

P U B L I C       H E A R I N G

before

SENATE JUDICIARY COMMITTEE

on

Nomination of Fred G. Burke as Commissioner of Education

Held:  
March 23, 1979  
State Museum Auditorium  
Trenton, New Jersey

COMMITTEE MEMBERS PRESENT:

Senator Martin L. Greenberg (Chairman)  
Senator William V. Musto (Vice Chairman)  
Senator Joseph A. Maressa  
Senator Walter N. Sheil  
Senator Barry T. Parker

ALSO:

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

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SENATOR MARTIN L. GREENBERG (Chairman): The Judiciary Committee hearings concerning the renomination of Dr. Fred Burke will continue. At the end of the last session, the people with time problems were asked to come up to the front and speak to Mr. Tumulty. Some did and we have a list of those people. We will try to accommodate them. Those of you who are here today who also have time problems, we will try to accommodate. But I would like to repeat what I said at our last meeting. We will appreciate it very much, if you have printed statements, that you hand them in to be incorporated in the record; then you can highlight them instead of reading them. They will become part of the transcript and will be read. They will be available for all of the Senators on the Committee as well as the Senate as a whole.

We have talked about time limitations and imposing time limitations if necessary. I prefer not to do that. But if it does become necessary, the Committee will caucus and make a determination. In the meantime, we would like to avoid that and we would like your cooperation.

Mr. E. J. Kiess. Good morning, Mr. Kiess.

EMORY J. KIESS, JR.: My name is Ed Kiess and I am the Executive Director of the New Jersey Association of Elementary School Administrators. A brief description of who we are: We are the professional organization that represents over 1400 elementary and middle-school administrators and supervisors in grades kindergarten through eight in the State of New Jersey. Our Association wishes to go on record in support of the renomination of Dr. Fred G. Burke as New Jersey's Commissioner of Education.

All times in the history of mankind, as we all know, are trying times. But, it would seem, none appears to be more trying than the current times in regard to the future of this nation's most noble experiment, the providing of a free education for all of our children.

New Jersey, always in the forefront of this experiment, adopted the Public Education Act in 1975 to see to it that New Jersey's children would have an equal opportunity to a free, thorough and efficient system of education. A tremendous mandate was handed down by the Legislature. Dr. Burke accepted that legislative mandate and has tried during these most trying of times to develop and set in place that mandate.

Keep in mind that that mandate was not to develop a new system where none existed. The mandate was a mandate for change and improvement at the height of a time when the national household word was accountability. The mandate directed change in a system that did exist. To be the primary change agent, affecting hundreds of thousands, is a role that easily projects threats to security, to say the least. To be willing to accept such an assignment, fully aware of the high exposure to criticism and the high possibility of public perceptions of failure speaks highly of the individual. Dr. Burke accepted that agenda and we have supported him.

He, his office and the Department have been cordial, cooperative and accessible. Never before has a Commissioner of Education cooperated with our Association to the degree we now enjoy, in terms of seeking our input prior to decision-making on those issues he perceives as having impact on our role. Never before has our Association been invited to participate in the development of so many surveys, guidelines, study committees and the like.

Dr. Burke perceives that educational decisions must be made only after a broad involvement of those who will be affected. We, of course, do not always agree with the final outcome, none ever will. But we have been involved as we have never

been involved before.

He has been sensitive to the impact legislative and State Board decisions have on the local level and has continually attempted to facilitate implementation. The decentralization of the State Department bureaucracy to concentrate such services at the county level is just one example. His continuing support of the development of the Educational Improvement Centers is an example. When he arrived in New Jersey, only EIC - South was in operation. Now, in answer to ever increasing demands for technical assistance, 4 EIC's serve all of New Jersey.

It seems more than appropriate to point out that there abounds in our Nation two opposing forces and I think they bear directly on the problems we are facing as we consider the renomination of this Commissioner. One force makes America try to tolerate nothing less than best. The other force is that of the desire for instant conclusions and instant completion of all goals and tasks. Some refer to us as "Instant America - the add water and stir society." Do we all really believe that all would be well at this point in the development of T & E? Did we all really believe that there wouldn't be any course changes along the way? Some call these course changes flip-flops; some call them cave-ins to pressure groups. We feel they are course changes on a trajectory of trial and error. Because T & E had no rule book, T & E had no road map, T & E had no caution signs, many mistakes have been made.

Dr. Burke has been assigned to preside over and mediate a long list of conflict situations. These situations pose local and State government against one another. They force various parts of our New Jersey society one against the other. They demand greater quality for fewer tax dollars.

He has accepted the role as the chief child advocate in New Jersey and at the same time has to determine cap waiver requests following the very tough cap laws. He is responsible to guide decision-making in this era of tax reform and declining enrollments. His is almost a no-win situation. Of course, he is going to be criticized. In almost every situation, he stands to be criticized. And in most issues and conflicts, we all well know there will be a winner and a loser.

We appreciate his position and welcome his support with regard to the maintenance of tenure for middle management in the public schools. At the same time, we strongly differ with him on his stand in support of the abolition of middle-management bargaining rights.

We have taken strong issue with him with regard to the generation of "paper work" and forms that seem always to end up on the desks of those responsible to operate and manage the individual buildings in New Jersey's School Districts. We are pleased to note a reverse in this trend as the phases of T & E unfold. We feel assured that he is well aware of the problem we label "administrative overburden" and that our concern will continue to be his concern in this regard. He agrees that educational leaders in our school buildings cannot spend each day trapped behind their desks and also guide high quality improvement of the educational programs of our children. And we agree with him that much of the flow of paper, though initially generated by the Legislature and the Department, is also partly generated at the local level and that a shared effort should be made to refocus the efforts of building principals to improvement and maintenance of a high quality instructional program.

He shares our strong concern for the declining relationship that exists between school buildings and the communities they serve. He hopes to continue to address



this concern and mutually develop strategy designed to bring parents and school staffs closer together.

It seems cataclysmic to us to observe that there is an obvious contradiction evolving in American society and the presence of this contradiction requires a strong Commissioner and requires that we not subject our New Jersey schools to severe change at this time. And that contradiction is that while New Jersey citizens are increasingly resistant to increasing costs in education, they are becoming more and more removed and more and more apathetic with regard to their schools.

The Commissioner of Education must guide us through these years, years that have people who are not familiar with what schools are now about yet who, at the same time, are denying schools the funds to operate.

Should we seek a stranger to New Jersey's problems to guide us through these troubled waters or should we keep with us one who is deeply familiar with our problems, and, together, work our way to better days?

We believe Commissioner Burke shares our concern over early childhood education. We have communicated, particularly during this International Year of the Child, that New Jersey should shift from a mainly remedially oriented agenda in school reform to an agenda of prevention in school reform. In conversations with us, he has agreed that greater emphasis at the pre-school and primary levels would do much to strengthen education and, as well, to reduce long-term costs to the taxpayer, not only through a decreased demand or need for compensatory programs, but also reduce the need for other social services provided by other departments of government. We look forward to the coming of an era of prevention as the later phases of T & E are developed and set in place.

The Commissioner of Education wears so many hats. He sits as a member of the Governor's cabinet; he sits as Secretary of the State Board. By virtue of this position, he is the leader of the professional education community of New Jersey and he is the primary advocate for children in our State. In calmer times, those roles might even be identical and interchangeable - not so today. There are opposing forces, vested interests, rising costs - you all know the litany of these conflicts and pitfalls. You well know also the old saying, "not even a turtle makes progress unless he sticks his neck out." Well, Dr. Burke has stuck his neck out and he has made progress. We applaud his efforts and, as well, we have been his critics. We applaud his efforts in an attempt to provide stability and a degree of standardization in the evaluation of staff members. This effort, possibly one of the most controversial he tackled, brought much criticism. But with the State Board of Education, he stuck to the agenda. He sought input from all those to be impacted by State level evaluation requirements and concluded with a minimum system for New Jersey that will provide consistency and fairness.

Therefore, the New Jersey Association of Elementary School Administrators strongly urges that this Committee report favorably on the recommendation of the Governor that Dr. Burke be confirmed for a second five-year term. We need consistency. We need stability. He should be allowed to continue his leadership in the implementation of T & E.

We thank the Committee and, if you have any questions, we will be available.

SENATOR GREENBERG: Thank you very much.

Senator Maressa, any questions?

SENATOR MARESSA: No, I don't have any questions, thank you.

SENATOR GREENBERG: Senator Musto.

SENATOR MUSTO: No.

SENATOR GREENBERG: Senator Sheil.

SENATOR SHEIL: No questions.

SENATOR GREENBERG: We understand you have a plane to Washington to catch.

MR. KIESS: Yes. We are on our way to our National Convention.

SENATOR GREENBERG: I appreciate your coming down and giving us the benefits of your thoughts.

I just have one question for you though. I understand that the testimony that you have given represents the view of the New Jersey Association of Elementary School Administrators.

MR. KIESS: That is correct.

SENATOR GREENBERG: Thank you.

Barbara Potkay.

B A R B A R A P O T K A Y: Good morning. My name is Barbara Potkay and I am a life-long resident of the City of Trenton. I am a graduate of Trenton Public Schools. I am a former teacher in the Trenton Public Schools and I have served as a member of the Trenton Board of Education since 1969, with the exception of a two-year period between 1975 and 1977. I am here to speak against the reappointment of Fred G. Burke as Commissioner of Education.

I listened with great interest to all the speakers on Monday, March 19th. The speakers were all very different people from different racial, religious, ethnic, educational and financial backgrounds. They represented different communities: small communities, large communities, affluent communities and poor ones. But the message was always the same: our needs in education are not being met.

The Commissioner has been casual and indifferent to our problems. The Commissioner has not provided the creative type of leadership that we all need so desperately right now in New Jersey. The great significance is that so many different people from different parts of New Jersey - north, south and central - are saying the same things: We are not happy with what is happening or what is not happening in education in New Jersey. The buck stops at the top. We hold the Commissioner responsible. These are our personal judgments which can be neither argued nor ignored.

I don't believe that the legislators of New Jersey can ignore this message which has come across so loud and so clear in the past session.

I had a prepared statement for Monday's session. But since much of it is repetitive of what others have said, in the interest of time, I shall submit the written statement for the record and extract only those portions which I feel present a different viewpoint.

I agree with Senator Dodd and others that Commissioner Burke is leading the State of New Jersey away from excellence and toward mediocrity in public education. In my prepared statement, I discussed "thorough and efficient," the cut in State aid to the handicapped, the cut in regular State aid, student test scores on the minimum basic skills test and the first collegiate basic skills test, and the Commissioner's relationship to the State Board of Education. All of these areas have been covered in great depth by other speakers.

I would like to start in the middle of the presentation and discuss what happened in Newark and what is happening in Trenton. The situation in the Newark School System is another case in point. The State Board ordered the Commissioner



to take whatever steps necessary to avert a crisis in Newark. Yet the Commissioner allowed two years to elapse before the illegal deficit of millions of dollars. And two years passed before steps were taken to correct this illegal deficit and to balance the budget of the State's largest school system.

In his report on the Newark situation, the Commissioner insisted that while he knew of the illegal deficits, his responsibility was not to interfere directly. The Commissioner maintained that he refrained from taking any direct action to prevent the deficit because it was strongly believed that it was the local district's obligation first to remedy its own problems - educational and fiscal. The decision not to intervene was consistent with the law and the long tradition of local control in education in New Jersey, the Commissioner said. Yet, right now, in the Trenton School District where the 1978-79 budget is in balance and a balanced budget within the cap limitation has been submitted for 1979-80, the Commissioner is attempting to do away with local control and institute a complete State take-over of the district. Why did the Commissioner wait almost three years to do something about Newark's illegal deficit, stressing the importance, the legality and the tradition of local control of education? And why is he now rushing to take over the Trenton School District where the budget is balanced and legal? What has happened to the precious concept of local control? And what will be the future of local control of education if the feat is accomplished?

The entire procedure of the show cause hearings smacks of big brotherism. The prosecutors, the witnesses, the hearing officer, the judge and the jury are all State Department employees. I cannot believe that this is a proper or a fair procedure. The timing of this in-depth investigation in the Trenton School System must not go unnoticed. A State Task Force issued no exit report when it left the Trenton District in September 1978. Therefore, there was no indication that deficiencies that had existed prior to December 1977 had not been corrected, with the exception of the remediation plan in April 1978. Yet, out of the blue, without warning, in February, 1979, the Commissioner issued a show cause order at precisely the same time that his reappointment came up. This is not coincidental. It is timed very exactly to show that the Commissioner is implementing and enforcing "thorough and efficient," something that he has been very casual about in the past.

We have included for your consideration the records of the proceedings of the show cause hearings in Trenton to date. After reading this material, I am certain that you will agree with us that the entire procedure was a waste of time, effort and taxpayers' money, both on the part of the Commissioner and the State Department of Education, as well as the administration and staff of the Trenton Board of Education.

In its testimony, the State has not identified any problems of sufficient magnitude to justify taking away local control. It is inconceivable that so much time, effort and money has been wasted to investigate water fountains, window glazings, storage space and other such trivial matters in Trenton, while the Commissioner has turned a deaf ear to the cries for help that are coming from Newark right now. The end result is confused policy with the local school districts and the children they serve suffering the dire consequences.

The Newark Star Ledger on January 21, 1979, stated it best, and I quote: "The State presence in local school matters has been nothing short of pervasive since the passage of the School Reform legislation in 1975, pervasive and confounding."

In my opinion, if Commissioner Burke is reappointed, State school policy will continue to be muddled, confused and confusing for years to come.

The last two areas I covered in the written material dealt with the missing

money or, as a previous speaker so aptly put it, Forsgate, New Jersey's Watergate, and the transition team report. Since both these subjects have been discussed very thoroughly by others, I would like to conclude by saying, the transition team report stressed the need for a new tone and creative leadership in education in the State of New Jersey.

We, as citizens of New Jersey, must take this opportunity to petition the Legislature for this new tone and creative leadership in the education of the children of our State. Commissioner Burke has had five years to prove himself. He has tried and he has failed. We now have the golden opportunity to find someone who will provide the leadership that is so desperately needed right now in education in New Jersey. This would be the greatest gift we could give to the children of our State. We urge the Legislature to make this gift possible by not confirming the renomination of Commissioner Burke. Thank you very much, gentlemen.

SENATOR GREENBERG: That you, Mrs. Potkay. Did you indicate you have a statement for us?

MRS. POTKAY: Yes, I have it here. (Filed with Committee.)

SENATOR GREENBERG: I will see if there are any questions.

Senator Maressa.

SENATOR MARESSA: I was just going to ask about getting a copy. I think it is a very fine statement.

MRS. POTKAY: These are just my notes. I have taken some from the original statement. But I assume the court reporter has taken down what I have said here. My other statement dealt with the areas that I explained I didn't want to go into in detail because I know you have heard it all before.

SENATOR GREENBERG: Senator Musto.

SENATOR MUSTO: No questions.

SENATOR GREENBERG: Senator Sheil.

SENATOR SHEIL: No questions.

SENATOR GREENBERG: And welcome, Senator Parker.

Thank you, Mrs. Potkay.

Dr. George Wildman.

D R. G E O R G E W I L D M A N: Mr. Chairman and members of the Committee, thank you for this opportunity to be here to speak on behalf of the educational improvement centers of New Jersey. Even though I serve as the Chairman of the Board of Directors of the EIC-South, I have discussed what I am about to present with each of the chairmen of every one of the other boards, as well as the directors. So they are all familiar with what is being presented.

SENATOR MARESSA: Excuse me, Mr. Chairman.

SENATOR GREENBERG: Yes.

SENATOR MARESSA: I would just like to know if Dr. Wildman is here as a result of a consensus of the Board of Directors, under direction to come, or whether he is speaking for himself.

SENATOR GREENBERG: In what capacity do you appear, Dr. Wildman?

DR. WILDMAN: I am speaking, as it says on the second page of my presentation ---

SENATOR MARESSA: I read that and I don't understand it.

SENATOR GREENBERG: Would you explain it to us, please.

DR. WILDMAN: Speaking on behalf of all the EIC's.

SENATOR GREENBERG: Thank you very much.

SENATOR MARESSA: But that is not my question.

SENATOR GREENBERG: What is your question?



SENATOR MARESSA: Is he here as the result of a meeting? Was a resolution adopted?

SENATOR GREENBERG: Was any official action taking authorizing you ---

DR. WILDMAN: No official action, except that I consulted with every one of the Chairmen of the other Boards and with the Directors of the other centers.

SENATOR GREENBERG: All right. That is your representation. Thank you.

SENATOR MARESSA: Thank you very much.

DR. WILDMAN: More than ten years ago, a group of educators in South Jersey felt the need for an organization to be formed that could give technical assistance to local school districts in the development of their educational programs for children. In the early stages there was considerable resistance and little general support of the concept. Eventually, with the help of Title III monies and the assistance of some key people, the original nucleus of an Educational Improvement Center was formed and encouraged. In the early '70's Commissioner Marburger gave impetus to the concept through his belief in the potential of such an idea. But it was not until Commissioner Fred Burke came on the scene that the Educational Improvement Centers were to receive the kind of support that was to permit the EID's to make real progress. In the ensuing years, Commissioner Burke employed staff within his Department to explore the possibility of expanding the original concept to include four EIC's in the State.

Commissioner Burke encouraged the concept in many ways. He believed that the full effectiveness of the EIC's could be realized only if the operation and control of the Centers were to be organized in a manner that would permit them to respond directly to the needs of the local districts, rather than simply to the Department of Education.

Over the last few years, Commissioner Burke has exerted considerable effort to see that State funding has been forthcoming in order to make it possible for the EIC's to accomplish their original mission -- particularly in the area of technical assistance to local districts. He has been most cooperative and helpful in working with the Centers to develop legislation and effective administrative code regulations. While he has felt an obligation for the responsibility of his office, he has also been more than willing to see the EIC's exercise their rightful degree of autonomy as viable organizations.

There is much more that could be stated, but as chairman of the Board of Directors of the Educational Improvement Center, South Jersey Region, and speaking on behalf of all EIC's, I would like the confirming committee to know that Commissioner Burke's support has been appreciated. The EIC's are hopeful of looking forward to such continued support in the years to come.

I purposely did not make this a long statement because I think the idea of the support is expressed. The support that has been given to the EIC's and the growth the EIC's have had has become obvious. We have had, speaking now from the EIC-South's standpoint, a stability over the years. And I believe that that stability has been a key to growth. Some of the other centers have not had as long experience and, therefore, have not been able to have that kind of stability. It kind of proves the point that you need stability in education to see growth. We believe that is one of the reasons that a continuance of a Commissioner should be the outcome or should be why he should be approved. We do not believe that you can have the kind of progress that is necessary through having constant change too frequently. Let's put it that way.

I would like to have the opportunity to answer any questions that the Committee may have.

SENATOR GREENBERG: Let's see if there are any.

Senator Maressa.

SENATOR MARESS: No. I understand your statement clearly. Thank you.

SENATOR GREENBERG: Senator Musto.

SENATOR MUSTO: No questions.

SENATOR GREENBERG: Senator Parker.

SENATOR PARKER: No questions.

SENATOR GREENBERG: Senator Sheil.

SENATOR SHEIL: No.

SENATOR GREENBERG: Thank you very much.

Robert Sweet.

R O B E R T     S W E E T:     My name is Robert Sweet. I am a student from Union County. I live in Fanwood, New Jersey. It is about an hour's ride from here, give and take a few minutes. I have been a New Jersey resident all my life; that is 20 years. I have been in the New Jersey school system for 14 1/2 of those years. Presently, I am still in the New Jersey school system.

The breakdown of that is 12 years in the Fairlawn School System, which is in Bergen County; a year in Scotch Plains, Fanwood High School, which is in Union County; and presently I am attending Union County Technical Institute in Scotch Plains, which is again in Union County.

The reason that I am here today is that I came down earlier in the week to find out exactly what was going on in these meetings. I sat with great interest trying to find out what these people had to say: the pros and the cons. I came with an open mind. As of right now, I feel that the reappointment of Commissioner Burke would be a great injustice to the people of the State and everyone involved. I find also that it is not only him, but also the State Department of Education that is at fault.

I could give a whole list of examples and I could go on all day. But I have two or three that will just give you a basic idea of some of the problems that have happened in school systems that are not in inner-cities, that are residential, that perhaps you haven't heard about.

My first example would be in the Fairlawn High School. There was a great overestimation of the enrollment. This was in the early '60's into the '70's. It eventually caught up with the system in 1975-76. It caused the older ranking tenure teachers to push out other tenure teachers, along with teachers that didn't have tenure. An example of this would be an Elementary School Reading Specialist who forced out a High School Guidance Counsellor because she had an accreditation in the guidance field. This Guidance Counsellor had been at the school for I don't know how many years. But she was forced out of a job because they had to cut back somewhere.

I see the same problem, from talking to teachers in Scotch Plains, happening again because of overestimates. The problem is not entirely the State's fault, it is not entirely the Board's fault or the town's fault. But it is a joint effort and there should be some effort made on all parts to work on that.

I would like to know where Commissioner Burke was then. He was in office. I would like to know where his Department was then to step in or have some control over that and some accountability. That is only one problem that existed in the Fairlawn

system. That one typifies what happened.

I would like to give an example of what happened at the Scotch Plains-Fanwood High School during - I guess it was two or three years ago. There was an incident where cheerleaders were selected. Then there was a cry of prejudice and there had to be a reselection. I know it is a minor problem. But some of those cheerleaders were not reselected. There were lives threatened, people were physically injured, and a teacher's reputation was completely marred to the point if she had gone anywhere in the State, she would not have gotten a job. I would like to know where Mr. Burke was then. There should have been some kind of concern on his part and the Department's part. I don't mean they should step in on every situation, but that did turn into a very volatile situation.

There was also a program there called an open-ended day. It was a very unique program. If you had open periods of time, you were supposed to spend them in the media center, the cost of which must have been into the millions of dollars. That media center is being wasted right now. I was recently at the school within the week and the media center was completely empty. In the halls, it is like being in prison with security guards. The way the system is now, there has to be that kind of control. It has gotten to that point. You can't walk around during lunch. You are held accountable for everything that you do.

There is one more example I would like to give and then I would like to sum up.

I am a student at Union County Technical Institute. As of now, there is no Union County Community College, per se, because Union County Tech is under secondary education. It was chartered under that. Our degrees are: AAS degrees, a two-year degree, which we work very hard for, coming from Union College. At no time --- I should say most of the time - no one attends Union College. They attend Union County Technical Institute. Why are our degrees coming through that college, which is a private college? It is not very publicly known, but it is a private college. From what I understand, the State looked at the problem. They said there was no real problem. I would like to know who they talked to; because from my viewpoint and that of the other students and teachers at my school, there is a problem there and nothing has been done about it.

I feel that there is a pretty good analogy that can be made here: There is a rope and it is tied around someone's waist. It is let out so far and then it is pulled taut. That is where there should be some restrictions, some checks, some overseeing. As I see it, the rope has been let out and eventually it is going to knot around the State's throat and it is going to cut off the circulation. There has been too much free rein, too much allowed to go on, and it is about time something is done about it.

I could go on with different examples. But I think you have a pretty good idea about what is happening and what will continue to happen if Commissioner Burke is reappointed. Commissioner Burke is at fault and so is the State Department of Education. But we as citizens of this State will also be at fault if we do not speak out against this reappointment. Five more years of Mr. Burke would further deteriorate good schools to mediocrity and those already at a low level would only get worse. That is entirely possible. Thank you very much.

SENATOR GOLDBERG: Thank you, Mr. Sweet. Let's see if there are any questions.  
Senator Musto.

SENATOR MUSTO: No questions.

SENATOR GREENBERG: Senator Parker.

SENATOR PARKER: Are you speaking for any group or for yourself?

MR. SWEET: I belong to an organization called COST. It is a concerned organization of students and teachers. It is funded through the SGA at my school.

SENATOR PARKER: SGA?

MR. SWEET: The Student Government Association.

SENATOR OPARKER: And your group is opposed generally ---

MR. SWEET: Well, I have been talking to different people. I couldn't get a general consensus because we really just started out. I started this group as a concerned student and I am trying to get teachers and students involved in this, as well as administrators.

SENATOR GREENBERG: Senator Sheil.

SENATOR SHEIL: Just a quick comment on the Union College situation - you may or may not know that that is not a problem for the Commissioner. That is the Board of Higher Education.

MR. SWEET: That is my mistake.

SENATOR SHEIL: And it does get State funding. Union College is not completely private.

MR. SWEET: Union College funding comes through bids. They have to submit bids. I have checked this out. They are a private college. They are chartered as a private college. They submit bids and most of their funding comes from the State through those bids.

SENATOR SHEIL: I think if you check, you will find they do get State funding; so it is a combination.

SENATOR GREENBERG: Thank you very much.

Fred Meissner.

F R E D M E I S S N E R: Good morning, Mr. Chairman and members of the Committee.

SENATOR GREENBERG: Good morning.

MR. MEISSNER: My name is Fred Meissner. Until September of last year, I was deeply involved with the study and development of the minimum basic skills program that is being used in all of New Jersey's public schools today.

By way of background, I think you should know that I am not an educator. I am a businessman. And my personal involvement with State educational matters dates back until only December of 1975 when I was asked to chair the Task Force on Competency Indicators and Standards, whose recommendations, incidentally, were used extensively in the development of the minimum basic skills program that was adopted for our State in November of '76.

In January of '77, I was again asked to chair a State committee related to minimum skills. This was the Minimum Basic Skills Advisory Committee that was charged with the responsibility of overseeing a group of nine sub-committees working on the development of an annual testing program to be used in conjunction with the minimum basic skills program adopted the previous November. The tests developed by these sub-committees were first administered to more than 400,000 3rd, 6th, 9th, and 11th grade students in all New Jersey public schools in April of '78.

The expected high student failure rates on these tests, which incidentally were subsequently borne out, prompted an extension of the life of the Minimum Basic Skills Advisory Committee to survey the State's capability to remediate students failing to attain the State-set standards for these tests.

As some may recall, this survey resulted in a report on the State's remedial education capabilities that I presented to the Commissioner and the State Board of Education last September. This report was quite negative and highly critical of the



State Department of Education's administration of the compensatory education program throughout New Jersey.

I mention this background at some length, Mr. Chairman, to indicate two things: first, that my involvement with the State Department of Education over the past three years was fairly extensive, giving me good opportunity to observe the Department and its operations, particularly in the minimum basic skills area, very closely; secondly, that my involvement was an objective one, allowing my committee findings to be critical of department organization and procedure whenever criticism seemed warranted. Also over the three-year period of my committee chairmanships, I was in regular touch with Commissioner Burke personally and met with him and his immediate staff quite frequently on matters pertaining to committee work. Throughout this relationship, I was impressed with Commissioner Burke's general knowledge of educational matters, his willingness to speak quite openly and frankly on information and personalities involved with my committee activity, and his very obvious concern that whatever policy or procedures our committee developed be universally beneficial to all school districts in the State, regardless of the type or size.

While my relationship with Commissioner Burke has always been friendly and mutually respectful, it is a matter of public record that we did not always agree. But in those instances when we did differ, I found him to be a good listener, understanding and tolerant of my position and willing to accept suggestions for change when he was satisfied that a change had been well considered and was in fact supportable.

I think it is significant too that, to my recollection, the Commissioner responded positively and had the State Department move promptly to implement almost every one of the recommendations that the three Minimum Skills Committees that I chaired ever presented to him and to the State Board of Education. And this includes the 17 recommendations contained in the Status of Remedial Programs Report that I alluded to earlier and which was so very critical of the Education Department's handling of the remedial education program throughout the State. These recommendations had to be difficult for the Commissioner to accept. Yet he moved on them all very promptly and I am satisfied at this sitting that good progress is being made in their implementation.

In general, I have to conclude that the progress that is being made in New Jersey's minimum basic skills program and the Department's determined efforts to improve the handling of remedial education in the State are due largely to Commissioner Burke's personal interest and involvement.

In closing, let me say that like others I am often concerned about some educational issue or policy that I learn about through the news media. And very often I find myself unsure as to just what the right position should be on certain issues. But I don't have to make the final decision on any of these issues and pretty soon my concern fades and in a little while I usually forget it. Unfortunately though, the Commissioner of any State department doesn't have the luxury of being able to forget a problem. He must make a decision and then live with it. And in education where very often issues are highly judgmental in nature and almost always clouded in heavy emotion, these decisions can be very tough and very controversial.

Like others, I haven't agreed with Commissioner Burke on some of his decisions and I have made no secret of that. But the evaluation of a person's performance shouldn't be based on just incidences of personal disagreement, but rather on an objective look at his total job. From my perspective and judging largely from a close association with him over a three-year period, particularly on the minimum basic skills matters, I think that on balance Commissioner Burke's performance has

been a good one, and a good one in some of the most difficult times that education in our State has seen. I feel his performance warrants his confirmation to another term as New Jersey's Commissioner of Education. Thank you, Mr. Chairman.

SENATOR GREENBERG: Thank you, Mr. Meissner.

Mr. Meissner, have you consistently been of that view?

MR. MEISSNER: Yes, I have.

SENATOR GREENBERG: Senator Musto.

SENATOR MUSTO: No questions.

SENATOR GREENBERG: Senator Parker.

SENATOR PARKER: Just one - You indicated that you are a businessman and had no connection with education except for this experience. With whom are you affiliated, sir?

MR. MEISSNER: New Jersey Bell Telephone Company.

Senator, I would like to make a statement in that connection if I may.

It has been brought to my attention that in some previous testimony somebody commented to the effect that some business people's testimony might be suspect due to the fact that there might be pressure applied. I would like to make it a matter of record here that I am giving this statement this morning under no duress whatsoever.

SENATOR PARKER: I didn't ask you that for that reason, sir. I asked it because I was interested that you had served as a businessman and had taken the opportunity to serve and came in with a "free mind." That is why I wondered were affiliated with.

MR. MEISSNER: Fine. Thank you.

SENATOR GREENBERG: Senator Sheil.

SENATOR SHEIL: No questions.

SENATOR GREENBERG: Thank you, Mr. Meissner

Dr. John Donato.

D R. J O H N D O N A T O: My name is Dr. John Donato. I am from Newark, New Jersey and I represent a group of taxpayers who have an organization called Fiscal Sanity. By way of background, our organization has been involved in trying to control exorbitant expenditures on the part of the city in the forms of salary raises and monitoring excessive spending on the part of other organizations, including the Newark Board of Education.

From the previous speakers, especially Mrs. Potkay, I think you are well informed about the situation in Newark and the Commissioner's lack of participation in this problem. As a matter of fact, since the institution of an Auditor General in Newark in August of 1976, we have seen quite a few reports from this individual, Mr. Thomas Marshello --- were sent to the Auditor's General Office, the Assistant County Superintendent, the Board of Estimates.

There was extensive communication between these individuals to make them aware of the impending deficits in the city. In spite of these communications, there was a deficit of one million dollars reported in June of '77 and there was a deficit of \$4.6 million in '78. And there will probably be a deficit this year.

Now these deficits were allowed to occur in spite of the only Auditor General being appointed in the city by Commissioner Burke. This is very, very important. That means he was especially cognizant of the problem we were having there and of the political situation.

The School Board of Estimates denied the appeals for increases. The Council denied the increases. But yet, in spite of this, Commissioner Burke with the knowledge

that these deficits were occurring, failed to speak out publicly and failed to inform the people, as far as I am concerned, of what was happening there. And it wasn't until after the election or until the beginning of this year that these reports became public information.

His report of October 24, 1978, explicitly pointed out - Mr. Marshello's report of that date - to Commissioner Burke that the financial situation in Newark had not been resolved and the remedial programs that had been proposed by the Commissioner and the County Superintendent had failed to correct these situations. To this date, there is no indication that the situation has been corrected. Of all the alternatives, it seems that we are forced to the alternative of cash deficit.

As legislators, you recognize the responsibility of all officers and commissioners involved in municipal or school expenditures to abide by a balanced budget. That is a statutory requirement. However, this statutory requirement has been avoided and there is no indication that there is any attempt to make the School Board abide by this or to investigate the reasons or to correct what happened in the past.

This year, the Newark Council had their arm twisted to not only cover the deficit of \$4.6 million but to spend another \$3 million for unforeseen commitments of the Board of Education. There was actually a request on the part of the Board of Education to have \$11 million. However, they were able to reduce that to approximately \$7.6 million. You can see at this point, the Newark School District stands in a very good position to have another deficit.

My question to you gentlemen is: How can a Commissioner be reappointed without having the full facts regarding his management and his responsibilities in the School Board of Newark? There is no indication that there is going to be an investigation. We as taxpayers of Newark feel that the city cannot afford to have this particular situation swept under the rug. As a matter of fact, I have in my possession now a petition, according to statute 40A:5-22, which permits 25 freeholders to have their own investigation when accepted by the judge.

SENATOR GREENBERG: Twenty-five freeholders?

DR. DONATO: That is right.

SENATOR GREENBERG: Oh, you mean twenty-five ---

DR. DONATO: Twenty-five homeowners.

SENATOR GREENBERG: You are not talking about elected officials?

DR. DONATO: No.

SENATOR GREENBERG: Okay.

DR. DONATO: However, we would like this Judiciary Committee to do the investigation before they make the appointment because it would be very unfortunate for them to make this appointment and then have us go on and bring out these facts which may undermine the educational system and "thorough and efficient" education even more.

You are in a very good position at this point to start off on a new course and to remove any doubt whatsoever as to the Commissioner's liability in the occurrence of these cash deficits in Newark. Statute 40A:4-1 et seq. requires a balanced budget. There are specific rules regarding transfers of money with respect to line item budgets in 4-58 and 59: Two months at the end of any particular semester, any particular budget period, and three months at the beginning. These are very complex statutes and you are in a good position, especially with your connection with the Economic Unit of the Attorney General's Office, to have this done. I think it is an obligation on your part to have this done before the reappointment. But in case you do not have this done, we are in a position at this moment to execute

the statutory provisions of 40A:5-22. However, we would like to see this body take the initiative in this regard.

I have come here today to present the case for the taxpayers of Newark. But you as legislators recognize that Newark is receiving 80 percent of its present budget from the State and the federal government. Just recently the Council passed an ordinance authorizing \$153 million for education in Newark - and you know the type of educational product we are getting there. If "thorough and efficient" was ever a farce, it is a farce in Newark.

On one hand, in the City of Trenton, you have taken over education; but in Newark where the need is greater, where we have an Auditor General - and Trenton does not have one - the Commissioner has seen fit to allow things to go their merry way with more cash deficits. My premise, gentlemen, is this is more political than anything else because if these deficits had been revealed last year before the mayoralty election in Newark, I think we would have had a different result on the council as well as the mayoralty level. But that is water over the dam, gentlemen.

We are faced with the problem now of avoiding these deficits in Newark. Newark cannot tolerate it. The State educational funds and the federal educational funds cannot tolerate these things anymore. That is why we have come down here to talk to you and to let you know we are interested. We would like you to come to Newark and have some of your meetings there. It is very difficult for people there to come down here and express themselves. But you had a few of them here who really went out of their way - and, believe me, one has to go out of his way to come down here - and they were very articulate. These are the people of Newark. They are not from the legislative bodies who on one hand say, this fellow isn't doing his job; and, on the other hand, they come down and support him when there is a political necessity to do so.

Gentlemen, we need your help in Newark, and especially the children and the taxpayers of Newark need your help. If anyplace there should be a school district taken over, it should be the City of Newark. You know it as well as I do. We would like to see you make moves in that direction because our appointed body in Newark has been completely unable to control the situation in Newark. There are Board of Education moneys being invested by groups which are not supposed to use that. All the money should be handled by the controller of moneys. We have had Executive Superintendents and we have had other people investing moneys. That was straightened out. We have had capital funds qualified by the bond law of \$22 million. But we have one school in Newark, Eastside, that had an override of almost \$11 million and had an override in time of 3 years and still isn't finished.

We have a drug problem in Essex County that is out of this world. And, Senator Greenberg, I think you are more aware of it than anyone else.

SENATOR GREENBERG: That is because I come from Essex.

DR. DONATO: Of course.

SENATOR GREENBERG: Not for any other reason.

DR. DONATO: I didn't mean to intimate that.

We had a principal recently run down in front of his home.

SENATOR GREENBERG: Incidentally, stay on that subject for a second. What is your position as to what Dr. Burke or anyone in his capacity should be doing that he is not now doing with regard to the drug problem in Newark or anyplace else in this State?

DR. DONATO: I know that Prosecutor Coburn of Essex County is taking initiative in this matter and he is starting Grand Jury investigations. The principals are up in arms about it. I haven't heard any comment from Commissioner Burke in Newark or Essex County or even on a total State level.



SENATOR GREENBERG: One point that you make is that there should be some position taken.

DR. DONATO: Exactly.

SENATOR GREENBERG: --- some leadership exercised.

DR. DONATO: Yes, sir.

SENATOR GREENBERG: You don't contend, do you, that Dr. Burke is in favor of the present condition?

DR. DONATO: No.

SENATOR GREENBERG: The fact that he has been silent, if he has - and I, frankly, don't know - may be a legitimate complaint. But beyond speaking out against it, do you have a particular concept in mind that a Commissioner should pursue in connection with this problem that Dr. Burke has not pursued?

DR. DONATO: Yes.

SENATOR GREENBERG: What is that? I am really interested to know.

DR. DONATO: I think that he should get together with the law enforcement offices of the county and the municipalities involved and reach down to the security level in schools. There is no attempt to do this. The security forces in schools are one or two guards outside. I have gone to different priests and different people myself in the East Ward when Mr. Qualla was recently assassinated in front of his home, beseeching them to inform the public through their pulpits and through the organizations there that this is the time to come down hard on these individuals. Let's form a crime-spotters organization so that we can phone in to people. I have talked specifically to Mr. Coburn and his assistant, Robert Penza, to do this on a very personal basis where they don't have to leave their name or anything else. This has taken off and the people are doing this.

SENATOR GREENBERG: All right. I am sorry to interrupt you - continue.

DR. DONATO: That's okay.

To get back to my other points, I am here asking the Senate Judiciary Committee to come to Newark so that the people there can involve themselves in this particular thing; because if there is any school district that should have input into this Committee's hearing, it is the District of Newark. They have the most to lose and they are losing. There doesn't seem to be any indication that the trend in Newark is going to be reversed. As a matter of fact, you can see yourself - and you know probably from personal knowledge - that the trend is going to get worse and "thorough and efficient" education will be more of a sham than it is now because they have removed not only people from the program, but they are removing courses. They are removing recreational programs, art and music. Unfortunately, we don't have any representation from these people today to tell you the other things that they are losing.

How can the children have a "thorough and efficient" education? They are being put into a position where without sufficient funds they will be subjected to a shorter school period. How can we give them a "thorough and efficient" education in a shorter school period? They have been reduced from 3:00 o'clock to 2:00 or 2:30 on their regular schools day now.

SENATOR PARKER: Excuse me, Doctor. I would like to interrupt you on that point. You say they are getting less and less money in Newark. That is not because of lack of support by the State.

DR. DONATO: No, it isn't.

SENATOR PARKER: So it has got to be from a deviation or cutting of the municipal budget of the normal support that had been there on the municipal level. Is that correct?

DR. DONATO: No. They are getting more money from the city. Let me just straighten it out for you. There is more money each year for the Board of Education. They went from \$120, \$130 and they are up to \$153 million now. There is more money being contributed by the city. They were contributing \$22, \$25 and they are up to about \$29 million this year. However, there is less money being used for teaching the kids and for getting them supplies. There are some teachers that have no books, no paper, no pencils or anything. As a result, the children are getting less benefit from all the money that is being put in there. There is a critical situation going on there now which, if not corrected, will permit this continuous deficit spending.

SENATOR PARKER: Let me ask you another question. Has the student population increased or decreased?

DR. DONATO: The school population in Newark is decreasing like the total population of the city. But it is still up around 67,000. However, this has not been able to permit a better education.

SENATOR PARKER: Has the administrative and the teaching staffs increased or decreased?

DR. DONATO: The school administrative staff in the bilingual situation has increased and in other places it has increased. But the question of the quality of teachers has arisen. There was a recent article six or seven months ago that a number of the certifications were improper, a thousand of them. Finally, it boiled down to a couple of hundred.

We have an Executive Superintendent running the school system in Newark who has no educational background or training. His training is in personnel. This lack on the part of the Commissioner to insist upon trained personnel to run a school district I think is one of the primary problems we have there. We have to get trained people in education to run our school district because we have non-trained people at the head who are running it and who are making more than the Mayor. Thank you.

SENATOR GREENBERG: Doctor, one second, please. Are there any questions? Senator Maressa.

SENATOR MARESSA: No questions.

SENATOR GREENBERG: Senator Musto.

SENATOR MUSTO: No questions.

SENATOR GREENBERG: Senator Parker.

SENATOR PARKER: Doctor, are you in education?

DR. DONATO: No. I am a physician practicing in Newark. I had children who went to school in Newark up until last year. Two of them go to college in Newark. I practice with two offices in Newark. I have been involved in fiscal monitoring in Newark with many people. I ran for Mayor last year against Mayor Gibson in an effort to bring a lot of these things to light. I am still running after the mountain, you might say. May I leave these ---

SENATOR GREENBERG: What are they?

DR. DONATO: (Continuing) --- photostats with you? One is a photostat of the report by Mr. Thomas J. Marshello that was sent October 27, 1978, outlining the necessity of giving an extra \$11 million to the Newark Board of Education: \$4.6

million which would cover the deficit, and \$6.4 million that had been put in appeal. Also I would like to submit a copy of the budget, indicating the requirement for a balanced budget; and a copy of the first law regarding the legal responsibilities of any commissioner and the possible penalties involved in not fulfilling those responsibilities.

SENATOR GREENBERG: What do you mean, the first law?

DR. DONATO: This is Section 2A:l35-1, et seq. ---

SENATOR GREENBERG: Of the present statutes?

DR. DONATO: --- of the present statute that refers to nonfeasance and so forth.

SENATOR GREENBERG: I understand. Yes, you may leave that.

(Material submitted by Dr. Donato can be found, beginning on page 1X.)

We thank you for your appearance.

I am still working from a list which we compiled of people who have some time problems. I am now up to Vitaut Kipel. Are you appearing with someone?

MS. SMORODSKY: I am Camille Huk Smorodsky.

SENATOR GREENBERG: Okay, fine. Will you please give your name and the organization, if any, that you represent.

V I T A U T K I P E L: My name is Vitaut Kipel. By profession I am Science Librarian employed by the New York Public Library, a resident of the State of New Jersey for about 25 years, involved in the educational system as a father of two children who went to public schools in Bergen County, and by working with various ethnic communities throughout the State.

I am testifying here as the Chairman of the New Jersey Ethnic Advisory Council and my testimony is in favor of the reappointment of Commissioner Burke.

The well-known fact is that the State of New Jersey is ethnically the most diversified state of the Union. According to the New Jersey Ethnic Directory, there are in the State 65 nationalities with over 1700 ethnic cultural and fraternal organizations. The activities of these groups became especially visible during the Bicentennial years when the ethnic communities participated in numerous festivals, shows, lectures and the projects such as Liberty Park Complex, Ellis Island, and publication of the New Jersey Ethnic Experience.

Recognizing the diversity, significance and the importance of ethnic groups in the State, the Advisory Council was established by Executive Number 65 in April of 1978. The Department of Education and Commissioner Burke became ex-officio members of the Council. From the very beginning the activities of the Council went along three areas: education, cultural activities and social and neighborhood issues. The education, of course, is the most important area of interest to the ethnic communities. The basic concerns to the ethnic communities are the issue of textbooks, language programs, and the cultural heritage.

The ethnic population of the State feels that very many textbooks and general curricula are inadequate and often insufficient in regard to the histories of ethnic groups and the histories of their homelands. Several ethnic groups, particularly of East European background, such groups as Byelorussians, Ukrainians, and the Baltics, feel that their heritage is presented in completely distorted form.

This fact, the concern of ethnic communities in regard to their education, was brought by us to the attention of Commissioner Burke. At several meetings with the Commissioner, we analyzed the situation and developed constructive plans for

improvement and correction. At the meetings with the Commissioner, we have established working relationship with the educational system of the State and the ethnic communities. We feel that this relationship will bring results and the past mistakes and inaccuracies in regard to the histories and cultures of various ethnic groups will be rectified. This certainly will improve the general level of our education and enlarge the cultural backgrounds and interests of our children. Commissioner Burke has initiated this process and the ethnic community of the State is very appreciative. Thank you.

SENATOR GREENBERG: Thank you.

C A M I L L E H U K S M O R O D S K Y: My name is Camille Huk Smorodsky. I am the Chairman of the Education Committee with respect to the Ethnic Advisory Council. There is just one little preface I would like to make before I begin with my presentation; and, that is, that the ethnic community is here 365 days a year. We are your residents of Burlington, Camden, Essex County, North Hudson, Passaic, Bergen, and what have you. We intend to be visible and active. So I would like it understood that this presentation is not something that is just presented on a once-a-year deal pretty much the way the festivals are. This is an on-going and important issue to us.

The Education Committee of the New Jersey State Ethnic Advisory Council has worked closely with the Office of Education on several proposals. Commissioner Burke has designated at least four liaisons with his office to continue these projects.

First and foremost, the ethnic communities in the State of New Jersey are concerned with the status of their supplementary or "Saturday" schools, which are engaged in teaching children, and children in this State in general, their native language and cultural heritage. These schools are supervised by the local ethnic community organizations. In our neighboring states of New York and Maryland, the schools are recognized and, in fact, accredited by the Commissioners of Education of the respective states. In New York State, there are Regents Examinations provided for all those languages not taught in the public schools. The ethnic communities in the State of New Jersey are also seeking some form of recognition for these supplementary schools.

The Eastern European communities are deeply concerned about the nomenclatures used in the study of their histories in the public school system. They have appealed to the Education Committee of the New Jersey State Ethnic Advisory Council for a review of publicly used textbooks in our State to be sure that the information contained therein is accurate and up to date.

Representatives of the Education Committee have had an opportunity to meet with Commissioner Burke and to discuss these issues. The Committee found Commissioner Burke sensitive and responsive and hopes to continue working with him directly in the coming years to reach mutually advantageous results on all these issues.

Therefore, the Education Committee wishes to add its endorsement for the reaffirmation of Commissioner Burke.

SENATOR GREENBERG: Thank you very much.

Senator Maressa.

SENATOR MARESSA: Just one fast question: I have been reading the Ukrainian Congress Committee of America's letter to Senator Greenberg concerning this reappointment and the problems they have with the fact that the Ukrainians and the other Baltic -- well, not necessarily Baltic -- the other members of the USSR, who asked for identity as individuals, not being given that. I was wondering



whether you have an opinion with regard to that and whether or not Commissioner Burke has been responsive to that.

MS. SMORODSKY: We feel that Commissioner Burke has been extremely responsive. It is a very frustrating issue. We do hope to pull in the Ukrainian community and indeed all the communities that are interested in helping us work with these issues, to be sure that we can overcome the logistics problems involved at this point. I am very well aware of the Ukrainian problem in particular because I, myself, happen to be of Ukrainian descent. I have chaired several committees in that respect. We are concerned with the nomenclature used. Obviously, if we teach our children that 2 and 2 is 4 and not 5, it would follow in order that we would also present the correct historical picture.

SENATOR MARESSA: Let me interrupt. How has he been responsive?

MS. SMORODSKY: He has appointed a Mr. Sandor Havran to be our liaison with his office on this particular issue. He has provided us with a list of the New Jersey Education Information Centers throughout the State. We are going to be appealing to the various communities to provide these education centers with reference material so that the teachers will be well prepared when this question comes up. As far as the logistics of reviewing the textbooks and changing them in the school system, this is a question that is unresolved and we hope to work on it within the coming term.

SENATOR MARESSA: Thank you very much.

SENATOR GREENBERG: Thank you both very much.

Mary Simmons. Will you identify yourself in terms of any association you may have with any organization?

MARY D. SIMMONS: I am representing myself. I am a parent from Montclair, which is a suburban ---

SENATOR GREENBERG: I am sorry, Ms. Simmons. I am having difficulty hearing you and I think the people in the audience might. The microphone in front of you is the public address microphone. So if you would keep your voice up a little and into that, we would appreciate it.

MS. SIMMONS: I am a parent from Montclair, which is a suburban community in Essex County not far from Newark. We have a town population of about 44,000 and we have a school population of 6,000 children. I have been heavily involved in the affairs of my school district for a little over the last five years.

I want to say that we also in the audience at times were having difficulty hearing the questions of the Senators. So if you could also either speak up or use your microphones, we could hear what you have to say.

SENATOR GREENBERG: That is a justifiable request. We will try to do that.

MS. SIMMONS: One more comment before I begin my testimony: When I made my appointment to come down here, I was asked to submit 12 copies of my testimony. I must say that I am disappointed to see that there are never more than 5 or 6 members of the Committee present at one time. (Applause.)

SENATOR GREENBERG: I assume the applause is for the 5 or 6 of us who are present, and I thank you. (Laughter.)

MS. SIMMONS: And it is never even the same 5 or 6.

SENATOR GREENBERG: Let me just state that the purpose of having a transcript of the testimony which is being taken now is so that those who cannot make all of the sessions will have an opportunity to read all of the testimony before they vote.

MS. SIMMONS: I hope they will do so.

SENATOR GREENBERG: So do I.

MS. SIMMONS: I thank you for letting me come and I am here to recommend a new Commissioner of Education for the State of New Jersey and would like to give my reasons. They are as a result of my direct experience. If you would like documentation for anything which is in my testimony, I can provide it for you from my records and from the public records I have been inspecting over the last several years.

First, in June of 1976, Montclair's Board of Education passed a new district educational plan which vastly changed the characteristics of both school programming and the educational content of the curriculum of Montclair's schools. A group of citizens concerned about the ramifications of the proposed plan visited the Commissioner after having sent, well in advance, a great deal of supportive evidence for their views. To our disappointment, we realized that Commissioner Burke was either unprepared for our visit or declined to involve himself in a constructive way in our problems.

Point two: The Commissioner had ordered Montclair to create a better balanced desegregation plan in 1976, an admirable directive. How did Montclair comply with the Commissioner's mandate? On June 1, 1976, the Montclair Board of Education passed a resolution outlining our current educational plan for the district. This plan had never before been presented in public. The vote was taken at a conference meeting where no public response was possible. The failure to hold public hearings on the plan prior to its adoption deprived our residents of due process under the laws of New Jersey and the United States Constitution. Lest you think this is a purely local matter, let me add that written acceptance of the resolution from the Commissioner was received in Montclair in just four days. It was not possible in that space of time for our Board of Education, or citizens, much less a commissioner in Trenton, to examine the integrational and educational aspects of the plan as passed. It appeared that a private arrangement had been worked out between the commissioner and our superintendent prior to the plan's adoption. Our own Board of Education and school administration, with assistance from Commissioner Burke, made a mockery of public participation. An educational plan was put into effect with the sanction of the commissioner, but without the legality of public hearing and passage, without pilot studies for radical curriculum changes, without cost projections for a plan which doubled the number of students being bussed and which required additional unbudgeted-for staffing. Later litigation in the commissioner's own administrative court, eliminated these points cogently, but no redress was forthcoming.

Three, what has been the result of this plan so precipitously and unlawfully implemented? I mentioned the absence of prudent cost projections. I quote from a letter to Vincent Calabrese written by the Education Committee of the Montclair-Glen-Ridge League of Women Voters and dated January 16, 1978. "The overriding and sobering conclusion is that there is compelling evidence that our schools are costing more than the money appropriated for them, that this condition has probably existed for a few years, and that it appears to be escalating."

This fact was confirmed by a state examination of Montclair's financial records. When did this deficit condition, heretofore kept secret, begin? Late in the fiscal year 1976-77, the same time the new plan was implemented. That year over \$90 thousand was transferred to salary accounts. In June of the following year,

over \$22 thousand was similarly transferred. And by the end of 1978, Montclair faced a deficit estimated at \$465 thousand. Only persistent citizen activity made disclosure of the deficit possible. The plan which the commissioner had approved was too expensive for the district to support without several years' cap waivers, emergency appropriations from our town, and large amounts of federal funding.

I wish here to make two comments about some undesirable aspects of federal funding. One is that the basis for a federal grant is often of unproven educational merit; and, secondly, it is virtually impossible to make the use of federal funds accountable to the local educational consumer. Waste and corruption often accompany such funding. Heavy reliance on federal funding as is necessary now in Montclair keeps a district constantly on the edge of financial crisis and erodes educational stability since programs must change constantly as funding requirements do. Financial instability has been part of the Burke legacy.

As a result of our financial instability, we have been faced with the threatened firing of large numbers of unbudgeted-for teachers, the firing of valuable aides which left our libraries and lunch rooms unstaffed, the freezing of money needed for educational supplies, and the inability to hire substitute teachers during the end of the fiscal year 1978. The much needed services of child study teams were drastically curtailed; in fact, Montclair still does not have the child study personnel recommended by the State Department of Education for its number of students.

Four, Commissioner Burke has described Montclair as a "bellweather" district. Its programs are daring and innovative. Our educational plan is built on a violation of citizens' rights, and we still do not have a proper evaluation mechanism to assess the broad range of curriculum and methodology being currently presented in Montclair schools, despite the fact that such evaluation is called for in the T&E regulations.

Five, proof of the educational merit of the program is found, according to Commissioner Burke, in the results of the 1978 Minimum Basic Skills Test. In a recent article in the Montclair Times of February 8, 1979, Commissioner Burke is quoted as saying that Montclair students rang among the best in the State. At my request, the Public Information Office of the Department of Education was asked to supply the facts behind that statement. The facts are that Montclair did better than three-quarters of the urban districts in New Jersey, and the record of the urban districts is abysmal. That hardly ranks us among the best in the State, only among the best of the worst. In the same article, Commissioner Burke stated that only two communities in New Jersey produced higher scores than the national average. The facts behind that remark are that Montclair's 9th grade was surpassed in reading and math by only two and five districts, respectively. Incidentally, Montclair's ninth graders just squeaked by the State minimum scores in those subjects. Some of our other grades were also close to the State minimum of 75 percent in reading and 65 percent in math. Commissioner Burke's remarks have been inaccurate and misleading. It is a sorry spectacle to see public officials patting themselves on the backs and manufacturing bloated compliments while children go without needed services, quality teaching, proper enforcement of existing laws; and shoddy financial practices are permitted to throw districts into turmoil.

Extemporaneously, on the minimum basic skills test, I did a great deal of checking into that subject for our own tests last spring and found that there was almost no enforcement of the policies that the Testing Division has set down for the way the test scores are handled. Parents were not notified properly of

their children's test results. The tests in some cases were not filed with the children's school records. Parents and teachers were given almost no information about the testing program.

So, while there are many good policies and structures in place in New Jersey, they are not enforced and they can not work for the parent and the student.

I urge that Commissioner Burke not be reappointed.

SENATOR GREENBERG: Senator Parker.

SENATOR PARKER: No questions.

SENATOR GREENBERG: Senator Sheil.

SENATOR SHEIL: No questions.

SENATOR GREENBERG: Senator Maressa.

SENATOR MARESSA: No.

SENATOR GREENBERG: Senator Musto.

SENATOR MUSTO: No questions.

MS. SIMMONS: May I ask one question?

SENATOR GREENBERG: Yes.

MS. SIMMONS: I was here on Monday and I heard one of the Senators make reference to some of the negative statistics and facts that were presented by two of the witnesses. He said that this was a confirmation hearing. I would like to know what is a confirmation hearing?

SENATOR GREENBERG: You would like to know ---

MS. SIMMONS: --- what is a confirmation hearing? It was my impression that a hearing is to arrive at the truth about a particular matter. When you say, a confirmation hearing, it implies something quite different.

SENATOR GREENBERG: You want to know what this is?

MS. SIMMONS: Yes.

SENATOR GREENBERG: This is a Judiciary Committee hearing, which is held in accordance with our policy and practice long established to take testimony, both favorable and unfavorable, as may be offered, with regard to a particular nominee - in this case it is Dr. Fred Burke - in order for the Committee to discharge its function of either affirmatively reporting out the nomination for full Senate consideration or of not reporting out the nomination. This is the way the committee system functions in New Jersey and this is the way the Judiciary Committee, in particular, operates. For example, the Governor in New Jersey has the obligation by statutes to appoint a great variety of people, subject to the confirmation process of the Senate. This is the first step in that confirmation process. The Committee takes testimony, analyzes it, meets and then ultimately votes on whether or not to report out and, if so, favorably or otherwise, the name of the nominee. Then the Senate as a whole has a constitutional obligation to advise and consent, which really means to accept or reject the nominee. It can agree with the Judiciary Committee or not, as it sees fit.

MS. SIMMONS: The phrase "confirmation hearing", I suppose to a lay person may imply something it shouldn't. But I also hope that the fact it is called a confirmation hearing will not mean that the legislators, you people who have to decide on this --- I hope that you will have an open mind and see the threads of consistency that have been running through all of the citizen testimony that has been given here so far. Thank you.

SENATOR GREENBERG: Thank you.

John Powers, Union City Board of Education.



J O H N     P O W E R S: Mr. Chairman, members of the Committee, I would like to thank the Committee for the opportunity to express my views to you.

I speak today in favor of the re-confirmation of Commissioner Burke. My qualifications to speak on this issue come from various areas. I am at once the President of the Union City Board of Education, the President of the North Hudson Jointure Commission, a special needs regional district, and the Secretary-Business Manager of the Hudson County Vocational School District. But perhaps more than all the foregoing, my best qualification is that I am the father of four children all enrolled in a public school system of New Jersey - an urban district - Union City.

In the twelve years that I have been a Board of Education member, I have had numerous occasions to work with countless State Department of Education Administrators. The quality of the leadership, employees and work product of the Department has, in my opinion, never been better.

I come as an advocate for Commissioner Burke and had intended to be strictly positive in my presentation. But after sitting through much of the testimony of these past days, I find that I must comment, however slightly, on some of it. I preface these remarks by assuring the Committee that I was impressed with the care and concern and the high motivation of the persons who testified. But, in some instances, what was related would seem to me to be contradictory, or misdirected.

The Commissioner was accused of misleading that Board. Yet, the same witness called Mr. Burke a man of honesty and integrity.

The Commissioner was attacked for a lack of initiative and also for carrying out his role as Commissioner with too much self-expression.

Mr. Burke was accused of a lack of leadership ability, yet the same witness stated that he was receiving "total cooperation" and "positive support" from the office of the County Superintendent of Schools. Gentlemen, as you well know, the County Superintendents work directly for the Commissioner.

He was accused of listening to special interest groups and when an example was given it was to show that he had spoken with the representatives of each major group which would be affected by the decision on "tenure teacher evaluation." I should think that the criticism would be valid if he had not spoken to the NJSBA, the NJEA and the NJSAA.

He was accused of not informing districts concerning T & E mandates and their implementations until August of that first year, even though the Law had been passed several months previous. That would be a serious problem if it were not for the fact that the Legislature failed to pass the appropriation for the implementation until June of 1976. I would say that the Department should be praised for the work product that was produced on such short notice.

And Boards of Education should be equally praised for the fact that they were able to submit budgets to the people in time for elections that year.

It has been stated that the Commissioner is indecisive, that he adopts different positions on the same question. I submit that under the impact of the last five years, the Commissioner of Education of this State had the option of running for cover and making no decisions, or, of making decisions which, even he knew at the time the decision was made, might have to be changed, altered or even abandoned when the experience of implementation was known.

Let's forget that this has been the most revolutionary half decade in



the history of New Jersey education.

I see, from my perspective, outstanding innovation and leadership in the Department. Obviously not everyone likes the Commissioner's approach to problem-solving. Some say he is controversial. I say he is not so much controversial as he is one who creates controversy - useful controversy. Fred Burke creates an atmosphere in which all sides talk, not just to each other, but with each other. I have found him to be the most reachable and frank Commissioner we have ever had.

I have been a board member through five Commissioners and Acting Commissioners.

He is innovative, imaginative and willing to experiment. If something is in the best interest of the kids he will put himself on the line for it.

Before I end, I would like to give you two concrete examples of this. I consider my home district, Union City, to have the finest bilingual education program anywhere in this country. I can emphasize that by pointing out that one of our high school publications was awarded, by the Columbia University Press Association, seven awards of merit including the "best" English Language Literary Magazine in the world in the senior high school grouping this past year. I re-emphasize the word "English" and point out to you that over 50% of the students who contributed to that publication were non-English speaking when they entered out school system. Our bilingual program does not exactly follow the mandates of the State Board of Education.

In his position the Commissioner had the responsibility to inform us that we were in non-compliance and to cease operating the way we were. We appealed to the Commissioner to reconsider. To make a long story short, the Commissioner in effect said "It doesn't conform - but it works - continue." The result is that today our program is being run as a demonstration project to determine if the State Plan should be modified with some of the innovations we utilize. His choice was not the simple one but it was the right one.

In this same light, Fred Burke has been attacked for his positions on the certification of bilingual teachers. I don't intend to take the time to explain our bilingual program to you or to show you why there is such a controversy over this certification issue. But I can tell you that Commissioner Burke never extended the deadlines to receive those certificates nor did he ever recommend that action to the State Board. He took a stand that was just the opposite. I know this to be a fact because I requested that the Commissioner do what he could to get extensions and he would not.

Another example of the Commissioner's concern for education can be seen in the way his Department handled the Union City school district which, during that fateful summer when the Supreme Court ordered all public schools closed, was in open defiance of the Court Order.

Thanks to the cooperation and technical assistance of the Department our District was able to continue to function uninterrupted. This was accomplished through the unselfish support of the Catholic Schools of our district, whose facilities we utilized and because the Commissioner understood that time lost in an urban system is never made up.

I should point out the clarification that it was the belief of the Union City school system after consultation with the Department that what we did was legal, innovative, but legal, and it is our belief today that it was.

I have heard witness after witness recount stories - indeed horror stories - about conditions in their schools. These witnesses would have you believe that all these problems are, at least to a great extent, the responsibility of the Commissioner. That just is not true.

If there are school teachers and administrators condoning or, as one witness said, actually participating in, drug trafficking, it is the responsibility of the local board of education, not Fred Burke's.

If there are incompetent teachers, again, it is a local board of education responsibility.

Vandalism, teacher absenteeism, cleanliness of facilities, vermin in schools - all those problems properly lie with a local district.

High school graduation standards have been mentioned a dozen times at these hearings. The Legislature of this State is considering bills to establish minimum graduation standards. The Legislature is not acting because Fred Burke has not done his job. It is forced to act because under the provision of the existing law it is mandated that "District Boards of Education shall adopt ..." reasonable graduation and promotion standards, and, we have not met the mandate. Our local boards have not met it. Most boards that I am familiar with apply for their Middle States Evaluations and comply with those standards. Very few of us make up any of our own.

All these things are examples of the "home rule" concept. This long established policy in New Jersey is a virtual sacred cow. In most instances it is the right approach to education, to government in general. It is most desirable to have the power of government as close to the people as possible.

Some witnesses before this Committee would apparently like to have "home rule" applied at random. The story goes as follows:

Board A is doing a great job, or thinks it is; but Board A thinks Board B is doing a lousy job. "So leave me alone" says Board A - "but move in and take over the operation of Board B." It is much like the person who says we should have rehabilitation centers for drug addicts - "as long as they are not in my neighborhood."

Fred Burke has used his limited powers to override home rule with discretion. He is attempting to create progress not anarchy. Any other course would have been government by "whim" and the results would be disastrous.

I have listened to attack after attack on urban education over these past days. Gentlemen, our school district in Hudson County are far from perfect, but I'll be damned if they remotely resemble the caricature of urban education that has been presented here. I would invite those people who apparently honestly believe that urban education is so bad to come to Union City any time they would like. I'd like them to see publicly sponsored and paid for Pre-School programs for the normal child and the handicapped; summer programs for all age ranges, Magnet schools for the Gifted and Talented operated in conjunction with Special Needs programs in the same facilities to insure interaction. I'd like you to see an urban school district with virtually no student absenteeism, with after school programs servicing over 1500 youngsters a day and an Adult School second to none in quality and scope. I'd like you to see a school health care program that is not matched anywhere and perhaps most of all a district in which children of different races and cultural backgrounds get along as "one."

It is said that urban districts can't produce college material. In

Union City well over fifty percent of our high school graduates go on to higher education. Most complete their degree work. I've used Union City as an example. I know it best. But in West New York, in Bayonne, in districts throughout Hudson County, similar accomplishments are being made. They are being made in no small measure due to the assistance and support of the Department of Education.

Ours are the most "urban districts" in the State. What we have done every district can do. Let's stop blaming the Commissioner and start blaming ourselves.

Gentlemen, Fred Burke did not pass T & E or the Income Tax, the Legislature did.

Fred Burke did not reduce aid to local boards by 22 million dollars, the Legislature did.

Fred Burke did not remove 28 million dollars from the amount used to provide an education for the handicapped, the Legislature did.

Fred Burke did not pass an Aid Formula which discriminates against urban areas --- once more, gentlemen, the Legislature did.

The Commissioner has done what the people of the State of New Jersey, through their duly elected representatives, have told him to do. In my opinion, he has done it well. He is not a Solomon, nor does he claim to be. He is an able, dedicated, diligent and talented man. He deserves your continuing support.

Thank you.

SENATOR GREENBERG: Thank you, Mr. Powers. Senator Maressa.

SENATOR MARESSA: It sounds like you have a very outstanding school district there. I wonder if the Mayor has anything to do with that.

MR. POWERS: Just about everything.

SENATOR PARKER: Is that a title one school district?

MR. POWERS: It is a title two.

SENATOR GREENBERG: Thank you very much. Is Paul Tractenburg here?  
(No response) Loretta Richardson. Would you identify yourself for the record, please?

L O R E T T A     R I C H A R D S O N: My name is Loretta Richardson; I have been a resident of New Jersey for twenty years, thirteen which I spent in Essex County and the rest of the years I have been in Hudson County. I am affiliated with the Parent Union of Jersey City and the Citizens Union of New Jersey. I know a lot of what I have to say is repetitious, but I think it is important to the school system in Hudson County.

I am opposed to the re-appointment of Fred G. Burke for another five-year term as the Commissioner of Education for the following reasons: The low expectations the Commissioner has for city children. The MBS scores show that approximately 80% of the students in Jersey City do not meet the minimum standards. In my opinion, this is due to the low expectations of Commissioner Burke. He has expressed these low expectations as they have filtered down to some of the teachers in the Jersey City school system.

The physical conditions in schools in Jersey City: We have many schools in Jersey City that are in deplorable condition. Water leaks through roofs and buckets are placed in classrooms to catch the water. In one particular school, PS 22, electricity is so faulty that I am expecting any day to hear that someone has been electrocuted.

Approval of district Compensatory Education monies which probably violated the law: The Comp. Ed. program is supposed to give 30 to 45 minutes extra time to students who do not meet the minimum standards while the students who are at or above standard are supposed to receive enrichment. Teachers must also administer curriculum to students who fall in the middle. However, we in Jersey City know from our public meeting held March 1, 1979, that the Comp. Ed. program for the most part has been a failure. It puts teachers in the impossible position of trying to present and teach three lesson plans to three different levels of students. Also, a percentage of Comp. Ed. monies is being used to pay salaries of teachers already on the board of education payroll, which results in the Board of Ed. saving money by using teachers already in the school system rather than hiring and training Comp. Ed. teachers. If this isn't enough, there has been no evaluation of the Comp. Ed. program to measure its progress or failure.

Learning disability and deficiencies: There are principals in Jersey City who, when faced with a student who needs psychological testing and who exhibits unacceptable behavior, label and classify these students as behavioral problems or incorrigibles before testing. What this results in is students being constantly suspended from school. In one case in Jersey City a student was suspended by a principal who claimed that a member of the child study team advised her to suspend the student until he was tested, classified and placed. Upon visiting special services with the parent of this student, we were informed that no one had made mention of such a recommendation and they did not have the authority to do this. Moreover, this practice is against the law. I fully understand the local school districts are charged with the many incidents I have mentioned. However, it is my contention and belief that if these problems are not corrected on the local levels, then it is the responsibility of the Commissioner of Education to step in and take charge. It is obvious to me and should be obvious to this Committee that the problems and conditions described are beyond the control of administrators in local school districts.

As for State decisions made by Commissioner Burke, in my opinion there are three areas that show a lack of leadership:

He consults with powerful lobbying organizations but not with parents, and especially urban parents who foot the tax bill and for whose children he has the responsibility to ensure quality education.

He lowered the MBS standards to bring about a false picture of urban students to exaggerate student achievement.

In conclusion, there is a need to make fundamental changes throughout the present education process and reviewing Commissioner Burke's record of performance over the past 4 1/2 years shows that he is not the man who can deliver the kinds of changes necessary, and vital for a thorough and efficient education, especially in urban districts in New Jersey. Moreover, when T & E came about, Commissioner Burke claimed that it was a "revolution." However, we in Jersey City have not seen any significant changes in the education process. Thank you for allowing me to speak.

SENATOR GREENBERG: Thank you very much. Senator Parker.

SENATOR PARKER: I have a question, and it refers to the next to the last paragraph in which you say "He lowered the MBS standards to bring about a false picture of urban students and to exaggerate student achievement." Can you elaborate on that for me a little bit?



MS. ROBINSON: The passing scores in reading are 75. The passing score for math is 65, which means that if the student is at a 65% level or 75% level in each of these areas, they will pass the test, which means other students in a higher bracket---

The lower scores will look higher. That is the point I am trying to make.

SENATOR PARKER: But you said that he did that, that he set the standards. I take it from that that he set lower standards for achievement and did that by some regulation?

MS. ROBINSON: Was the minimum basic skills test higher in the beginning?

SENATOR PARKER: I don't know. I am not familiar with the standards that are set. That is why I asked the question. It does concern me that he would issue regulations that would show, for instance, that more children are passing a test when in fact they are not, thereby reducing the standards and thereby instead of trying to improve education, the quality of education, he would be supporting rules and regulations that would be doing just the opposite.

MS. ROBINSON: It seems to me that a 65 or 75 score in math and reading should not be acceptable, because for my kids, and I guess people in Jersey City and other places feel that the educational standards should be higher than 65 or 75. He had to support that.

SENATOR PARKER: Well, 75 or 65 doesn't really mean anything to me, because I don't know what the normal standard is or what other standards are.

MS. ROBINSON: 75 and 65, I mean, anyone who has been through school knows that that is not a good score. 90 is an A, 100 is A-plus.

SENATOR PARKER: So you are saying it is on a scale of 100?

MS. ROBINSON: Yes.

SENATOR PARKER: Instead of supporting 70 or over.

MS. ROBINSON: Or 80 or over.

SENATOR PARKER: Well, the failing grade in school is 60 or below?

MS. ROBINSON: 65 or below--- 60, you are right. And that is another indication of low expectations for urban school students.

SENATOR PARKER: Doesn't that apply to all students?

MS. ROBINSON: I don't know that. I know that it applies to the students in Hudson County.

SENATOR PARKER: Thank you.

SENATOR MARESSA: Did Commissioner Burke lower it, or something like that, when he came into office?

MS. ROBINSON: I think that is what I am saying.

SENATOR MARESSA: You think he did?

MS. ROBINSON: Yes.

SENATOR GREENBERG: Thank you. Beatrice Lang. (No response) The next series of people are those who were called on the nineteenth but not present at the time.

Andrew Dale. (No response)

Buster Soaries. (No response)

Savid Bixel. (No response)

Joseph Gennello. (No response)

Richard Lloyd. (No response)

Virginia Conti (No response)

John Shipley. (No response)  
Angela Perun. (No response)  
Connie Shore. (No response)

I am now going to continue with the basic list. Dr. James Dwyer, Superintendent of Schools, Somerville.

J A M E S J. D W Y E R: Thank you, Senator. Senators, I am Dr. James Dwyer, Superintendent of Schools for the Somerville Public Schools. I am providing testimony today concerning the reappointment of Dr. Fred G. Burke, Commissioner of Education. I am not appearing as a representative of my school district, nor of any organization in which I may hold membership. Rather, I am speaking as an individual and I speak in favor of Dr. Burke's nomination and ask that his reappointment as Commissioner of Education be confirmed by the New Jersey State Senate.

I believe that Dr. Burke should be reappointed for three basic reasons: Because of the importance and integrity of the position of Commissioner of Education; because of the scope of problems facing public education in New Jersey today; because of the personal performance of Dr. Burke as Commissioner of Education.

The importance and integrity of the Commissioner of Education - The position of Commissioner of Education is one of long-standing in New Jersey. Indeed, it even pre-dates the well-known "thorough and efficient" clause first included in our State Constitution over 100 years ago. Our State has had a long and glorious history of local control, i. e., activities affecting all the citizens of our State have traditionally been designed and implemented in such a manner to provide an opportunity for decision-making to occur at the level closest to those who will be affected by such activities.

Public education has not been excepted from this practice and tradition of local control. A cursory review of our State's public education history and development, beginning in the 1830's, demonstrates that individual communities considered the educational needs of their children and took steps appropriate to those times to meet those needs. From time-to-time the needs changed and the public responded at the local levels with programs designed to address those changes.

However, it became evident - more than a century ago - that a coordination was required statewide in New Jersey to guarantee that the special requirements of the State and of society would be met. To provide for this coordination, the position of Commissioner of Education was created, and it was his responsibility - a responsibility which remains to this day - to ensure that the State goals and objectives for its children would be addressed and that the children of our State would be properly prepared to function as effective, contributing members of our society.

The tradition of local control and of locally-arrived-at decisions still remains and it is the responsibility of the New Jersey Commissioner of Education to see that the State's educational objectives, as outlined through statutes, court decisions, his own decisions, and through the rules and regulations of the New Jersey State Board of Education, are carried out and implemented evenly on a statewide basis. To carry out this responsibility, a New Jersey Commissioner of Education has been given wide-ranging powers and authority. As a matter of fact, the New Jersey Commissioner of Education is undoubtedly - in terms of legal authority - the strongest Commissioner of Education in any of the 50 states of our nation.

However, in addition to the statutory authority provided to the Commissioner, he has a higher authority emanating from the New Jersey Constitution, especially as it relates to the section which requires the New Jersey Legislature to provide for a system of "thorough and efficient" education in the public schools. The New Jersey Supreme Court - under Chief Justice Weintraub - in the landmark Jenkins case, clearly indicates that the Commissioner of Education not only has the authority, but the obligation to take whatever action is required to see that this constitutional mandate is carried out - conflicting statutes notwithstanding.

This short history of the position of the Commissioner of Education, as outlined above, is significant because of the recognition which our courts, legislatures, and other bodies have given to it in the past, as recognition that the individual holding that position must provide the leadership, continuity direction, assistance, and understanding needed to carry out our educational objectives and goals.

In 1965 a decision was made by the legislature with the approval of the Governor which led to the separation of public education in New Jersey into two branches: elementary and secondary education, and higher education. That action, in effect, brought about the untimely retirement of an outstanding Commissioner of Education, Dr. Frederick Raubinger. His resignation was followed by an interregnum administered by Dr. Joseph Clayton who performed as Acting Commissioner of Education for an extended period of time in a very admirable fashion. However, a decision was made at that time to look outside the boundaries of the State of New Jersey for a permanent successor. That successor was Dr. Carl Marburger who came to New Jersey from another area of our country. Dr. Marburger was forceful, intellectual, and an educator who spoke his mind and took action in ways he believed necessary to help the school children of our State. In 1972, he was denied reconfirmation by the New Jersey Senate and another interregnum occurred for an extended period of time under the administration of the late Dr. Edward Kilpatrick. Finally, in 1974, Dr. Fred Burke was appointed and confirmed as Commissioner of Education and today his nomination for reappointment is being considered.

These unplanned changes in the administration of New Jersey Commissioners of Education in the past fifteen years have not enhanced the leadership abilities of those who have made outstanding efforts to thoroughly carry out the responsibilities of the position. If Dr. Burke is not reconfirmed as Commissioner of Education, there will be a further weakening of the authority of the individual responsible for carrying out educational policies statewide. This action will certainly serve as a further deterrent to capable, skilled, and experienced school administrators to display any serious interest in such a position in the future. As a matter of fact, the time could quickly come when any professional educator who would show an interest in this position of Commissioner of Education could be considered akin to the individual who would buy that last ticket on the Titanic.

The scope of problems facing public education in New Jersey today, New Jersey's educational problems, are not one dimensional, but are multi-faceted. They are concerned with instructional problems, social problems, economic problems, and political problems. Dr. Burke took office in 1974 at a very difficult time. Our public schools were just settling down from a period of student unrest of the late 1960's and early 1970's. The effects of the first collective bargaining law enacted in 1968 (over Governor Hughes' veto) were just beginning to be felt.

A new legislature and a new governor were in office. The existing public education law, Chapter 234 P. L. 1970 - the Bateman-Tanzman Act - had been declared unconstitutional by the courts of New Jersey.

A replacement law which could stand the constitutional test was not in place. Declining school enrollments with all their accompanying implications were just beginning to develop; our nation - and especially our state - was in the throes of a very serious recession. Individual interest organizations -including, but not limited to, those directly associated with educational employees, were vying for power and position. An emotional debate concerning a new system for a broad-based tax was being debated, not only in the legislature, but in every office and home throughout the State.

Many had expectations that Dr. Burke, upon entering New Jersey and assuming his position, would immediately solve all of these problems and, at the same time, reduce educational expenditures and achieve all of the goals which many minds had not been able to collectively solve before him. Problems such as these cannot be solved until those involved in the problem can work jointly toward a solution. To say that Commissioner Burke has not acted quickly and decisively is an indication of the lack of understanding of the complexity of the issues.

Dr. Burke has been accused of a litany of sins of everything from being responsible for pupils not possessing minimum basic skills, to refusing to hold teachers accountable for their performance, to being responsible for student violence and vandalism, to being responsible for local labor disputes in school districts, to the high cost of education and to innumerable other changes which clearly have their origins in circumstances not caused by the Commissioner of Education nor are they of such a nature that he personally can, through personal dicta, eliminate them.

The personal performance of Dr. Fred G. Burke as Commissioner of Education: Entering the climate of New Jersey when he did, I believe that Dr. Burke has performed remarkably well during his tenure as Commissioner of Education. He is a personable individual who possesses the experience and skills necessary to carry out the responsibilities of his position. I feel that his goals along with those of most individuals and groups in New Jersey - even those who are opposing his renomination - are basically the same. However, the difference and dispute I believe is not that the Commissioner is not moving public education in the proper direction, but simply that he is not doing it at a rate fast enough to satisfy his opponents. In the past, previous Commissioners of Education have been accused, indeed, even have been accused by the New Jersey Legislature of not making an appropriate effort to communicate with those affected by the educational decisions of the Department of Education and the State Board of Education. Because Commissioner Burke has honestly, and effectively, attempted to establish lines of communications, not only between him and individuals or between him and individual groups, but has encouraged groups representing different constituencies to talk among themselves toward common goals, he has been criticized. Commissioner Burke has been accused of doing little to encourage local school districts to reduce the cost of education in New Jersey and, yet, as we are all aware, over 80% of a school district's budget is attributable to salaries or fixed charges related to salaries. Commissioner Burke did not enact the existing collective bargaining laws, the Legislature did with the governor's

approval. However, Dr. Burke in his position as Commissioner of Education is required to provide administrative relief and judgement on those issues and controversies brought before him which may have implications in these areas. Commissioner Burke has been accused of not providing leadership or suggested alternatives or solutions for known educational problems, but when he has taken positions opposing action of lay legislature or a lay State Board of Education who are attempting to move into areas that he believes, as the educational leader of the State, are educationally unsound and has raised objections, he has been criticized as being an obstructionist and overly sympathetic to special-interest groups. In my opinion, it takes courage - the courage of leadership - to tell the legislature or the State Board of Education that the "cure might be worse than the illness." There are issues that the Commissioner has been blamed for - that local school districts have been blamed for - that are not problems of our making - nor are we in a position - local school districts or the Commissioner - to provide ultimate solutions. I am referring to problems such as drug abuse, violence, and vandalism. What is the role of other state, county, or local agencies in these matters? What is the role of parents in these matters? Indeed, what is the role of students themselves? Our schools are as good as they ever were - our teachers are better - but if youngsters do not regularly attend schools, they cannot learn. They are in a position that is similar to having goods for sale, but no one to buy the merchandise. In the past, parents, the public, and the community supported our schools; assisted our schools; that no longer is true. In the past, seriously disruptive students could be excluded from school; now - due-process notwithstanding - they are returned to school even before you can say "restraining order."

I believe it is time that we gave Dr. Burke credit for what he has accomplished. He has made a terrific effort with his staff in Trenton, at the twenty-one county offices of education, and in local school districts, to implement Chapter 212, our "thorough and efficient" law, a law which is laudable in its intent, however imperfect its language. The Commissioner and the Department of Education have been receiving conflicting messages for years. The Commissioner wisely attempted to focus the monitoring efforts of the Department of Education and the county offices of education in those districts which needed special attention. For that, he was criticized. Monitoring capabilities are limited, they cannot effectively assist over 600 school districts at the same time, nor is that effort necessary. You can evaluate, effectively, teaching staff members without being punitive or threatening. The Commissioner tried this and was rebuffed. Dr. Burke has sincerely attempted to implement the laws, the education laws of New Jersey, and it is not totally unexpected that he would be criticized by local boards of education, local superintendents of schools, local teachers, and local communities because these groups have always made their own decisions concerning public education. It was the New Jersey courts and the New Jersey legislature and the New Jersey governors who have changed that pattern; in carrying out his responsibilities under the New Jersey Constitution, Commissioner Burke finds himself in the position of the "messenger bringing bad news to the king." He is an easy, visible, and defenseless target.

The Commissioner of Education has been accused in the popular press of creating a vacuum which the Legislature has been forced to fill. However,

to a great degree, Dr. Burke has found himself constrained by court decisions and legislative enactments. In considering the constitutionality of Chapter 212, P.L. 1975, the Supreme Court under Chief Justice Hughes, indicated that it had some serious reservations concerning this law as to whether it would, indeed, carry out the intent of the Weintraub decision in Robinson v. Cahill. The court indicated that it would, in effect, reserve jurisdiction because it had some serious questions concerning sections of the law, especially, Section 25, the so-called "cap" provision, but was willing in 1976 to rule the law facially constitutional with the understanding that the Commissioner would not be restrained in any way from granting "cap" waivers under Section 25, and also that the law would be fully-funded. In the past year, we have observed our Governor urging and the Legislature agreeing to tamper with the funding formula by reducing funds to local school districts in an amount approaching 50 million dollars statewide for the 1979-1980 school year without, however, limiting any of the mandated programs which those funds were supposed to support. In addition, the "cap" provision placed in the education law is, in my opinion, unconstitutional and my board of education is currently taking action to enter litigation to the Supreme Court in this matter. One thing is evident. There certainly are no clear guidelines to serve as criteria which the Commissioner may apply to enforce and implement this section of the law. He made an attempt this past year to provide the flexibility which he believed was required, and was severely criticized. This year he attempted to apply standards and guidelines and, again, he has been criticized. I believe that as far as this particular issue goes, it requires a determination by the Supreme Court as to (a) whether that section is constitutional at all, or in the alternative, (b) whether appropriate guidelines can be clearly established by the court to carry out its own intent. In any respect, it has had a "chilling" effect on the operation of the public schools in New Jersey.

Some members of the Legislature have been quoted in the press as indicating that they would like direction; they would like to assist public education; they would like to act; they would like to be helpful. If that is true, I would suggest that the Legislature encourage studies be carried out to provide for cost/outcome analyses concerning existing special education programs, compensatory education programs, and remedial math, reading, and language arts programs to determine if desired outcomes are being achieved and if so, at what cost. Commissioner Burke has been accused of "lopping off the mountain tops to fill in the valleys" in order to comply with the state public education law. The problem, in my opinion, is not with the Commissioner's attempt to enforce the law, but rather with the law itself. I believe that the primary problem in this area is with an interpretation of reading of the Weintraub court decision in the Robinson v. Cahill case which, in my opinion, called for equalized educational opportunity for students throughout New Jersey, but not necessarily to equate that with equalized educational spending among all districts. There are many districts in our state, particularly certain urban and very rural districts, which will require higher expenditures to produce the same educational opportunities for the children of their schools. It may not have been the Legislature's intent in developing and enacting - with the approval of the Governor - Chapter 212, P.L. 1975, to destroy public education, but the existing law is being perceived by those who must implement it as a law whose primary intent is to reduce educational expenditures and not to improve the quality of education.



Indeed, if the law is permitted to continue for several more years without revision, it will perhaps produce equalized educational expenditures, but in the process, quality educational school districts with quality educational programs will be leveled downward while those school districts which have not been providing programs of high quality to date will not necessarily be raised in quality. I assume the effects will be accelerated since the net effect of support for public education locally is now being transferred back from the state level to the local property tax owner. Because of these perceptions, Dr. Burke is being targeted for blame, but Dr. Burke as a member of the Governor's cabinet, as a constitutional officer of the State of New Jersey, and as the primary educational leader in New Jersey is simply attempting, with his staff, the Department of Education, and the State Board of Education, to carry out the responsibilities entrusted to him.

These are very difficult and complex times in public education. The problems that New Jersey is undergoing are not significantly different from those existing in other states of the union. There are no easy answers; no quick answers. We must work cooperatively together; we must cultivate leadership; we must obtain direction; we must hear the voice of those who are in positions to provide the advice. We cannot, in 1979, afford the luxury of appointing a new individual to the position of Commissioner of Education. We desperately need the continuity that has existed. It is necessary that Dr. Burke be permitted to continue his efforts. Therefore, I respectfully ask the Senate to confirm Dr. Burke and reappoint him for a new term as New Jersey Commissioner of Education.

SENATOR MARESSA: Thank you. I would like to ask, how many years have you been the County Superintendent?

DR. DWYER: No, I am not the County Superintendent, I am the District Superintendent.

SENATOR MARESSA: Well, how many years have you been the District Superintendent?

DR. DWYER: I have been District Superintendent since 1968.

SENATOR PARKER: Yes, Doctor, on that last point when you are talking about problems on the funding under the new school, the richer districts, or the districts that are going to provide for the quality education being held down by the caps, and you say that Commissioner Burke has shown a lot of leadership. How does that comport with the ruling that he made immediately after the Governor made the statement, that he was not going to allow rich, or wealthy districts, those with a local tax rate in excess of 6.5 to come in and have any cap waiver.

DR. DWYER: My district was denied cap waiver entirely by Commissioner Burke.

SENATOR PARKER: Do you think that shows leadership?

DR. DWYER: I personally disagreed with that. As a matter of fact, I had my Board of Education appeal to the State Board, and they partially reversed Commissioner Burke on it. The fact that I may disagree with Commissioner Burke on an individual instance, Senator Parker, doesn't mean that I will support his total leadership in the last five years. I agree with you. I don't think that is a fair interpretation, and we appealed it and we got a remedy for it.

SENATOR PARKER: Well, do you think it was proper for him to do that, because the Governor for budget reasons said he is going to do that, and take that position, totally abdicating his responsibility to all the school districts?

DR. DWYER: I don't like what he did, but you touched on one point. I think the real basic problem in this State in education in the last five or ten years, not ten years, but in the last five or six years has been one that falls at the doorstep of the Legislature and the Executive Branch.

SENATOR PARKER: I don't think you can blame that on the Legislature - the Governor indicating that he is not going to allow any waiver, and the Governor making a mandate and then imposing that on the Commissioner. It is my understanding that this type of waiver was to be given on the basis of merit and consideration of the total educational process.

DR. DWYER: That is exactly why our district is going to the court as a class action to ask the Supreme Court exactly that point. I agree with you on that point, Senator Parker.

And, it is a difficult position in this State for the Commissioner of Education to also be a member of the Governor's Cabinet. There is no question about that.

SENATOR PARKER: Well, really, the criticism that I have received from many members of the State Board of Education and other educators is that the Commissioner does not, when he takes a stand, or when he makes his position known, does not adhere to it and he allows political pressures, the whims of those above him, to control his actions. This is the thing that concerns me. You talk about leadership and the need for leadership from a gentleman of this calibre and I have nothing against him individually. Then, when the going gets tough, he lets somebody else dictate to him, rather than stick to a position that is right, basically right.

DR. DWYER: Well, you see, Senator, you have me at a disadvantage because I don't know what you know about directions coming from the Governor's Office. I don't know for a fact that the Governor has done that.

SENATOR PARKER: It was in the press that I think the Governor indicated that he should hold down the spending, and when he cuts the budget to \$22 million, the Governor made it clear that he wanted no waivers for any school district, which the local property tax was, I think, 6.5?

DR. DWYER: It was for people over the 65th percentile.

SENATOR MARESSA: Thank you very much, Dr. Dwyer.

DR. DWYER: Thank you.

SENATOR MARESSA: I now call Dr. Crosby Copeland, President Elect of the New Jersey Association of Secondary School Principals and Supervisors.

C R O S B Y     C O P E L A N D: Thank you, Senator. I am Crosby Copeland, Principal of Trenton Central High School, and President Elect of the New Jersey Association of Secondary School Principals and Supervisors.

Mr. Vice Chairman, members of the Senator Judiciary Committee, I have been requested to speak before you today by the Executive Council and Board of Governors of the New Jersey Association of Secondary School Principals and Supervisors. My purpose is to make known our association's position on the all important issue of the reappointment of Dr. Fred Burke as Commissioner of Education in New Jersey.

As a preface, I think it is fitting to point out that during the last five years the position of Commissioner of Education has probably been one of the most difficult and controversial ones in the Governor's Cabinet. Not only has he had to satisfy the demands of the State Board of Education, the Governor, and the

Legislature, but he has also had to cope with pressures from a variety of citizen groups, the Department of Higher Education, and a number of powerful education groups. Intense pressure was brought to bear from all directions, primarily, we believe, because of the many new problems which arose, most of which were not of his own making, but rather were created by the courts, the Legislature, and the demands of the public.

The most important of these problems stemmed from the Botter decision which triggered a series of major events which we feel were handled as efficiently as possible given the constraints of time, funds, and personnel which existed at the time. These included the development of the entire plan for a thorough and efficient system of public education for the children in our schools, the funding crisis which finally brought about the New Jersey State income tax, the restructuring of the Department of Education and the resultant decentralization to accomplish adequate staffing of the county offices, and the expansion from one to four education improvement centers to provide support programs for staff training and program development activities to aid in the implementation of T & E.

At the same time that all of this was taking place, the Commissioner also had to deal with pressures that were building as a result of public clamor over declining test scores, teacher tenure, increasing costs of education, violence and vandalism in the schools and the controversy over bilingual education. We believe that Commissioner Burke took a very positive approach in the search for the solution to these major problems. He made excellent use of all available resources by establishing or recommending establishment of a number of major study committees to assist in the development of recommendations for coping with the problems.

We feel that these and many other actions taken by the Commissioner to involve educators, students and the public in the decision making process have served to establish his credibility as one who believes that the democratic process can and does work if sufficient patience and restraint are present to permit the process to evolve. We believe that it has worked for the Commissioner, and that is why the following have been accomplished:

1. T & E is now in full operation and is a working process.
2. The county offices are now providing on-site monitoring of the development of the T & E process at the local level as a result of the reorganization and decentralization of the Department.
3. Viable evaluation procedures have been developed and adopted for the evaluation of all teaching personnel.
4. The statewide minimum basic skills testing program is now operating smoothly.
5. The statewide compensatory education program is in place at the local level.

We believe that these accomplishments alone are sufficient reason to declare that never in the history of education in New Jersey, or in fact, most other

states in the union, has a Commissioner of Education been called upon to attempt to accomplish so much in so short a period of time. The challenge has been of immense proportions and the Commissioner has met it well.

We believe that the Commissioner has also taken tremendous strides in improving the credibility of the Department in its working relationships with the educational community. If I may be somewhat personal on this issue, I have found the following activities which were initiated by Commissioner Burke to have been of considerable interest and value to me, to my association, and to leadership personnel in all of the major education groups who have been involved.

1. The Executive Academy which has served to interpret the Department and its activities to all levels of administration.
2. Frequent meetings with leadership personnel of the various education groups to keep them updated on major issues in education and to get their input.
3. Involvement of members of these various groups on major Commissions and study groups such as the T & E Committee, the Longitudinal Study Committee, the State Advisory Council on Reading, the Adolescent Study Commission, the Graduation Requirements Study Committee, the Committee to Study Violence and Vandalism, the Committee on implementation of the Meisner Reporter, ad infinitum. I might comment here that graduation requirements were addressed by Commissioner Burke about a year before the Senator came up with Senate Bill 1164.
4. Excellent cooperation from the Commissioner's office in all matters including governmental relations, sharing Commissioner's decisions and opinion, and developing a training program for integrating the middle states and T & E evaluation procedures.

Our association also believes that the Commissioner could have functioned more satisfactorily in making key appointments of personnel in the Department, in dealing with caps, and in dealing with the issues of tenure, had he been free from political constraints.

Considering all aspects of the Commissioner's record in office, the New Jersey Association of Secondary School Principals and Supervisors wish to go on record as supporting reappointment of Commissioner Burke for a second term of office. We feel that he has a keen interest in providing quality education for the youth of New Jersey, and that another term in office will bring to fruition the results of his efforts. We urge the Legislature to approve Governor Byrne's recommendation that the Commissioner be reappointed.

SENATOR MARESSA: Thank you, Dr. Copeland. A previous witness from Jersey City made reference to the MBS scores having been lowered by Commissioner Burke. Could you comment on that?

DR. COPELAND: I don't think the scores were lowered. I think she should of perhaps referred to the percentile. The percentile was lowered.

SENATOR PARKER: What do you mean by the percentile was lowered?

DR. COPELAND: She was confusing the test scores with the manner in which grades are given in the public schools. She mentioned that there was a means of scoring from 100 down to 0 and that those who fell in the range of 60 to 65 were doing poorly and that those who received 90 to 100 were doing very well.

We are talking about minimum basic skill scores. We are talking about reading, and when we talk about reading, we don't talk in terms of getting an "A" or a "B" so to speak, we talk in terms of grade equivalents, averages, and the ability to comprehend and to be able to read. And, I don't think it was Commissioner Burke who lowered the percentile. I think it was a Committee or Commission that was established by Commissioner Burke to study the minimum basic skills tests. Some of the urban districts were saying that the validity of the test was questionable, because there were some items on there that were not suited to children in various ethnic groups or children in various parts of the State, urban versus rural, versus urban.

SENATOR PARKER: You mean as to the questions and the content of the examination that it wasn't there and it didn't take into consideration all aspects of those being tested?

DR. COPELAND: Yes.

SENATOR PARKER: So, what you are saying is that the test grade level didn't come down, but there was some adjustment in the percentile as to, I guess, what is average statewide?

DR. COPELAND: Yes.

SENATOR PARKER: And the Statewide average was lowered so that basically the test scores therefore would be lower, or the necessity to pass would be lower?

DR. COPELAND: Well, I think the average was lowered so that more students could receive extra help, compensatory education. It was---

SENATOR MARESSA: Will you hold it down, please?

DR. COPELAND: As the test was originally designed, and we found this in our particular district, there were some individuals who were perhaps scoring high who needed additional work, additional remediation work. They were not getting it because---

SENATOR PARKER: You know of nothing that he did personally or individually to reduce or to lower to create the effect that Ms. Richardson indicated?

DR. COPELAND: No, I do not.

SENATOR PARKER: Just one other thing. I missed Mrs. Potkay's testimony. I got in just as she was testifying. I understand that she was critical of Commissioner Burke, and that is your school district, the district in which you are the Superintendent or the Principal.

DR. COPELAND: I am the Principal.

SENATOR PARKER: You are the principal of the high school?

DR. COPELAND: Yes.

SENATOR PARKER: I wonder if you could comment on the effect of what Commissioner Burke has done to your school system here as she did.

DR. COPELAND: Well, I wasn't privy to Mrs. Potkay's testimony, so I would prefer not commenting.

SENATOR PARKER: You disagree, then, with the Board of Education? Was she speaking, do you know, for the whole board? Did the Board take a formal position?

DR. COPELAND: No, I think she was speaking as an individual Board member.

SENATOR MARESSA: I think she indicated that.

SENATOR PARKER: I must have missed that.

SENATOR MARESSA: Thank you, Dr. Copeland. Karen Raulston, please. Are you speaking as an individual, or are you representing someone?

K A R E N     R A U L S T O N: I am speaking as a parent and as a member of a parents' organization called the Parents Union of Burlington County. I reside at 432 Jefferson Avenue in Edgewater Park, New Jersey.

Members of the Committee and members of the public, education is a State responsibility. It is the State responsibility to set standards and objectives to be obtained and to contrive educational environments and teaching strategy. This is a quote from Robinson versus Cahill. The Commissioner of Education has unprecedented responsibility and power to overhaul the public education system. It is his responsibility to establish credibility for those educational programs and activities identified as necessary for meeting accepted levels of achievement by supplying evidence that they work to accomplish what they were intended to accomplish. This is a quote from Commissioner Burke on page 11 of the T & E Primer.

Parents and citizens are not interested in making goals reasonable. We want goals set high for all children regardless of race or color, regardless of economic background, regardless of where they live in the State. Children will accomplish the goals set for them if they are told that they can; if they are consistently told they will fail, they will. There must be an upgrading of requirements for administrators and teacher certification and evaluation. It is the Commissioner's responsibility to be a leader in providing this direction. He has not.

Parents and citizens, too, feel that a teacher can make a difference, if it is a good teacher. The principle of same is that too many principals have never been aware that they are now administrators and in management and that teachers are their employees. The majority of building principals in one district tested on contracts did not even know what they contained, much less how to avoid grievances filed by teachers over the contract. There must be guidance provided to administrators by the Commissioner of Education to correct this weak link in the chain of the educational system. Violence and discipline are becoming horrendous factors in all schools, not just Newark, Paterson, Jersey City, but urban schools, such as Willingboro, Cherry Hill, Moorestown. A recent Burlington County Times article ran a full page for three days on problems in Willingboro schools related to violence against students and teachers.

There are those who will blame the parents. It is their fault. They should control their children. It is interesting to note that many of the children who become violent in school are also children who have learning problems, and have become frustrated with the inability to cope in the classroom setting, and the stress placed upon them. They have often been put down in front of both students and teachers for being lazy, stupid, or unwilling to learn.

Are these the students we are now going to give a certificate of attendance, or punish for the failures of the system? Although teacher absenteeism is at an all time high, little or any guidance has been received by local districts from Commissioner Burke on how to remedy the situation. In one



school district with a budget of \$28 and a half million, over one-half million dollars was spent on substitute teacher salaries alone last year. And that figure is already at an increase for this school year.

SENATOR PARKER: Excuse me, is that in Burlington County?

MS. RAULSTON: Yes, it is. It is in the Willingboro district. Why are teachers absent at a rate higher than national industry and business percentages? Do they care? Are they bored? Are they trained to teach and control the classroom setting, or are they merely certified? Do they suffer from a poor morale, and if so, why?

Commissioner Burke should provide leadership in getting to the root of this problem, and he has not. Teacher strikes have been an ever present, ever increasing factor in the educational process. The threat of jailing striking teachers is no longer a deterrent to strikes, as statistics show us that teachers are no longer put in jail for refusing to obey a court order to return to work or contempt of court proceedings. In 1967 teachers were sent to jail for refusing to obey a court order to return to work. In Woodbridge, Middlesex County, a teacher's union rep. served three months, and another leader thirty days. In 1970, in Passaic County, six teachers served thirty to sixty days during the summer with time off for good behavior. In 1970 in Newark, Essex County, more than 180 teachers served ten to ninety days in jail. In 1970 in Jersey City, Hudson County, 20 teacher leaders served ten to thirty days in jail. In 1971, in Fairlawn in Bergen County, 14 teachers served thirty days in a work release program. In 1971, in Newark 12 leaders served three months, one served six months, two served thirty days. In 1972, Freehold Regional High School, 11 teachers served two to four month sentences. In 1973, Elmwood Park, in Bergen County, 4 teachers served twenty of the thirty day jail sentences. In 1974, Long Branch, Monmouth County, 12 teachers served two days over the weekend, and then the picture changes even more drastically.

In 1975 in Hoboken, Hudson County, the first example of "alternative services" 6 teachers performed 100 hours of work in county social institutions in lieu of jail terms. In 1977, in Matawan, Monmouth County, 100 teachers sentenced to seven to thirty days, but the entire union had a beach cleaning party at Sandy Hook State Park for two days.

SENATOR PARKER: Excuse me, on the statistics on the strike, and what have you, what does that have to do with the Commissioner and his reappointment?

MS. RAULSTON: I maintain that it is attributed to a lack of leadership in instituting effective alternatives to bargaining impasses. I feel that it is the direct responsibility of the Commissioner of Education, and indeed the Department.

SENATOR PARKER: I was just wondering--- There is a collective bargaining process, and under the PERC law, that is really the prerogative of the Legislature, and we pretty much preempted that on him. I was just wondering why you were going into all of that.

MS. RAULSTON: As Commissioner of Education, it is his responsibility to be a leader in creating legislation affecting education.

SENATOR MARESSA: Please continue with your statement.

MS. RAULSTON: Thank you. Can we expect students to obey the law, and indeed to respect the teachers who break the law when they see that those

very people they have been trained to respect do not obey the law themselves? Are there two sets of standards? Striking teachers have been known to resort to teamster tactics, putting nails in driveways, threatening and harrassing students and parents who cross the picket line, spray painting cars of local board members or PTA officers who try to keep schools open. Are these examples to be set for children who are to respect others? Would you respect a teacher who called you a scab after the strike was over?

Do teachers always strike because they want more money? Or do they strike because, basically, they too are frustrated in their efforts to educate? Frustrated with their administrators, frustrated with the lack of guidance and initiative shown by the State Department of Education, and indeed the Commissioner.

Teachers are no longer the poorly paid positions of the past. They work an average of 180 days a year, provided they don't use all of their added ten day's sick leave, sick days, personal leave, professional leave, paid vacation if they get married on the job, et cetera.

Their salaries are above the national average consistent with their degree of education, and they receive fringe benefits which are usually more generous than that of business or industry. And, indeed, the majority of the members of the public could pay their salaries. What is wrong with the educational system then? And, why at a time when there is a glut of teachers on the market and student enrollment is steadily declining should students have to take the remnants of the sixties when there was a serious shortage of teachers and the school boards would hire anything that breathes.

Of course, we all know that those who did breathe and who are still breathing are still in the classrooms with tenure. Why aren't these teachers being evaluated, trained to correct deficiencies, and if they are unable to demonstrate a willingness or an inability to do so, gotten rid of? In schools where over 60% of the students did not pass the minimum skills tests, we must surely look at the qualifications of the teachers and administrators who have presented the curriculum, and we must do so without delay before another generation of children passes through the school system.

It is the Commissioner's responsibility to assume this leadership as the highest authority in education for this State, and he has not. Commissioner Burke has stated to this Committee that he was "proud of his accomplishments during his tenure." As the highest authority for education for the children of the State of New Jersey, proud of the inconsistently, and indiscriminately applied caps law limiting school spending which he has permitted unjustified exemptions to, proud of the uniform pupil proficiency, and he stated that he was encouraged by basic skills scores, in spite of the fact that more than one-fourth of New Jersey pupils are not able to pass basic skills tests, and in suburban districts, indeed more than two-thirds of the students are unable to pass basic skills tests.

Indeed, we wonder what the true results of these tests mean when we learned that nearly ten percent of the students in the state never even had their tests scored, and it was later proven that the results of test scores were manipulated, that the test was easier last year than the year before, and that we are told even in some districts that teachers taught the test. No wonder there is such a credibility gap about public education.

The Commissioner is proud of his lip service to parental involvement in the schools when in fact in a letter dated September 25, 1978, he pointed out parent involvement as being, and I quote, "the law which required encouragement of maximum citizen participation in educational matters," and that each local school board member is an elected official or is appointed by an elected official. The community at large participates in these elections, and while he believes that local boards should do everything possible to encourage public involvement, he does not feel that further special measures are required."

Local boards have consistently shown an inability or an unwillingness to address the problems that exist. Indeed, the somewhat dubious distinction of serving on a local board of education has lost its charisma for most citizens. Few can afford the time away from their employment and families to attend the multitude of meetings, night after night, to solve the problems presented in the districts by the ineffective implementation of T & E, teacher grievances, negotiation for contracts for employees, tenured administrators who supply them with what information they wish them to know, and manipulate to control their decisions.

There is no financial compensation involved for these citizens who come forth to serve the children of their community, or even to those who serve on the State Board. They must often take time off from their employment at their own expense to attend meetings or gather information necessary for proper decision making in connection with their position.

And, too many of them just did not know what they were getting into when they ran for the position of board members, and indeed are not capable of handling the job. It is interesting to note that one of the larger districts in this State, with a budget of twenty-eight and a half million dollars, and three seats to be filled on the board, was the victim of a thirty-two day teacher strike last year, and nine of the twelve candidates in the forthcoming April election have not even heard of the NJEA when they appeared at a recent candidates night presented by the PTA.

No wonder there is such apathy about even turning out to vote for local board members - a fact brought to bear by the fact that school board members are elected by an average of less than ten percent of the eligible voters and many of those who do vote are those with a vested interest, members of the teachers union.

According to Governor Byrne, Commissioner Burke hasn't gotten into much trouble. - perhaps not with the politicians or with the NJEA whom he has openly courted, solicited, consulted and entertained. Yes, he has certainly been concerned with the "stress on the members of the educational community." Perhaps he hasn't gotten into much trouble because of his absence from the educational scene at times when it is his responsibility to be in the forefront in decision making. His responsibility to be a leader in curriculum development throughout the State, to assure that the public education system is educationally and fiscally the best possible, as he alluded last Thursday.

His responsibility to be a leader in establishing improvements in the certification procedure for teachers and administrators, his responsibility to be a leader in establishing evaluation procedures for administrators and teachers, his responsibility to be a leader in setting up " a very sophisticated system of monitoring " through county superintendent offices, his responsibility

to be a leader in "moving orderly and steadfastly toward improvements in public education," his responsibility to be a leader in making education "an open public process," his responsibility to be a leader in making sure that "uniform pupil proficiency" is at the highest attainable level for each and every student in the State of New Jersey. Let me tell you, Senators, that he is in real trouble with the parents and the citizens of the State of New Jersey, the same parents and citizens who elect State Senators, the same parents and citizens who are tired of promises that our children will receive a thorough and efficient education, the same parents and citizens who have heard far too much about minimum basic skills and want maximum skills for every child in the State of New Jersey, the same parents and citizens who do not want "uniform pupil proficiency" as promised by Commissioner Burke to mean that all students in the State will be educationally crippled, and unable to read and write and communicate in the adult world, a world in which 1.9 million residents over the age of twenty-five in the State of New Jersey do not have a licensed diploma, forty-seven percent of New Jersey's total population. Of that total, 604,000 never completed the eighth grade, by which time their reading and mathematical skills needed for everyday life should have been mastered - rendering these people difficulty in computing fractions, reading a newspaper, using a telephone directory, or even filling out an unemployment form. Every year 27,000 students drop out of New Jersey's schools. Many because of frustration and inadequacies in the system. Is this what you want for the children of New Jersey? It is not what the parents and citizens want, and we are tired of waiting, tired of promises, tired of excuses, while more and more of our children are passed through the system educationally crippled.

We demand a Commissioner who will take his responsibility and provide the leadership necessary to get the educational system moving now. Thank you.

SENATOR MARESSA: I have one question. Our educational system leaves a lot to be desired, I am sure, and it seems that you have done a great deal of research and I wanted to compliment you on your in-depth presentation. Can you tell me of some other State, if you happen to know, that has a system that works better than ours?

MS. RAULSTON: Having only been a resident of one other State, I really don't know that much about other States' Departments of Education. Being a resident of the State of New Jersey, this State is my concern right now.

SENATOR MARESSA: I am sincere in my request.

MS. RAULSTON: I am not ready to tackle it on a national basis right now.

SENATORM MARESSA: I just wanted to know whether you knew if other states have the same problems we have.

MS. RAULSTON: I am sorry, but I do not know.

SENATOR MARESSA: Thank you.

SENATOR PARKER: Just one thing, does your group - I wasn't completely familiar with the name - participate with the school districts actively? For instance, you spent a lot of time talking about the Willingboro district, but yet you live in Edgewater Park.

MS. RAULSTON: I happen to be a previous resident of the Willingboro district, having recently moved to Edgewater Park. That is why I am very familiar with statistics from Willingboro.

SENATOR PARKER: Did your group participate actively with the Willingboro Board of Education?

MS. RAULSTON: The primary function of our parent organization is to provide parents with information concerning the educational system benefits that are available to their children, and how they can correct deficiencies, who they can go to with complaints, and how they can get service from the educational system.

SENATOR PARKER: In Willingboro, did you actually work and present these--- Frankly, a lot of the things you presented had to do with the duties of the school board itself as opposed to the Commissioner. I understand your position about the leadership. But, from my recollection of the Willingboro Board, some of the difficulties have been coming directly from that Board.

MS. RAULSTON: That is the case I believe you would find in just about every one of the 611 districts in the State. We are concerned that some leadership be displayed on the State level to set up some guidelines that these boards and these administrators have to follow. We do not feel that has been done.

SENATOR PARKER: Do you think that would have helped to any degree in Willingboro?

MS. RAULSTON: Absolutely.

SENATOR PARKER: The way that board is operated?

MS. RAULSTON: Absolutely.

SENATOR PARKER: I won't comment on that.

MS. RAULSTON: Knowing that you are from that area.

MEMBER OF THE AUDIENCE: Senator Greenberg, can I just ask a question, sir, ? Many of these people have come a long way and gone to a lot of trouble to prepare their testimony. While I know it is being recorded and you have written records that you will read, I'm sure it is disheartening to them that so few members of the Committee are present to hear their testimony and I wonder if you will consider, if more of you will be here after the lunch break, I wonder if you will consider adjourning so that they could have a larger audience for the things they have to say. (Applause) I get the impression that there are people here who feel the same way about it.

SENATOR GREENBERG: The Committee will continue to take testimony in the fashion that it has taken it and those senators who are not present will have an opportunity to read it. All of the senators have notified of this hearing, as you know. I can really do no more than that, other than to adjourn it for another day when we will probably have the same problem. The point of the matter is, while it is very important and significant to the people who testify that they see faces from an emotional point of view, the significant thing is that their testimony will be given and hopefully, at least as far as I'm concerned, read and considered. This is not a theatrical performance. In many instances both on the Congressional level, as well as the State level, less than all of the people are present. It happens today that we have three. We had eight or seven last time. I want to get the testimony in the record. You see, not only will these eleven Committee members vote, but the other 29 members of the Senate, who will not be here under any circumstances, because they are not members of this Committee, will ultimately have to vote, if the Committee reports it out and under that theory, I should have forty people here. I can't do it. I can't even have eleven here. All I can do is attempt to do it, which is what I'm doing and frankly I want to continue. I don't want to delay this matter unnecessarily and I have no choice but to proceed under the present circumstances.

Ernest Kerstein?

ERNEST KERSTEIN: Thank you. My name is Ernest Kerstein and I am from Mahwah, New Jersey. I am a full-time businessman. I have indicated on the copy of the testimony that I left here that I am the Chairman of the Curriculum Development Committee for the Mahwah Home School Association, however I am speaking only for myself.

I am here because of my overriding concern that all of our children get an education that will enable them to cope effectively in the real world into which they will be thrust upon graduation from high school. They have not been getting that kind of education. I believe that "Thorough and Efficient" does provide a unique opportunity for that to occur.

T & E is education by plan with insistence upon involvement by parents and members of the local community. But, it is also a five year developmental plan that must be given the time necessary to grow and produce results. This fact seems to be overlooked by many who use T & E as a scapegoat for a wide variety of perceived sins, such as paper-work overload, low test scores, budget caps and so forth. Often, the blame lies elsewhere. We tend to lose sight of the fact that the ultimate beneficiary of a successful T & E will be our children. Do we expect that ambitious goal to be reached easily without pain and sacrifice?

Unfortunately too, the media has failed to bring a measure of balance and understanding in its coverage of stories on the subject. Two years ago, in the New Jersey section of the New York Times, a story headlined, "A Year of T & E, Does It Work?" The following year, the Bergen Record headlined T & E--"At Age Two Has It Passed The Test"? It is a five year test. Recently both the Record and the Star-Ledger ran stories falsely attributing low test scores of college freshmen to T & E. The truth is that T & E has not yet had an opportunity to influence those students. How many readers are aware of that? They are very likely to be influenced negatively.



I am reasonably confident that at the end of five years the report on T & E, probably the toughest course ever taken on by New Jersey, will receive a passing grade. In the meantime, let's not lose sight of our children by throwing out the baby with the bathwater. Commissioner Burke has been an advocate of T & E from the outset and he should be given the opportunity to finish that job.

In addition to the need for renewed emphasis on the basics of reading, writing, and arithmetic, the time has come for a "fourth R"--reality. How often have parents admonished their children by saying, "You'd better pay attention to your studies or you will be sorry when you get out into the real world". That is a warning children should heed, but often do not. However, there is also a warning that we as concerned parents and citizens should also be heeding. From whom does this warning come? Well, from leading educators from all over the country; from Ernest Boyer, the U.S. Commissioner of Education. It came from Presidents Ford and Carter, and particularly from the Council of Chief State School Officers of the 50 states and territories. I refer to their 1976 report, entitled, "Civic Literacy for Global Interdependence. I have a copy of that here that I can leave. I'll quote three paragraphs from it.

"During the past thirty years, since the end of the second world war, a quiet revolution has been going on in our country. Until two years ago, this revolution was almost unnoticed, but with the eruption of the world food crisis, plus the oil and energy crises, Americans everywhere became uncomfortably aware of the degree to which our lives are now affected by what happens elsewhere, and that what we do affects the lives of others.

All of this is posing new challenges to Americans. We must develop a basic understanding of the forces at play in the world, so that we may cope more effectively with the problems of global interdependence; and, because under our federal system, the constitution lodges primary responsibility for education with the state, it is a test of state claims to leadership in the field of education to respond with energy and vision in meeting this vital challenge.

The Committee on International Education of the Council of Chief State School Officers sees its role as mobilizing the interest and resources of the states in order to create a new and expanded civic literacy on problems of global interdependence. What we accomplish in the future is important and critical if we are to move our country into first place internationally in knowledge and understanding of global events. Our goal should be nothing less."

On April 21, 1978, President Carter issued an Executive Order establishing the President's Commission on Foreign Language and International Studies. The first objective of the Commission is to recommend means for directing public attention to the importance of foreign language and international studies for the improvement of communications and understanding with other nations in an increasingly inter-dependent world. I was very pleased to note that one of the 25 members on the Commission is Representative Millicent Fenwick of New Jersey.

The first meeting was held in Washington D.C. on October 27-28, 1978 with a series of working sessions. One area of focus agreed upon was international education at all levels, primary through adult. The resource person on the topic of international studies in the schools was Dr. Fred Burke, New Jersey Commissioner of Education and the Chairman of the Committee on International Education for the Council of Chief State School Officers.

Concurrently with these happenings, the State Board of Education adopted a resolution recommending that school districts include curricula relating to other cultures of the world; that they encourage efforts in global education and ethnic

heritage studies, and that the Department of Education cooperate in developing educational policies relating to international business and occupational projections for New Jersey.

I am proud that the State Board of Education took such action, which reflects an awareness of the changing world and our need to respond.

So, New Jersey is at the crossroads in 1979. It is halfway through a controversial "Thorough and Efficient" program designed to provide a quality education for our children in the complex years ahead. The nation is watching this state because our efforts are unique, but it is a five year program and in view of the tremendous investments already made, we must let it wax and grow strong.

For the basic reasons of T & E and for the fact that Dr. Fred Burke is already an expert in the areas in which the top educators of the country and even our President said we should be concentrating, I feel that he is the most qualified man we could possibly have at this time and I urge his reappointment.

SENATOR GREENBERG: I thank you sir. I thank you for appearing and for your thoughtful comments. Senator Maressa?

SENATOR MARESSA: I don't have any questions.

SENATOR GREENBERG: Senator Parker?

SENATOR PARKER: I just have one. I gather you are speaking as a citizen and also one that has been involved with the development in your local school districts of certain curricula, I guess, in accordance with the mandates of T & E, the parents and the locale getting involved. Do you find any difficulties or deficiencies with the leadership and the problems as they affect the local district, vis-a-vis the Commissioner?

MR. KERSTEIN: No. As a matter of fact, I think that the T & E mandate is so clear, so far as the steps to be taken or the five or six basic steps you take and if the school district is willing to put out and follow the guidelines, setting goals and do all the other things, that I just see it as a tremendous advantage for the children in our State and down the line. What I'm saying, in Mahwah, it is a lot of extra work but they are doing it and they will be evaluating the objectives and everything. I think it's an excellent thing and the morale is very high up there.

SENATOR PARKER: Are you affiliated in any way with the Commissioner or anyone in the Department?

MR. KERSTEIN: No, but I am involved very much in the whole idea of the global education aspect. I belong to a number of non-profit organizations such as the United Nations Association and things like that where we are involved in seeing more global prospectives brought into the school.

SENATOR PARKER: By whom are you employed?

MR. KERSTEIN: I am employed by Federal Paperboard. I am a national sales manager and their headquarters are in Montreal, New Jersey and I live in Mahwah and most of my work is done in Bergen County.

SENATOR PARKER: Thank you.

SENATOR GREENBERG: Thank you very much.

MEMBER OF THE AUDIENCE: Mr. Chairman, I must enter a protest here as a point of information. As has been the case of some people who have testified before this committee, there are conflicts. The very important question just asked by Senator Parker--

SENATOR GREENBERG: Just a second. You are excused, Mr. Kerstein. Thank you very much. If you have testimony that you want to give this Committee, I'll take it. You can come back up, sit down at the microphone. You have already testified and we will be happy to hear you again, but I don't want speeches from the floor with regard to people who have testified. You are welcome to come back up and testify.

MEMBER OF THE AUDIENCE: I wasn't about to give a speech, Senator. I was just going to give you a point of information with regard to Senator Parker's question.

SENATOR GREENBERG: We will take that point of information from here, not from the floor. The next witness will be Carole Schoen.

C A R O L E S C H O E N: Thank you Senator.

SENATOR GREENBERG: Mrs. Schoen, I notice that you are represented to come from or speak on behalf of Parents for a Quality Education, is that true?

MS. SCHOEN: Yes.

SENATOR GREENBERG: And do you, in fact, speak for that organization?

MS. SCHOEN: Yes.

SENATOR GREENBERG: Would you please identify it and where it is and what it stands for and also do you have a copy of prepared text or not.

MS. SCHOEN: It is a long story. The copies are still back in Milford with somebody who was going to leave them and didn't.

SENATOR GREENBERG: You can submit them to the Committee aide at any point and any synopsis of that that you can give today would be appreciated.

MS. SCHOEN: Parents for Quality Education, a local group concerned with the quality of public education, is against the reappointment of Commissioner Burke because he has failed in more than one of his responsibilities. However, on the local level, one of the most serious failures is Commissioner Burke's failure to uphold the T & E law as stated, "A thorough and efficient system of education includes local school districts in which decisions pertaining to the hiring and dismissal of personnel, the curriculum of the school, the establishment of district budgets and other essentially local questions are made democratically with a maximum of citizen involvement and self-determination." Fred Burke has failed to enforce this law and thus has failed to carry out one of his most basic functions of that office, that of upholding the law. In fact, what he supports is minimum involvement. His position is that citizen involvement is restricted to election of local board members and attendance at their meetings. At some districts, and ours is one of these, the board of education does not run the district. It is, instead, run by the employees, the chief administrator and/or teacher union representatives. There is, in this situation, no possibility for the citizen to have meaningful input to public education. There is no opportunity to speak for the children of the district. The citizen or parent has just as little influence as he had before the new T & E law was passed, almost four years ago. The success of quality public education requires equal sharing of philosophies and knowledge of citizen, parent teacher and administrator. This obviously can not happen with Fred Burke as the Commissioner, for he has proven his inability to deal with enforcement of this law. Please do not allow a continuity of failure. Thank you.

SENATOR GREENBERG: Thank you. Senator Maressa?

SENATOR MARESSA: No questions.

SENATOR GREENBERG: Would you please tell us--perhaps you did and I missed it--the nature of the function of the organization that you represent?

MS. SCHOEN: Okay. We are a small group, approximately two dozen people, who formed five years ago to present to the board of education those weaknesses which we saw as parents of children.

SENATOR GREENBERG: Are you from any particular geographical area?

MS. SCHOEN: We are from the Westwood Regional school district, Bergen County, Township of Washington and Westwood, approximately 6000 pupils.

SENATOR GREENBERG: Thank you very much.

Dr. Eugene Bradford?

EUGENE BRADFORD: Thank you for the opportunity to speak today. My name is Dr. Eugene J. Bradford. I am the Superintendent of Schools in Caldwell-West Caldwell. I speak today for myself, not for my board of education nor for any organizations to which I belong. However, I also speak as one of a three member group that was asked by the Commissioner of Education to review the offices of the county superintendents of schools. So far, we have reviewed eight of those offices and it is on that basis today that I wish to make and direct most of my remarks.

Perhaps I should begin by indicating the charges that were given to us by the Commissioner concerning the work that we were to do. The Commissioner asked us to find out effective are each of the offices in carrying out the responsibilities that were given to them particularly under the T & E law; what has been done well in those offices and what has not been done well; and what factors have prevented the most effective achievement of the objectives of the T & E law and what processes should be modified, deleted, replaced, etc.; and what improvements could be made for the next year.

SENATOR GREENBERG: Doctor, you had better not tell us about Burlington, Camden or Essex.

DR. BRADFORD: We have done some of those, yes. As we were asked to do this, the three of us involved in this, Dr. Kentribone, who is the Superintendent of Schools in Vineland and before that Superintendent of Schools in Camden, and Dr. Sam Aboff, who is the Superintendent of Schools in Elizabeth and myself, all three of us, before we assumed this responsibility, asked a very pertinent question for all of us, and that was the integrity of our assignment. We were assured and it's been carried out to this date that there would be no interference with anything that we were to do. All the information that we received would be kept private and confidential and any information that was to be sent to the Commissioner about our observations would not identify individual sources.

SENATOR GREENBERG: Doctor, would you tell us what the relevancy is of your analysis or report of what you have done.

DR. BRADFORD: I am simply reporting that all of the 21 commissioners are representatives of the Commissioner of Education and carry out for the Commissioner his responsibilities in the county. They carry out the monitoring responsibilities of T & E, the review of budgets. My summary, if you would like it that quickly, is simply that the offices have been carried out beautifully, the people representing those are highly professional and that the responsibilities have been very effectively done in those county offices. We reviewed particularly the T & E responsibilities as well as busing, transportation and all the rest of those activities, and I think the Commissioner is well represented in the counties by the officials in those offices. I was pleased-- it was my first time to have that intimate a look at the county offices and I was most pleased. We did make some suggestions to the Commissioner and he was responsive to those suggestions and all in all the result of our study has been, I think, to confirm the opinion that the Commissioner is doing a good job and certainly should be reappointed and that his officials carrying out his jobs in the 21 counties are doing an effective job.

SENATOR GREENBERG: Doctor, I don't mean to minimize the significance of what you have done or what you are doing or will do. I am just suggesting that, in fact I know, that the Senate Education Committee would be most interested in the contents of that report, but that has to go to the question of what's happening under T & E, etc. and what we are interested in at the moment is the relationship between that and Dr. Burke and whether or not there, in fact, should be confirmation of his appointment and that's why I wanted the bottom line that you just gave me.

DR. BRADFORD: Well, the bottom line is that the people that represent the Commissioner and really carry it out, the operational officers of the Commissioner, are doing a good job. They are monitoring what they are supposed to monitor and they have been effective in it.

SENATOR GREENBERG: Alright. Senator Maressa?

SENATOR MARESSA: Is this as a result of his influence?

DR. BRADFORD: Yes. He is very aware of what is going on in the counties. I take great pleasure in the fact and bring it to your attention that he was secure enough to ask for an unbiased opinion from a peer review group. That took a lot of courage and I think it is indicative of his willingness to listen to people and I have found him so.

SENATOR GREENBERG: Senator Parker?

SENATOR PARKER: Were you funded in order to do an in-depth study?

DR. BRADFORD: No, it was purely expenses.

SENATOR PARKER: Were you given time off from your school district, your school duties in order to make the evaluation on an in-depth basis?

DR. BRADFORD: One of the days only. The rest of the time was done on vacation time. I did all the reading--we received voluminous literature--that was all done at night and on the weekends.

SENATOR PARKER: A couple of the witnesses have been critical of citizen or parent participation and the lack of it. Did you find any problems with the participation that is required by T & E, that the parents and the citizens of the community participate in the preparation of the plans for T & E for any local district?

DR. BRADFORD: As far as we were able to ascertain by reading the records and reading the minutes of meetings, every community had a parent involvement in the original setting of the goals for each community. In some instances there was as many as two or three hundred out and in some communities the interest was very light, but there was an opportunity for them to participate. In fact, I think in one or two communities there were only one or two persons present, but that was not the Commissioner's problem. In our area, in Essex County, our numbers were in the hundreds.

SENATOR PARKER: Thank you.

SENATOR GREENBERG: Thank you very much, Dr.

Dr. Walter L. Marks?

W A L T E R L. M A R K S: I am speaking on behalf of not only myself and the administrative staff of the Montclair public schools, but I am also speaking on behalf of the Montclair Board of Education.

SENATOR PARKER: Did they authorize you to speak on their behalf?

DR. MARKS: Yes, they did.

SENATOR PARKER: Did they take a formal vote?

DR. MARKS. Yes, My comments will take approximately four minutes. These comments that I offer are in support of the renomination of Dr. Fred Burke as Commissioner of Education and you have heard much about Montclair this morning, but little about the Commissioner by one of our citizens.

It has become popular recently to lay the collective ills of New Jersey education at the feet of Fred Burke, as though these problems that took decades to develop can be blamed on a commissioner of education who arrived in New Jersey a short five years ago. Older school buildings in urban areas such as Newark and Camden and other urban areas did not suddenly need major capital repairs overnight. Rather, they were allowed to deteriorate by local boards of education and superintendents, for many years to the point that it is questionable whether they should be repaired or torn down and begin again.

A very recent concern about drugs in our schools implies that this is a new problem that has developed since Dr. Burke came to New Jersey, when in truth, educators and parents have been trying to stop this overwhelming trend for many years.

Poor student achievement is not a new phenomenon. For as long as there has been formalized education, there have been those who can not learn without special help and the poor reading, writing and math skills of college freshmen is not just a New Jersey problem but rather a pattern being seen across the country.

These problems are the direct reflection of many social ills and they can no more be solved by one man than can problems of poverty, poor housing and adequate medical care for broken families. They should be the concern for all of us, parents, educators, businessmen, legislators and law enforcement officials. At a time when our problems have been clearly defined for us, we should be working together to support those who are trying their best to improve matters, rather than looking for a place to lay blame. I am heartened by the concern and attention paid to these problems by the State Department of Education under Dr. Fred Burke's leadership over the past five years and I feel that it would be unfortunate to disrupt this process just when the effects of new programs started by him and his Department will begin to be felt. The ills of our schools did not occur overnight and they will not be solved overnight, but I have seen the beginning of what could be real progress. For example, over the past five years Dr. Burke has had the responsibility of putting into effect the sweeping changes called for by the "Thorough and Efficient" legislation, changes that affected the public schools of the State in a very short time more than any other single influence. The sheer size of the reform act itself made the initial implementation of T & E an almost unmanageable job. It is easy to look back and say we might have done some things differently, but we can say that T & E is off the ground and moving in the direction it should. Through the leadership of Dr. Burke, the public schools have been provided with a framework for future planning. They have been given guidance in setting goals and objectives and by the way, Senators, when Dr. Burke came to this state, many local boards and superintendents didn't know the definition of "goals and objectives". We have at least, now, in 600 plus districts, we know what goals and objectives are.

Under Dr. Burke's leadership, the State department has had a profound effect on school finance in New Jersey, for he has presided over a department during a period of the most severe financial crisis education has ever faced in this State. Indeed, it began when we had to bring the public school system to the crisis of July of 1976, when the court ordered all public schools closed until constitutional means could be found to finance them. Never before had anything like this happened on a statewide level in this country and there were no precedents to guide Dr. Burke or local superintendents or boards, and the pressure has continued as the Commissioner has had to implement an entirely new system of financial accountability to comply with the T & E legislation. Not the least of these pressures has been the responsibility of making difficult decisions concerning cap waivers, decisions which are bound to alienate taxpayers on one side and the educational establishment on the other. The Commissioner has had the almost impossible job of coordinating curriculum planning with budgetary accounting. Under his direction schools in the State have been developing and will implement next year the program planning, budgeting and evaluation system and he has had to introduce this process by which educational output could be measured in some way and then relate back to the dollars spent on those programs.

In short, Dr. Burke, in my judgement, has been forced to move education in the State in the direction of remedying past deficiencies and at the same living with greater fiscal constraints.

Under Dr. Burke's stewardship, public schools have maintained local control, but the level of supportive services coming out of the State Department has increased. The move to decentralize services from Trenton to the county offices has brought the resources of the State Department closer to the local level. The Educational Improvement Centers, valuable resources to local educators, have been increased in number and expanded in services and we are now moving toward the concept of the educational services commission on a county level. This educational service commission will allow school districts to maintain local autonomy while unifying to provide more services at reduced costs.

In the area of providing equal educational opportunities to all students, better known as desegregation-integration, Dr. Burke's administration has moved, in my judgement, in a well thought out, less disruptive, but forceful manner. The integration of schools has remained a top priority and New Jersey can still say proudly that there has never been a district in the State under court order to desegregate. I appreciate this opportunity and thank you.

SENATOR GREENBERG: Thank you.

SENATOR PARKER: In that regard, Doctor, Ms. Simmons indicated that the public and citizens were not involved or participated in that program in your school district.

DR. MARKS: As I've sat here this morning, I appreciate the job you have of sorting out fact from fiction. Just to give you an example of that, there was a lady who spoke from our community at a hearing before the disputes and controversy, that was one of the contentions. There was a lengthy hearing. We presented our side and they presented theirs and there was no basis for the facts on that statement made and that is documented. There was all kinds of citizen participation.

SENATOR PARKER: I'm referring more to the desegregation plan.

DR. MARKS: That's what I am referring to. There was a hearing conducted by the Disputes and Controversies.

SENATOR PARKER: When was that?

DR. MARKS: About three years ago. We went to a voluntary integration plan from a forced busing plan. We were asked to do that by the Commissioner, by the way, and of course, he supported it and you might come to Montclair sometime and see that.

SENATOR PARKER: Except for the disputes, when the matter was done and the plan was adopted by the board, it was, I assume, done in public forum and was the public permitted to participate and discuss this?

DR. MARKS: We had, over a period of about eight months, a number of public hearings on the plan, before the board ever adopted it. In fact, there was about eight plans before the board and there was a hearing on all of them. Of course, we were under the Sunshine Law and everything we did was public and it was adopted at a public meeting.

SENATOR GREENBERG: Thank you very much, Doctor.

DR. MARKS: Thank you, sir.

SENATOR GREENBERG: John Hawus? (no response) Not present. Paul Tractenberg? (no response) Not present. Joan Corbet?

J O A N C O R B E T: Good afternoon, gentlemen and thank you for permitting me to testify.

*My name is Joan Corbet. I am a member of the Board of Education in Westfield, New Jersey. The Board is extremely grateful to this forum for permitting us to testify.*



Westfield has long demonstrated a commitment to excellence in education. Before the T & E law came into existence, this district had clearly established process goals. Three of these goals are relevant to this hearing:

- "Recruit, develop, and retain well qualified staff.
- Develop a strong management team.
- Establish and implement procedures for evaluation and accountability of personnel and programs."

The district personnel policy is likewise direct and definitive:

1. "To develop and follow strategies and procedures for personnel recruitment, screening, and selection which will result in employing the best available candidates i.e. those with the highest capabilities, strongest commitment to quality education, and the greatest ability to implement the district's education program."

Staff members new to Westfield are chosen with great care and deliberation. Administrative openings are announced not only to staff but to outstanding graduate schools throughout the United States. Competition for positions is keen; evidences of the highest qualities are sought.

Once staff members are employed, they are evaluated by their superiors. All administrators are judged by their performance of objectives, and their salaries, in part, are based on meritorious performance.

I respectfully suggest that if our district values so highly the selection and evaluation of professional staff so should the State of New Jersey.

Does anyone deny the need for an outstanding individual to serve in the important post of Commissioner of Education? Should not the State of New Jersey, like school districts throughout the state, measure the abilities and accomplishments of its educational leader against similar accomplishments of other educators throughout the United States?

Should not the state's top position be filled by one whose quest for excellence and whose record of leadership is unquestioned? Should not those charged with recommending an individual to implement the laws regarding education open the position and institute a nationwide search? For only then, will candidates from within and from outside be able to offer their record of accomplishments, their commitment to excellence, and their aloofness from politics.

We in Westfield read with alarm newspaper reports concerning the present Commissioner by the Governor and others. It is not our function to evaluate him. It is within our right to ask for an appraisal of his past performance. This appraisal should then be measured against the performance of others who may apply.

We ask you, the Senate Judiciary Committee, not to make a sham nor a mockery of this appointment. We in the local communities cannot demand excellence of our students, of our teachers and of our administrators unless we see evidence that the Governor and the Senate seeks excellence in the highest position in the state.

As John Gardner wrote, "...excellence implies more than competence. It implies a striving for the highest standards in every phase of life."

Lest you tune out this request because it comes from a suburban school district, and urban revitalization is a serious goal for this legislature and administration, may we ask you to join with us and Jesse Jackson to develop a state-wide strategy to

"Push for Excellence."

Thank you very much.

SENATOR GREENBERG: Thank you Ms. Corbet. I assume you speak for the board.

MS. CORBET: Yes, I speak for the entire board.

SENATOR PARKER: Before you go, do you support or take any position in the renomination?

MS. CORBET: I feel that I could not support the renomination of the Commissioner. I think the qualities of leadership and excellence that we find would be necessary have not been evidenced.

SENATOR PARKER: You made reference to comments by the Governor and others. Maybe I'm not familiar with those.

MS. CORBET: I think that the overriding comment that concerned us the most was the comment by the Governor, whether made facetiously or not, that the appointment of the Commissioner was made because he has made very few mistakes and he hasn't gotten into too much trouble and I think those of us who have standards of excellence in education are looking for more than somebody that hasn't gotten into a lot of trouble.

SENATOR PARKER: Maybe that's just more than leadership of a commissioner's office.

MS. CORBET: I think those states that have developed a processing in which the educational direction is removed from the realm of politics are those states which we ought to emulate.

SENATOR PARKER: Just going through what Dr. Marks just indicated and some of the others, the difficulty in trying to get T & E and the funding, and really the problems, the horrendous problems that we have been through in the last couple of years, do you think it would be possible for us, with our system the way it is now going, and under the present leadership throughout the State, that it would be possible to get somebody more familiar and could do a better job and bring in a higher set of standards to do the job?

MS. CORBET: I certainly think that we can look for that somebody, yes. I think we can certainly do more of a nation-wide search for an excellent educational leader. It may very well be that Commissioner Burke is the only person who is available to you at this time, but I think that the concern of those districts that are promoting excellence and are trying to see their students strive for excellence is that there is leadership at the State level that is willing to accept less than excellence. It is willing to accept mediocrity.

SENATOR GREENBERG: It is interesting that you should say that because, others or at least one that I recall, who testified against the nomination, indicated one of the reasons is that we should make a thorough search of someone from New Jersey in order--I think he said that there must be more competent people in New Jersey, indicating, I think, that the Commissioner was not a New Jersey native. I share your view that the boundaries of the State should not be the boundaries of the search and I think I should also add, at least in my judgement, the remarks attributed to the Governor in connection with the alleged reason for the appointment were made more in jest and facetiously than they were of a serious nature. Frankly the remarks of the Governor and any other people or individual should not be despositive as I have said of this Committee's action with regard to this nominee. I think that when you are in an area as the Commissioner of Education that the job is so important for future generations and people who live in this State, that the normal considerations of a Governor having an almost automatic right of a cabinet of his own choice, I think, is subject to greater scrutiny in a case such as this and I think that's what this Committee intends to do.

MS. CORBET: Thank you very much. I think that is precisely the point we had hoped to make in our testimony.

SENATOR PARKER: I have one further question.. Is your district one of those that is having trouble with the caps and the limitations on spending and not being able to provide what you feel is the thorough and efficient education because of that?

MS. CORBET: I would accept the first half of your question, but not the second half. Yes, of course we are having trouble with our caps. Of course we are having trouble accomodating the kind of program we would like to do with the financial restraints that have been placed on us, and of course we are very concerned with the

feeling that education in New Jersey is going to bring the top districts down to a medium level and allow the lower districts to come to a medium level. I think, at this point, we are still providing a thorough and efficient education. Our future planning projection, though, concerns us tremendously, as to whether or not we would be able to continue doing that.

SENATOR PARKER: Well, your district is one of the ones that come to mind as one of the wealthier districts and I worry about bringing that down and the problem of the leadership and the statements by the Commissioner that he is not going to allow cap waivers in those so-called affluent districts. I wonder if that had any basis for any part of your opinion here today.

MS. CORBET: No. I think the affluence of our district can be looked at in several different ways: affluence in terms of income per family; affluence in terms of tax rates; affluence in terms of average spending versus the New Jersey State average. While residents in Westfield may be affluent income-wise, the community is not affluent when it comes to the formula that is used to devise the caps, since we don't have a large number of rates and since we spend just above the state average. So, in that sense,--

SENATOR PARKER: You would be one that if you did have problems, he wouldn't give the waiver to you or theoretically, you wouldn't get a waiver.

MS. CORBET: Probably. I think that we are concerned about the fact that over the years we have been very outspoken and so we decided not to go for a waiver. We thought that we had lost the case before we made it.

SENATOR PARKER: Well, I'm very much concerned about it, as I expressed earlier, and I wanted to see what your feeling was, coming from Westfield, which, in my mind, puts you in that category.

MS. CORBET: We have, over the years, had to eliminate one program and tighten up on some staffing. We are still running a thorough and efficient program. It might not be quite to the level that we would like to see and quite to the level that some of the parents would like to see, but I think that we are more concerned with our future projections than we are with our current situation. We really see, five years down the road, that the caps would put a district like this in a position where we really would have to impact our program offerings.

SENATOR GREENBERG: Thank you very much. Sandra Zaccaria?

S A N D R A   Z A C C A R I A: I am here to speak to you primarily as a parent, who has been very, very much involved in the citizen movement in education for a very long time. In terms of the proceedings that we have had here for the three days--

SENATOR PARKER: Excuse me, is that in Cumberland County?

MS. ZACCARIA: No, you're close. It's the very, very closest tip of Atlantic County to Cumberland.

SENATOR GREENBERG: Would you tell us please what the Educational Study Group is?

MS. ZACCARIA: It is a small group of local parents who have worked over the years to build citizen involvement in the public schools, to inform the community about educational concerns and issues.

SENATOR GREENBERG: And you speak on behalf of that group?

MS. ZACCARIA: Yes and I would like to mention also that it is a member group in the organization known as ACE, the Association for Citizens in Education.

SENATOR PARKER: Excuse me. What township is that? Could you identify the township?

MS. ZACCARIA: Yes, it's Bueno Boro. The school district, since the focus of this is education, is Bueno Regional School District, which encompasses Bueno Vista Twp. What to leave out and what to go on with, I guess, is the problem.

SENATOR GREENBERG: Well, is there something prepared that you have?

MS. ZACCARIA: Yes.

SENATOR GREENBERG: So, you know that you can leave that?

MS. ZACCARIA: Well, I can, but I would like to make some of it public.

SENATOR GREENBERG: I welcome you to do that, but what I am saying, whatever you have written will be taken in toto and incorporated in the record.

MS. ZACCARIA: Okay. Concerning the reappointment of Commissioner Burke, I'm afraid that I will have to stand as opposed to his renomination. I've given a lot of thought to the positive presentations here and have a lot of respect for the difficulties of the man's position. However, throughout all the testimony, I have to say that I have heard nothing of the Commissioner's specific accomplishments over the last five years, nor have I heard anything about his educational goals for the next five years. We have listened for three days and still do not know what his philosophical positions are on educational issues, nor do we have any outline or specific plans which will address the areas of continued concern that were identified by the Commissioner in his presentation before this Committee.

In contrast, I find the evidence in the testimony of those opposing Commissioner Burke's renomination to be most specific, detailed and well documented. I have nothing to add to those cold, hard facts that stand as testimony to Fred Burke's performance as Commissioner of Education. However, there has been a lot of discussion about the question of leadership. No one has yet defined the quality and nature of leadership. Everyone has agreed that it is the key component to the job of Commissioner and I would like to consider what kind of leadership the Commissioner of Education should provide and has Commissioner Burke provided that leadership? I would like to do that, however, through my own experience in my own district over the past eight years.

I would like to make some personal comments and observations about our public schools, education and the need for leadership that will result in progress and change. I speak as a parent who has been in pursuit of quality education and citizen participation and involvement in public education for eight years. I began by attending local school board meetings when the oldest of my three children started kindergarten. For the past year, I have been attending State School Board meetings and actually missed fewer than Commissioner Burke himself. I have attended dozens of conferences on special education, gifted education, individualized instruction, early childhood education and most recently, a conference on violence and vandalism in the public schools.

I not only am involved in education at the local level, through the Educational Study Group, but I am Vice-President of Advocates for Education and I am Vice-President of ACE, the Association for Citizens in Education. My experiences with public education have been shattering and depressing. I would like to explain why. As I walk my child to school on her very first day sharing in the excitement and enthusiasm of her new adventure, I learned quickly and harshly that parents are not welcome and would share very little of my child's new world with her. Can parents visit the classroom? Only with the teacher's permission, upon adequate advance notice and with good reason. Can my husband come in once a week and work as a volunteer aide in his daughter's classroom? No, it might distract the children and interfere with the teacher. What of the parent whose child was having difficulty in school, who wanted to visit that child's classroom, but was repeatedly refused by the teacher. The parent then filed a grievance which ultimately reached the school board. A hearing was scheduled, postponed and then

rescheduled for a date in July. Having no other recourse, the parent walked to the classroom uninvited and was threatened with a possible call to the police. Then, we wonder why the public feels alienated from the schools; why parents are not interested in their children's school experiences. How can there be interest without involvement? At public board meetings, local board meetings, our questions about the schools were met with intimidating challenges as to our right to know, be informed and involved. Were we a legitimate parent group, which leads one to wonder what is an illegitimate parent group. We had to argue for our right to speak, receive agendas and minutes and use the public schools for community meetings. Where is the reality that the public schools belong to the public and must be open to public use and public scrutiny? When the operation of schools is so costly, with so little return in student performance, fiscal and educational accountability and community use, is it any wonder that there is so little support for public schools today? The task of being a concerned and caring parent involved in your child's education is a frustrating and dehumanizing interaction.

Now, let's step inside the schools and feel the structure and environment in which the child is immersed for six hours every day over thirteen years of his young life.

SENATOR MARESSA: Mr. Chairman, may I interrupt for a second? Ms. Zaccaria, did you complain to the Commissioner about this and fail to get a response? I don't see the connection between all these problems, which I'm sure exist, and whether or not we should confirm the Governor's nomination for Commissioner.

MS. ZACCARIA: Perhaps if I was allowed to continue, you would.

SENATOR MARESSA: Well, I've been waiting for about three or four minutes to see a connection and I don't see one.

MS. ZACCARIA: Those specific things were not brought before the Commissioner. I have written letters concerning other things involved with trying to remove a tenured teacher from a classroom.

SENATOR MARESSA: In other words, we want to know what the Commissioner did wrong or right.

MS. ZACCARIA: Okay, but I would like to suggest that all of these problems grow out of the absence of leadership.

SENATOR GREENBERG: Our problem, you see, is that you have a local board of education. Is it appointed or elected?

MS. ZACCARIA: It is elected.

SENATOR GREENBERG: And you belong to a group of concerned parents, so I assume that you have been vocal at the local level, and if you have a local board that is not responsive to these very basic needs of parents, with which I sympathize, the first thrust is to take action at the local level. It is related, in a sense, to the activities of the Commissioner, but as has been testified to by at least twenty people, so far, not every ill in a local district can be laid at the doorstep of the Commissioner. If, in fact, the Commissioner did not function in specific areas, we want to hear about that. We have general testimony with regard to his leadership or lack thereof and any more that you wish to give, I would like to hear, but the problems, each individual problem at each local school district, I guess we could sit here forever.

MS. ZACCARIA: Yes, but what I would like to suggest at the culmination of all of this is that as a parent involved in education all of these problems are addressed to in T & E.

SENATOR GREENBERG: Not violence in the schools and some of those things.

MS. ZACCARIA: Oh, yes it is, if I could please continue.

Now, let's step inside the schools and feel the structure and environment in which the child is immersed six hours every day over thirteen years of his young life, about which you have no choice, because school attendance is compulsory. Are the children respected as individuals, each with their own learning style? Are they motivated to learn with encouragement and praise? Is there acceptance of both success and failure without ridicule? Is discipline constructive rather than punitive? Are they encouraged to be creative and spontaneous or are they taught the skills of problem solving or divergent thinking? Are they permitted to participate in the decision making process that affects their daily lives? Are they treated with compassion and dignity? All of these are found in T & E. They are all itemized and listed in T & E. Is there a feeling of mutual respect between the teacher and the child? It is my sincere belief, having been involved with parents in South Jersey for a long time, that the answer to these questions in most schools would be a resounding no. Instead, we would see children performing their work tasks like automated robots, teachers who focus on the number of wrong answers instead of the number of right answers and project failure on a child because he does not learn as fast and does not conform to the group norm. We would find first graders divided into groups already labeled, establishing the pecking order of who will be the doctors and who will be the dropouts. We would see children herded around in army fashion only to stand here and wait after hurrying so very fast. You would see our teachers shouting, demanding and commanding, speaking at children instead of with them or to them. We would see uniformity and conformity and we would see children lined up with their noses against the wall for punishment. The cause for vandalism and violence in the schools springs from an environment that is repressive, punitive and dehumanizing, where children are not even accorded the basic rights found in the Constitution, which we all enjoy. The answer to violence and vandalism is not harsher punishment and stricter discipline, but rather respect for every child as a person, a loving and accepting environment and a caring and dedicated professional. This is all in T & E.

However, the saddest chapter in the story of public education is when it fails to educate the child. We have heard the devastating statistics of our minimum basic skills test, but seldom are we reminded of the tragedy at the other end of the spectrum. Before entering our child in school, we had her tested and learned that she was performing two years above her chronological age. In kindergarten, they taught her her colors, numbers 1-10, and the alphabet. In first grade, they taught her to read, something she had already been doing for a year. By the end of second grade, she was doing nothing in school and no one seemed to know why, but she did. As a 7 year old, she said, "Mommy, why do I have to do the same papers over and over again, every day, I already know how to do these things. I want to know how to do new things. That's why I go to school." The schools response was that they could not make exceptions for individual children. The child entered school with an IQ of 156 and with every year of education, her IQ slowly dropped. When pressed to develop a program for gifted education, the superintendent stated that "A community like ours, which is a small, rural community, has no gifted children." Then, a miracle happened in the form of legislation, known as T & E, because it specified that--and this is from, directly from the T & E, the early T & E, and that's the distinction, an important one--that, "districts shall develop individual talents and interests and serve diverse learning styles to motivate pupil achievement, to provide educational opportunities for exceptionally gifted and talented pupils and to provide specialized and individualized educational experiences to meet the needs of each pupil." With the anticipation of that mandate and in the interest of our child, we had no recourse but to threaten to sue the district for failing



to meet her individual needs and to provide a thorough and efficient education as spelled out in the administrative code interpreting the Public School Education Act of 1975. This was not necessary. The next year, the district started a Saturday program for superior students. At the beginning of fourth grade, we found it necessary and at the recommendation of the child study team, to remove our child from the public schools, because they just had nothing to offer and because we could no longer sacrifice her future and the promise we saw in her capabilities.

The parents and citizens of this State have been provided with a most sensitive instrument that will make education fulfill the promise it holds to the children of our State. When T & E was first introduced, I attended several conferences at EIC; which were about T & E; which were about goal setting, which was an important part of T & E; which were about developing standards, goals for children on a much more individualized basis than T & E exists today. I work with my district and day by day saw T & E become less and less and less the tool that it was. I participated in that watering down process. Therefore, what I'm suggesting is that the leadership that we need now in New Jersey will definitely speak through all that is there in T & E, will speak to citizen involvement, will speak to the development of a humane and positive environment in our public schools, will speak to quality education that recognizes the needs of all children to grow and develop to their fullest potential. We need a leadership that will come up with positive, constructive and creative plans. I have not heard any offered yet by our present Commissioner. At this point in time, I have to say, four years later, I still find public education the means to ameliorate all children from mass mediocrity and unfortunately this Fall, I don't have much choice but to take my other two children out of public schools. Thank you.

SENATOR GREENBERG: I find it interesting and I'm sure that the next commissioner, whoever he is, will hopefully read the transcript of these hearings, because your views are probably shared by a great many people in terms of what the objectives of education should be and are. The ultimate question of whether this Commissioner is capable of accomplishing them or sufficiently attempting to do so is yet to be resolved. I thank you for those thoughts. Senator Maressa?

SENATOR MARESSA: No questions.

SENATOR PARKER: No questions.

SENATOR GREENBERG: Thank you very much. Mayor Kenneth Gibson?

K E N N E T H     A .     G I B S O N :     Good afternoon, Senators, I appreciate the opportunity to be with you.

SENATOR GREENBERG: We thank you for coming.

MAYOR GIBSON: Senators, I understand the hearing procedure. I would like to submit to the Committee Aide, for the record, the entire statement that I intend to make, and we have other copies available, if they are needed.

SENATOR GREENBERG: It will be incorporated into the record, and available for all Senators on the Committee and otherwise.

MAYOR GIBSON: In case there is any doubt concerning why I am here, I am here to support the re-appointment of Commissioner Fred G. Burke. I thank the panel for the opportunity to do so.

Undoubtedly you have heard, or will hear, testimony that will deal with the specifics of Dr. Burke's abilities as Commissioner - chapter and verse testimony attesting to his unquestionable abilities as Commissioner.

On the other hand, you have heard, or will hear, testimony which addresses related tasks which confront us as a State and Nation, tasks which must be undertaken with thought and creativity in order to improve the quality of education.

I know this panel will not confuse the two separate issues. The all-encompassing problem of improving the level of education and the abilities of Dr. Burke as Commissioner are two distinctly different issues. They are related, but not the same. An excellent driver and a broken-down truck can be related, but they are certainly not the same. Some people would have you blame the driver because the truck is moving slowly or not at all, without considering why the truck is malfunctioning in the first place.

I went to Newark Public Schools. I received a good education, as did most other students, in those schools at that time. Approximately two decades after my graduation from high school, Fred Burke became Commissioner. He became Commissioner at a time when students in Newark were not receiving a good education. He became Commissioner at a time when students in Newark and in many other school districts were being graduated without proficiency in basic skills. Why?

This is the real question facing our State and Nation. Anyone who says he or she has the complete answer to this question is suffering from an incurable case of egomania, self-delusion - or is just a chronic liar.

Never mind having the answer to the problem of education in our State; who do you know who can completely resolve the matters of local control versus the State court and legislative mandates; or tax relief while providing school programs and physical improvements; or categorical funding as opposed to equalization aid; or declining enrollment versus rising costs due to inflation?

If anyone here knows of such a person, the City of Newark will make that person an offer he or she can't refuse, and take that person back to Newark today.

Wishful thinking aside, we have had a man come to Newark to help us continue our efforts to improve the education of our youngsters, while these other matters, many of which are deep-rooted in bare fisted politics, are argued.

I trust that one is not required to make completely arbitrary judgements to be Commissioner, because Dr. Burke has been firm without being arbitrary when he has been involved with the Newark School district. A person who never listens will never learn. Commissioner Burke has listened to many presentations by the Newark Board of Education; and, consequently he has learned the weaknesses of our

district, as well as our strong points, and we do have strong points. Thus, Commissioner Burke has been able to carry out the mandates of the State with empathy.

Given the magnitude of the problem of education in New Jersey, decisions reached and directives given with a sense of empathy make far-reaching decisions and directives more meaningful.

I am not an educator. In fact, there is a school of thought which contends there are no educators - only people involved in the learning process, with a person or persons responsible for giving directions to that learning process.

Commissioner Burke has given intelligent direction to the learning process in the State of New Jersey.

It is difficult to solve a problem unless you understand the magnitude of the issues which are involved. It is virtually impossible to solve any problem until one is willing to admit a problem exists. In the State of New Jersey many people were reluctant, if not openly opposed, to admitting there were problems with education - that is, outside the urban centers.

Commissioner Burke's minimum basic skills tests gave measurable results, indicating the strengths and weaknesses of our students in reading and math. Now, we have a fix on these problems in the primary and secondary levels. Many people would have preferred that we remain ostriches, but Commissioner Burke pulled our heads out of the sand and made us look full square at the problems. And, it was not only parents and concerned citizens to whom he addressed the results, but to our teachers as well. Commissioner Burke has insisted that the educational tool which has been developed and used under this direction be carried to its next logical step: That of being part of the solution for learning in the classroom. The necessary diagnostic data for remedying a problem of far-reaching proportions have been made available to each of the school districts.

Once again, through the leadership he exerts, he is working closely with the people who actually run our schools to make sure that this basic information, the results of the basic skills test, is applied and used in the best educational fashion. It is being used creatively as part of the ongoing task of raising the quality of life which will be available to us all.

Interestingly enough, this particular leadership and support role is ongoing for Fred Burke. The manner in which he has "taken hold" on this very basic problem of basic skills is not a new perspective for him. Dr. Burke knows the importance of interaction among all levels of educators. He established what he calls, in good educational language "an academy" to do just that - and brings superintendents and teachers, school board members and business administrators to the State Department of Education for an exchange of views in small group workshops and seminars.

Many elected and appointed officials never give the City of Newark a chance to exchange views. Commissioner Burke has a bad case of integrity. Speaking on behalf of the citizens of Newark, we hope that this could be contagious in our State. Many a morning, I have read criticisms of Newark, without the elected or appointed official having taken the time to discuss the matter with us before writing the press release. We have come to call them "one shot - cheap-shot headline grabbers."

Commissioner Burke has too much integrity to use this method to make a

name. From my observation, Commissioner Burke is not about the matter of making a name for himself - but about making education better for our children.

If we can imagine education as a sailboat going in the wrong direction, then we all must understand that the sailboat must be set back on the proper course. There are some people who expect that the person at the helm should attempt a quick U-turn. The outcome of this type of helmsmanship is completely predictable: The boat will capsize. Commissioner Burke is a helmsman who knows he must bring the boat about on an even keel - as even as possible. Fortunately, Commissioner Burke has the sound judgement and skills necessary to accomplish this.

The next two or three years are going to be very trying for those of us who have been elected or appointed to deliver basic services to the citizens of New Jersey. I need not take this panel through any litany to prove that this assessment is accurate. We have all heard that testimony. Many of us are satisfied just to say government is "caught between a rock and a hard place."

I know Commissioner Burke is not satisfied with that kind of defeatism. With his capabilities, experience, integrity and empathy, Commissioner Burke will look for - and I feel certain, find - that path which will lead our State through the "rock and the hard place." Thank you.

SENATOR GREENBERG: Thank you very much, Mayor. While you are here, and while I understand your remarks are more expansive than those orally presented, and we will have the benefit of your prepared statement, I wonder if you would mind responding to just a couple of questions which have been raised as a result of prior testimony, especially in connection with the City of Newark.

There has been some suggestion in testimony received by this Committee that Commissioner Burke unjustifiably views the limits of learning capacity, and presumably intelligence, of children in urban areas. In fact, one of the witnesses who testified equated that with a form of racism. On balance, I think what she was saying was that the Commissioner should have a higher regard for the capacities of the center city children and urban children than he does, and that the deficiency which results from that will inure ultimately to a limited learning on behalf of those children. You are the Mayor of the largest urban area in the State, and I wondered whether or not you have a view on that subject.

MAYOR GIBSON: Yes, sir, I do. I think that Commissioner Burke has been unfairly charged - based on some newspaper stories, primarily, related to either a speech he made, or presentation which was taken out of context. If I thought that Fred Burke was a racist, I would not be here testifying on his behalf. I want to make sure everybody understands that.

I think, however, that to use the story that reported that Commissioner Burke had some reservations about the learning capacities of urban center young people, which was, I know, taken out of context is unfair. The unfortunate thing about the society in which we live is that once somebody raises the charge of racism, it is very, very hard to live it down. I think he has gone about conducting himself in a responsible fashion. He has not made the headlines shot in order to correct those kinds of charges. I think based upon what I have seen in the newspapers recently that you can't correct those kinds of charges, because if they are after you they are after you. I think, frankly, as related to Fred Burke in New Jersey, I think there is at least one newspaper which is based in my city which is never going to give him a fair shot. Once that happens--- Some of you have experienced those kinds of things in the past. I don't think that there is anything this particular individual is going to be able to do besides fire that

particular newspaper. I really believe that. Now, I think that is unfair, but unfortunately, sometimes those kinds of charges, especially when repeated every day, are never going to be lived down in the public arena. The unfortunate thing is that professionals in the educational field should continue, in my opinion, to do their job regardless of what that kind of reporting does.

SENATOR PARKER: In that regard, there is a specific charge that he had lowered the standards for the minimum level of competency, or the test requirements in order to pass those, and maybe that is a corollary as to what Marty indicated as the charge of discrimination, or reverse discrimination, that it was done to get them through, and thereby severely impaired or destroyed, or helped destroy the school system by doing that. Can you comment on that? Has that happened? We have gotten some information and I have asked our staff, and we are getting the information, which indicates basically that that was not true, that the standards were set by the Commissioner and the State Board of Education, and have only been set once. I have already gotten some information on that. Would you want to comment on that?

MAYOR GIBSON: I really don't know the details of that charge. I have heard that kind of rumor, but I don't believe it. I would say that the level of performance in Newark has improved in recent years primarily because I think we have been given support in order to manage our system better. We have a long way to go. I don't want anyone here to say that we have solved our educational problem in Newark. We are a long way from it, but we are moving in the right direction, and if we are moving in the right direction under this leadership, I think we ought to continue that direction.

Now, we can argue whether or not we should be going faster. But, I would say to you very, very carefully we are moving in the right direction. And, I don't think that education in the State of New Jersey is ever going to be an issue that is going to be debated without some emotion. Anyone who is Commissioner of Education in this State in my opinion is going to be controversial - if that person does anything, or even if he does nothing, he is going to be controversial. So, I don't think that any Commissioner of Education in this State will ever be anything but controversial, education being a very emotional issue, very emotional service. I think, again, the gentleman we are speaking of has done a very good job for our State, and I think he should continue.

SENATOR PARKER: I just want to comment on that. I do have before me a report on Newark, and the one thing I specifically want to comment on, and congratulate you for, is that I know on the statewide statistics, the poorer districts, a lot of them, are diverting their local effort away from education and into other areas. Therefore, the level of total money and support for the school districts is going down, and thereby aborting T & E.

I see you did that in 1976 when you dropped your local from \$27 million to \$17 million. I want to congratulate you and the Board for bringing it up to \$28 million in 1977-78 and bringing your level up to \$37 million on the local level this time, so that your percentage is continuing to grow. I think that is important. To me it is important, and I think to education generally it has to be important, because if we ever hope to do anything with the Newarks and get them out of their problems, it is to educate their children and make sure the money is going there to educate them. I want to congratulate you on that, because I know you are not in the trend with apparently a lot of the other districts.

MAYOR GIBSON: Thank you.

SENATOR GREENBERG: Mayor, there has also been some testimony received concerning the deficit in Newark. I wanted to await for you to appear, because I wanted to have an opportunity to ask you about that. I have never discussed that subject with you, and, frankly, we have heard that from more than one person. The charge in general is that he knew it was happening, and he never said anything or never reported it until after it occurred, and as a result of that non-disclosure the school system suffered, Newark suffered, et cetera. Can you fill us in on that a little bit?

MAYOR GIBSON: Well, it is not true that that issue had not been discussed before it became publicized. That is one of the problems of publicity, of course. The question of whether or not there was a deficit in Newark schools was discussed for several years. The Commissioner and his staff had raised the issues. The Board of Education in Newark had challenged whether or not there was a deficit. The Commissioner was flexible - I think that is the best word to use - to see whether or not there was going to be a deficit at the end of the year. Once it was realized that there was a deficit, we were given direction, the Board of Education and the City of Newark, to clear it up. And, of course, Boards of Education and staff people not being elected, at least in Newark, tended to request of the Boards the money that they thought they needed to run without regard to the deficit situation. We argued that deficit situation for several years in Newark until the Commissioner put his foot down and said, okay, you folks at the local level cannot resolve it, primarily the Board of Education. You are now directed to resolve it, and you can't come down here and pretend that you are going to resolve it in one year. You must do it--- We were required to correct it.

I think that whether or not we should have been required, in the City of Newark, to do it in the first year is a question. At the same time, we were going through a change in administration in the Newark Board of Education from one Executive Superintendent to another. The debate about budget figures as you all realize when you go through the accounting process at the end, whether or not you have a deficit or a surplus was argued. The incoming Executive Superintendent could not testify to us as to whether or not there was a deficit or a surplus. He plainly argued that he didn't think that he had a deficit.

We gave them at the local level the benefit of the doubt. So, we countered the Commissioner of Education, and we said, we didn't think we had a deficit. In fact, we had a deficit, after all the accounting procedures were gone through. The Commissioner told us to clean it up. Now, we have cleaned it up. In my opinion, better late than ever, and we have bitten the bullet in the City of Newark, not only on the Board of Education side, but on the city side. And we are still alive. The City of Newark's school system is going to function, and the city is going to function. We are fiscally responsible. I think we have been more responsible on the city side than the Board of Education has, but the Commissioner gave us directives and we are following them.

SENATOR GREENBERG: Thank you. I have one last question. I know Senator Parker is interested in this as well. Walter Wexler came in to work with the problems for a while. The Senator just asked me what the present status is, and what is happening in Newark. In fact, we have had some people testify that they recommended a State takeover of Newark's school system.

SENATOR PARKER: You still have the auditor, right?

MAYOR GIBSON: I am not sure whether the State could run it any more efficiently than we are.

SENATOR PARKER: I would hope we would stay out of it.

MAYOR GIBSON: After the Wexler Study, there was a recommendation that the Auditor General be designated for the City of Newark, and that was done. The Auditor General paid out of the City of Newark's State money. The Auditor General is kind of an overseer, financial overseer. His function is to report to the Commissioner on things as he sees them concerning the financial matters. The Auditor General in the very beginning of this whole question of the deficit kept reporting that these books were in a deficit and they don't want to admit it. We at the local level argued with the Auditor General as to whether or not there was a deficit. I think the Auditor General has done his job. I think his reports to the Commissioner were accurate. I think that as an elected official at the local level, we tended to side with our board of education this time rather than accept the report of the Auditor General as being valid.

I have learned a lot from this process, quite frankly.

SENATOR PARKER: Is Walter still the Auditor General?

MAYOR GIBSON: No, Walter Wexler was not the Auditor General. He was a person who conducted the study. The Auditor General was designated by the Commissioner's Office.

SENATOR GREENBERG: Finally, I would just like your thought on the subject. Much of the negative testimony has centered on an alleged lack of leadership quality, I think. There is testimony that the Commissioner tends to waffle. Those were the words that were used. He does not make a decision - evidence of a lack of leadership, and as a consequence, the ship is rudderless, or captainless. You had personal experience with him, obviously, from the testimony that you have given here today. Do you have an opinion for us with regard to your view as to the - and I think you already touched on it, but I would like to hear it - newspaper reporting.

MAYOR GIBSON: I am in general agreement that that is an unfair charge. You know, there are styles of leadership, which we all recognize. I have been charged with the same brush, so to speak. Some of us do things with a lot of charisma, publicity, and others of us do it in a way that still gets the job done, but does not produce that kind of charisma approach.

Commissioner Burke, in some personal experiences, has called me on a number of occasions. He has said, "Mayor, by law, I know there is a difference between your power and that of the Board of Education, and the Executive Superintendent. I do think, however, that you ought to know certain things." He would give me some information. He would make suggestions to me as to how I could help get the job done.

He would say, now, "I can't give you orders. I can't give you directions. I am giving you advice from my office." A person who has no leadership would never do that. In fact, most people never call the Mayor, as I said before, before they make charges and issue directives. The Commissioner always called and always showed me that he was sincere, and had the leadership capabilities, pushed me to do certain things where I frankly did not do them - relative to the deficit situation. And, I think he gave us an opportunity to see whether or not we could clean up our act before he gave us directions.

You know, we could argue whether or not he should have come down with



a heavy hand, and zap the City of Newark and the School Board, but I think he gave us an opportunity to see whether or not we could do it ourselves, and we did not do it and he gave us the direction. That is, in my opinion, leadership, not charismatic leadership, but at the same time, it is getting the job done.

SENATOR GREENBERG: Thank you. Senator Maressa, do you have any questions?

SENATOR MARESSA: No. He has made his point rather clear, and I understand it fully. Thank you, Mayor.

SENATOR GREENBERG: Any further questions? If not, we thank you very much for coming down. We appreciate it.

SENATOR PARKER: Before I leave, I wonder if we can do two things. I have asked John whether we have received any testimony from the PTA and also the State Board of Education, and from other groups. I think, because of the importance of the issue, that maybe we ought to request to invite the head of the New Jersey Parent and Teachers Association, to hear his view. I would be very much interested in that. We have heard many citizens here today, but I would be interested in the major parent and citizens' group, if you want to call it that, organized in this State. It would appear that they are avoiding coming here for some reason, or are somewhat reluctant. I would still like to hear the views of the head of that organization and that State Board of Education.

SENATOR GREENBERG: Well, Senator Parker, you are free, of course, to solicit whatever views you wish. I don't think you have the power, nor do I, to compel these people.

SENATOR PARKER: I know that. I didn't mean to compel them. I did miss the others, and I apologize that I was in an active trial, and I couldn't get out.

SENATOR GREENBERG: I urge you to seek whatever information you want. And, if you want the full Committee support, we can discuss it at our Committee meeting and see if the majority of the people want to do that. But, in the interim, of course, you are free to do that yourself.

SENATOR PARKER: Or maybe John can just inquire whether they intend to or whether they feel compelled in any way.

SENATOR GREENBERG: John, why don't you do that, but indicate that it is being done at least at this moment on behalf of Senator Parker, and if we have to go beyond that, perhaps we will.

It is now two-thirty. Senator Parker has to leave. Senator Maressa has to leave. We have several witnesses yet to go who have not been reached today. And, others who were reached and are not here. So, it is obvious that we will need at least one more day. The date and time, I frankly cannot set until I speak with the other members of the Committee. I would like to have more of them here than we had today, but, those of you who have not been reached, but who have indicated a desire to testify will be notified in adequate time by Mr. Tumulty of our next date which will be within the next ten days, hopefully, and those who have been reached and are not present will also be called by Mr. Tumulty so they know when we are meeting again. That might well be the last meeting, because, as you know, we cut off the list at the end of today of additional people who wish to testify and I think that one more day might do it.

Of course, I am awaiting, the report from the Attorney General which we will have before any final consideration is made of this matter.

SENATOR PARKER: How many here who have not testified today wanted to testify? One, two, three, four. Would it be of any benefit to you to give us your written statement? It might save you the trip coming back.

SENATOR GREENBERG: Senator Parker is suggesting that those of you who wish to do that can do it. On the other hand, if you want to be heard, which you have a right to be, then the Senators have to leave, and they regret that we will have to come back another day. Is that about it?

So, if anyone wants to submit their written statement in lieu of testifying, we will be happy to do that. Otherwise, we will see you at our next session. I thank you very much.

(Hearing concluded)



SUBMITTED BY DR. JOHN DONATO



STATE OF NEW JERSEY  
DEPARTMENT OF EDUCATION  
225 WEST STATE STREET  
TRENTON, N. J.

OFFICE OF THE COMMISSIONER

October 27, 1978

Dr. Fred G. Burke, Commissioner  
Department of Education  
225 West State Street  
Trenton, N.J., 08625

Dear Commissioner Burke:

The Board's independent auditors have completed their review for the fiscal year ending June 30, 1978 and the results of that audit indicate a current operating budget deficit of 3.6 million dollars and an accumulated deficit of 4.6 million dollars.

It is significant to note that the problem began with the school year ending June 30, 1977. At that time the Board realized a current operating deficit of approximately 1 million dollars. This was primarily attributed to the Board bearing the cost of school crossing guards (whose cost of approximately \$600,000 was shifted to the municipality in the subsequent year), as well as the Board of School Estimate rejecting a request by the Board of Education for an emergency appropriation of approximately 1 million dollars.

When the 1977-78 budget was set in place, it was clear from the outset that the anticipated revenues would not adequately address the projected cost of operations. This was substantiated by the fact that: the priorities of the Boards "Remedial Plan" were not in concert with the budget as structured, that an additional pay period would have to be absorbed in that year due to how the pay calendar had fallen, that all costs associated with salary negotiations were not fully determined, that a 7% overall reduction in Other Expenses would result in overexpenditures in that category, and that adequate budgetary controls had not yet been reinstituted. During the course of the 1977-78 school year, the administration, aware of the problem instituted certain administrative measures to address the situation. However, when it was surfaced on April 10, 1978 that those steps thus far taken would not be sufficient, it was recommended that the administrations plan had to be expanded to include staff reductions. This recommendation called for a review of personnel rosters.

Those areas recommended were the approximately 1200 part-time employees including hourly and per-diem personnel, all non-permanent or provisional employees approximating 1700 in number, and all other non-instructional staff such as custodians, school aids, bus attendants, guards of public property, etc.

The Board of Education however, chose not to consider reductions in staff which resulted in an overexpenditure of 3.6 million dollars for the school year ending June 30, 1978.

In addition, the Board's President has indicated to you in his letter of October 3, 1978 that the present operating budget would not be adequate to meet the financial needs of the district to provide a quality education as exhibited by the Board's 6.4 million dollar appeal presently before you.

When one considers the amount of the appeal of 6.4 million dollars and the accumulated deficit of 4.6 million dollars, it is clear that there is a potential 11 million dollar impact on the current year's operating budget.

In view of the fiscal situation currently prevailing at the Newark Board of Education, it is my opinion that the total financial impact be addressed. In this regard it is recommended that before final determination of the budget appeal is made, that all pertinent data be considered. This is to include the plan requested of the Newark Board of Education to remediate the accumulated budget deficit. While it is expected that one of the plan options will consist of a reallocation of funds as well as previously recommended staff reductions, another option of the Board may be to continue operating at present expenditure levels and force an early closing of schools.

In the event the Boards plan for remediation does not adequately address the present fiscal situation, it is then recommended that a more direct approach by the State be undertaken, by jointly reviewing the current years operating budget with the Municipality and the Board of Education.

Respectfully submitted,



Thomas J. Marshello,  
Auditor General

TJM/cgh

CC: Board President  
Board Members  
Executive Superintendent

time to time, but at least  $\frac{1}{3}$  of all such notes, and the renewals hereof, shall mature and be paid in each succeeding year so that all notes and renewals shall have matured and have been paid not later than the last day of the third year following the date of the special emergency resolution.

L.1968, c. 194, § 4, eff. July 19, 1968.

**10A:4-55.17 Applicability of tax anticipation notes provisions to special emergency notes; filing resolution**

The provisions of the chapter hereby supplemented relating to tax anticipation notes shall apply to special emergency notes. A copy of the resolution shall be filed forthwith after it is adopted with the Director of the Division of Local Finance in the Department of Community Affairs for that purpose.

L.1968, c. 194, § 5, eff. July 19, 1968.

**10A:4-56. Contracts of special or technical nature**

A local unit may, if it so elects, enter into a contract for the purposes set forth in 40A:4-53 without advertising, provided the governing body shall, by resolution duly adopted by not less than  $\frac{2}{3}$  vote of the full membership thereof, determine that the services to be rendered are of a special technical nature and thus will not permit of special advertising. In the case of the purpose set forth in 40A:4-54, the provisions of general laws relating to contracts and public bidding shall control.

Laws 1960, c. 169, § 1, eff. Jan. 1, 1962.

Source: C. 40:50-9 (L.1956, c. 48, § 1); C. 40:50-11 (L.1956, c. 48, § 3).

**40A:4-57. Expenditures void without appropriations**

No officer, board, body or commission shall, during any fiscal year, expend any money (except to pay notes, bonds or interest thereon), incur any liability, or enter into any contract which by its terms involves the expenditure of money for any purpose for which no appropriation is provided, or in excess of the amount appropriated for such purpose.

Any contract made in violation hereof shall be null and void, and no moneys shall be paid thereon.

Nothing in this section contained, however, shall prevent the making of contracts or the spending of money for

a. Capital projects to be financed in whole or in part by the issuance of notes or bonds;

b. Contracts or leases the terms of which exceed the fiscal year in which such contracts are made, when provided by law;

c. The purchase of the right, title and interest in the right-of-way of any street railway company in the municipality, when said right-of-way extends in, over and along any public street or highway in this State and the improving or paving of said right-of-way after the same has been acquired.

Nothing in this section shall apply to the use of funds of departments, for the operation of which budget appropriations are not made, nor to contracts for professional services for the liquidation or foreclosure of tax title liens in such municipalities wherein it is agreed that the cost of the services are to be paid, in all or in part, from the funds derived, or to be derived from the redemption of lien property or the sale of foreclosed property. The use of funds of such departments and for such service contracts shall be subject to approval of the Director of the Division of Local Government Services in the Department of Community Affairs.

Laws 1960, c. 169, § 1, eff. Jan. 1, 1962. Amended by L. 1977, c. 164, § 1, eff. July 19, 1977.

Source: R.S. 40:2-29, as am. L. 1945, c. 155, § 1; L.1954, c. 54, § 1.

1977 Amendment. Rewrote par b. of third paragraph which related to "making of contracts of lease, or for services, or for fuel to be used for heating purposes or for snow or garbage removal for a period exceeding the fiscal year in which such contract is made, when otherwise provided by law"; made par. c. of third paragraph from former last paragraph and deleted introductory clause which read: "Provided, further, that nothing in this section, nor in section R.S. 40:50-6 of this Title, shall prevent a municipality from making a contract for the spending of money for"; and added last paragraph.

The provisions in last paragraph were formerly covered by former § 40:50-6.

**Law Review Commentaries**

The "Salt & Pepper Case": Indictment of public officer for vote to disburse public monies in excess of the appropriation. F. X. Hayes (Spring 1970) 14 N.J.State Bar J. 27.

The "Salt & Pepper Case" revisited. A. A. Goldberg and J. A. Alloway (Summer 1970) 14 N.J.State Bar J. 14.

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**I. In general**

This section prohibiting expenditure by municipalities of unappropriated funds did not preclude court from ordering that revenues distributable by state treasurer to the city for general purposes be instead diverted to the Board of Taxation to reimburse it for cost of financing revaluation of city's assessed realty after the city had refused to undertake

## CHAPTER 135

## PUBLIC OFFICERS AND OFFICES

## Section

- 2A:135-1. Neglect of official duty.
- 2A:135-2. Failure of municipal official to prevent continuance of law violations after receiving notice.
- 2A:135-3. Public officers or employees unlawfully obtaining state, county, municipal or school district funds.
- 2A:135-4. Unlawful detention of public property by public officer after expiration of term.
- 2A:135-5. Disbursing moneys or incurring obligations in excess of appropriations or amount limited by law.
- 2A:135-6. Proceedings in relation to bids or proposals for public equipment, supplies, works, etc.; penalty for noncompliance.
- 2A:135-7. Officers or employees of institutions having interest in furnishing goods or supplies thereto.
- 2A:135-8. Members of governing bodies of counties, municipalities and school districts not to be interested in public contracts.
- 2A:135-9. Forfeiture of office or position; restoration on reversal.
- 2A:135-10. Personating public officers or employees.
- 2A:135-11. Unauthorized persons taking acknowledgments.
- 2A:135-12. Inquiry of applicant for relief as to religion, creed, politics, etc., prohibited.
- 2A:135-13. Relief work, using position to influence political actions or soliciting or receiving political contributions prohibited.

## Cross References

Assaulting president, vice president, governor, etc., see § 2A:148-6.  
 Bribery and corruption, see § 2A:103-1 et seq.  
 Embezzlement, see § 2A:102-1.  
 Escapes, see § 2A:104-1 et seq.  
 Extortion, see §§ 2A:105-1, 2A:105-2.  
 Murder by killing officer, see § 2A:113-1.

**2A:135-1. Neglect of official duty**

A public officer who willfully refuses or neglects to perform any duty imposed upon him by law, is guilty of a misdemeanor.

## Historical Note

Source: R.S. 2:160-1.

L.1898, c. 235, § 23, p. 300 [CS  
 p. 1750, § 23].

## Cross References

Punishment for misdemeanor, see § 2A:53-7.

## Library References

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## 1. Construction and application

Defendant who had been retained by city to conduct independent annual audit for three years, but who did not possess any power of government or make any decisions in relation to policies and programs and whose only function was to provide service to city which was required to obtain that service by statute was an "independent contractor" and was not a "public officer" and was not properly indicted for nonfeasance in office. *State v. Indelicato*, 87 N.J.Super. 566, 210 A.2d 233 (1965).

Delinquency of officer in reporting fellow officer's wrongful acts might have subjected him to indictment. *State v. Steenson*, 35 N.J.Super. 103, 113 A.2d 203 (1955).

## 2. Nature and elements of offenses

It is not necessary that the breach of a duty by a public official be expressly declared by Legislature to be a crime, but violation of duty to public is itself a crime, for which the offender may be indicted at common law, and the duty may arise out of the very nature of the office. *Appeal of Messano*, 16 N.J. 142, 106 A.2d 537 (1954).

At common law, every public officer who willfully neglected to perform any duty which he was bound either by common law or by statute to perform committed a misdemeanor, providing that discharge of such duty was not attended with greater danger than man of ordinary firmness and activity might be expected to encounter. *State v. Winne*, 12 N.J. 152, 96 A.2d 63 (1953).

An office holder is indictable at common law where he wilfully or corruptly neglects or declines any official duty, whether prescribed by written law or by unwritten law. *Id.*

Where county prosecutor wilfully refuses to act, without just cause or excuse, he is guilty of breach of duty rendering him liable to indictment, and prosecutor is indictable for inaction and neglect in carrying out his duties without regard to whether his inaction and neglect resulted from his corruption. *Id.*

Under the common law, wilful neglect or failure of a public officer to



THE STATE OF NEW JERSEY, PLAINTIFF-RESPONDENT,  
v. CHARLES G. BONCELET, DEFENDANT-APPELLANT.

Superior Court of New Jersey  
Appellate Division

Argued October 27, 1969—Decided November 17, 1969.

## SYNOPSIS

Defendant was convicted in the Superior Court, Law Division, Middlesex County, for violations of Local Budget Law, and he appealed. The Superior Court, Appellate Division, held that defendant, a member of borough council and chairman of its finance committee, by voting to incur liabilities chargeable to four line items in budget in amounts which exceeded sums appropriated and by voting thereafter to transfer funds from two other line item appropriations to make up already incurred overexpenditures thereby overexpending those two appropriations violated Local Budget Law which was intended to control municipal expenditures by line item.

Affirmed.

1. Municipal corporations  $\S$ 885

Local Budget Law is intended to control municipal expenditures by line item. *N. J. S. 40A:4-1 et seq., N. J. S. A.*

2. Municipal corporations  $\S$ 885

Local Budget Law is intended to provide for municipality to make ends meet within its fiscal year and budget expenditures during a fiscal year should not depart from budget of that year. *N. J. S. 40A:4-57, N. J. S. A.*

3. Municipal corporations  $\S$ 885

Defendant, a member of borough council and chairman of its finance committee, by voting to incur liabilities chargeable

to four line items in budget in amounts which exceeded sums appropriated and by voting thereafter to transfer funds from two other line items appropriations to make up already incurred overexpenditures thereby overexpending those two appropriations violated Local Budget Law which was intended to control municipal expenditures by line item. *N. J. S. 2A:135-5, 40A:4-57, 58, N. J. S. A.*

4. Municipal corporations  $\S$ 885

Overexpenditures incurred when defendant voted to incur liabilities chargeable to four line items in budget in amounts exceeding sums appropriated in violation of Local Budget Law which was intended to control municipal expenditures by line item were not rendered legal by later transfers to those items from other accounts for which appropriations had not been exhausted. *N. J. S. 2A:135-5, 40A:4-57, 58, N. J. S. A.*

5. Officers  $\S$ 121

Criminal intent is an essential element of common law offense of misconduct in office. *N. J. S. 2A:85-1, N. J. S. A.*

6. Municipal corporations  $\S$ 174

To show that defendant violated Local Budget Law by voting to incur liabilities chargeable to four line items in amounts which exceeded sums appropriated and by voting thereafter to transfer funds to make up previous overexpenditures thereby overexpending to other appropriations, it was not necessary to show that defendant intended to profit or otherwise benefit from overexpenditures and it was sufficient if there was an intent to commit the act which the law forbade and the finding that defendant's conduct was unlawful and willful would support charge of bad faith. *N. J. S. 2A:135-5, 40A:4-57, 58, N. J. S. A.*

7. Municipal corporations  $\S$ 174

Evidence that defendant, a member of borough council and chairman of its finance committee, was a college graduate and successful businessman serving his third year as councilman and knew of provisions of Local Budget Law which was

5X



[illegible]

Cat. No. 23-221



