evaluation:

1. Evaluation aimed at raising teacher performance and improving the quality of instruction in a district, which requires teacher involvement, cooperation and agreement if it is to have any real chance of success; and
2. Evaluation which the board needs in the event of challenge of any decision.

With these two viewpoints in mind, examination of the evaluation procedures used in more than 100 school districts indicated two distinct methods of evaluation. The first type, which is used in most districts, is a narrative or checklist description of the employee against predetermined qualities or performance indicators. This type of evaluation occurs in an endless number of variations.

A second more recent type of procedure may be considered evaluation according to individually determined performance goals. This method is closer to the usual industrial, management by objectives, evaluation model. In this type of procedure, the evaluator and the employee mutually determine in conference the individual job targets or performance goals for the employee prior to the evaluation period. The evaluator then rates the employee on the extent to which the employee has achieved those goals during the specified time period.

Some type of self-evaluation may be utilized additionally in conjunction with either one of the above methods.

None of the teacher evaluation procedures examined, however, can really be said to answer all the objections of critics who maintain that teacher evaluation is essentially a subjective process necessarily subject to human

bias and error. This poses a serious problem in the development of an effective evaluation system, since, as earlier stated, the two initial viewpoints from which the Committee began its examination require cooperation and agreement from the teachers. While evaluation itself is not a negotiable item, the impact of an evaluation system, such as its effect upon employee compensation, is negotiable. Boards should be continuously cognizant of this distinction. And certainly, an evaluation system would have its best effect upon the improvement of instruction in a district if the staff members are in substantial agreement with the measures against which they would be judged.

The Committee did not feel that it could arrive at any sort of model procedure that would work in every district, in light of local objectives. Neither did it feel that it was a proper role of a School Boards Association to attempt to prescribe procedure. The Committee did feel, however, that a blend of the two major types of evaluation procedures accompanied by a sufficient number of checks and balances to guarantee a maximum degree of fairness appeared to offer the best possibility of acceptance and success.

The Committee believes that the following procedural elements are worthy of consideration:

1. Develop an evaluation team involving not only the employee's direct superior, but others as well. Designate a prime evaluator and, perhaps, assign weightings to the evaluations of the different evaluators.
2. Start the process early in the year by conference between the prime evaluator and the evaluatee. Involve the evaluatee in writing his own job description as nearly in terms of behavioral objectives as possible and in setting mutually realistic goals for the year against which he would willingly be measured.
3. Combine the performance-goals approach with an evaluation based on prescribed performance standards developed in consultation with teacher representatives.
4. Designate appropriate kinds of evaluative data (performance evidence) that includes not only result or output factors, but also input factors such as how well a person prepares for his job and process factors which indicate how well a person does what he is supposed to do to accomplish desired results.

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5. Provide sufficient controls to insure the validity, reliability and objectivity of rating procedures.
6. Add a self-evaluation dimension which requires the professional staff member to collect evidence by which he can, himself, monitor his effectiveness.
7. Provide a conference for the evaluatee with the evaluation team after all evaluations are completed.
8. Provide for an appeal procedure to the next higher supervisory level for the teacher who wishes to comment on the results of the evaluation.
9. Have the evaluators provide a list of steps recommended for improvement of the evaluatee. And help plan a continuing education program to strengthen performance in weak areas.

#### RELATIONSHIP TO TENURE

The Committee agreed with the previous ad hoc committee's conclusion that some of the reasons for which tenure was originally devised still have some validity. However, given presently developing patterns of organizational representation and negotiations, and increasing public pressure for closer accountability in education, the concept of career or lifetime tenure is no longer justifiable.

On the other hand, boards of education must provide a comprehensive and fair evaluation system, backed up with adequate support to enable the teacher to improve and to have every chance of succeeding. The Committee explored the concept of renewable or limited tenure which could be reaffirmed at specific time intervals, such as every five years. The Committee also examined the possibility of lengthening the initial non-tenure probationary period from three to five years prior to the attainment of tenure.

It seems obvious that no evaluation system can attain maximum effectiveness in the improvement of instruction under the constraints of career tenure.

#### RELATIONSHIP TO COMPENSATION

The Committee examined various ways in which evaluation procedures might be tied to compensation. The Committee found great appeal, from a management point of view, in the industrial type of rating system which governs pay raises according to performance. However, since merit pay plans must be negotiated, and the history of merit pay experiments throughout the country indicates that it is difficult for the board to gain teacher consent without making so many concessions that effectiveness of the plan is seriously diminished, the

Committee believed that it could hold out little hope that merit systems would become accepted practice in the near future. The Committee hastens to point out that this should in no way be interpreted as discouraging experimentation in any district where such approach might be negotiated.

The Committee found that much of the criticism of merit pay plans stems from the same criticisms regarding the lack of objectivity, reliability and validity of evaluation plans in general. Improved performance evaluation procedures could make possible serious consideration of merit pay plans. Boards are advised to consult their professional negotiator or board attorney if institution of any such plan is contemplated.

The more practical and realistic point of contact for tying evaluation to compensation would seem to be in the evaluation of relative job worth within a system. Such concepts as differentiated staffing would seem to hold out the greatest chance of success as a compensation model within the realm of collective bargaining. It must be pointed out, however, that differentiated staffing cannot be superimposed solely as a compensation process. Rather, it should evolve as a result of the design of an effective instructional model.

Only when job roles are effectively defined and a pay range related to job worth fixed -- only when the persons suited to those roles are selected and performance objectives set for them within the limits of those roles -- and only when objective measures can be devised for measuring the performance or results for persons within those roles -- only then can an output increment over and above a cost of living increment be realistically considered.

Measuring the improvement of school children in all areas of learning is so difficult that evaluating teacher performance may be the only way that boards of education can be sure that what is supposed to happen for children actually does happen

Respectfully submitted,

Emory J. Kiess, Jr.  
Chairman

EJK:RRL:fm

COMMITTEE TO STUDY  
STAFF EVALUATION  
AND ITS RELATIONSHIP TO  
TENURE AND COMPENSATION

May 13, 1972

MEMBERS

Emory J. Kiess, Jr., Chairman; Elk Township Board of Education, Gloucester County

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Thomas Millard, Orange, Essex County

Eugene R. O'Hare, West Morris Regional, Morris County

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