

VOLUME I

PUBLIC HEARING

before

ASSEMBLY SPECIAL COMMITTEE ON ASBESTOS HAZARDS

(Created Pursuant to Assembly Resolution No. 75)

Held:
November 1, 1984
Room 114
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Joseph V. Doria, Jr. (Chairman)
Assemblyman Robert P. Hollenbeck
Assemblyman George J. Otlowski
Assemblyman Nicholas R. Felice

ALSO PRESENT:

Leonard Colner, Research Assistant
Office of Legislative Services
Aide, Assembly Special Committee on Asbestos Hazards

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ASSEMBLY RESOLUTION No. 75

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 13, 1984

By Assemblymen DORIA, HOLLENBECK, OTLOWSKI, VAINIERI,
CUPROWSKI, Assemblywoman MUHLER, Assemblymen
CHARLES and ROCCO

~~AN ASSEMBLY RESOLUTION~~ establishing a special committee to study
the problem of asbestos removal from schools and other buildings
and the adequacy of the standards therefor.

1 WHEREAS, The Legislature finds that the safe removal of cancer-
2 causing asbestos from schools and other buildings is of para-
3 mount concern because of its effect on the health, safety and
4 welfare of the people in this State; and

5 WHEREAS, Approximately 300 public schools in 20 counties in this
6 State were scheduled to undergo asbestos removal this summer
7 and as of August 29, 1984 it was reported that approximately 200
8 schools had not received a final inspection and a certificate of
9 occupancy allowing them to open for the 1984-1985 school year;
10 and

11 WHEREAS, The several executive departments responsible for the
12 safe removal failed to coordinate their efforts and thus failed to
13 act expeditiously to stop the threat of danger to the school
14 children and teachers in this State; and

15 WHEREAS, It is necessary to determine the standards for the safe
16 handling of asbestos in public schools and other public and private
17 buildings in this State and the best methods of coordination and
18 improvement of the efforts of the executive departments to act
19 responsively to this problem; now, therefore,

1 BE IT RESOLVED *by the General Assembly of the State of New*
2 *Jersey:*

1 1. The Special Committee on Asbestos Hazards is established
2 with a membership consisting of the chairman of the General
3 Assembly Agriculture and Environment Committee; the chairman
4 of the General Assembly Corrections, Health and Human Services
5 Committee; the chairman of the General Assembly Higher Educa-
6 tion and Regulated Professions Committee; and two other members
7 of the General Assembly to be appointed by the Minority Leader
8 of the General Assembly.

1 2. The special committee shall study the problem of asbestos in
2 schools and other buildings; the adequacy of the standards for
3 asbestos removal procedures; the recent failure to expeditiously
4 remove asbestos from approximately 300 public schools; and the
5 role that should be played by the executive departments, including
6 the Department of Environmental Protection and the Department
7 of Health in alleviating this problem. The special committee shall
8 study the issues and recommendations raised in the report by the
9 Department of the Public Advocate dated August 29, 1984 and
10 entitled "Asbestos In The Schools: An Interim Report" and any
11 other pertinent documents and shall evaluate any proposed legisla-
12 tion or laws concerning asbestos removal procedures.

13 The special committee shall make recommendations for the
14 development of Statewide comprehensive standards for the use of
15 asbestos, including removal procedures, in all buildings in this
16 State and the coordination between the executive departments to
17 ensure a quick and informed response to this problem in the future.

1 3. The special committee shall be entitled to call to its assistance
2 and avail itself of the services and assistance of any officials and
3 employees of the State and its political subdivisions and their
4 departments, boards, bureaus, commissions and agencies as it may
5 require and as may be available to it for these purposes and may
6 expend any funds as may be appropriated or otherwise made avail-
7 able to it for the purposes of its study.

1 4. The special committee may meet and hold public hearings at
2 any places as it shall designate and shall report its findings and
3 recommendations to the General Assembly no later than 60 days
4 after the date it first convenes, accompanying the same with any
5 legislative bills that it may desire to recommend for adoption by
6 the Legislature.

STATEMENT

This Assembly resolution establishes a Special Committee on Asbestos Hazards with the responsibility to study the problem of asbestos removal from schools and other buildings in this State and to make recommendations concerning the coordination of the efforts of the executive departments responsible therefor and the development of Statewide guidelines for asbestos removal procedures.

The intent of the resolution is to confront the asbestos crisis in this State caused by the recent problems in carrying out the removal of asbestos from approximately 300 schools. By convening a Special Committee on Asbestos Hazards, the health, safety and welfare of the people of this State will be protected by the development of Statewide standards for the use and removal of asbestos including the coordination of the efforts of the executive departments responsible therefor.

ASSEMBLYMAN JOSEPH V. DORIA, JR. (Chairman): This is the first of four meetings to be held by this Committee, created by New Jersey's General Assembly as a result of an Assembly Resolution, to deal with the question of asbestos and the development of legislation, if necessary, for the removal of asbestos in State buildings, and also to deal with the problem in all of the buildings in the State of New Jersey.

We are going to hold four hearings. This is the first of the four hearings. The second one will be held next Wednesday in Jersey City. The third hearing will be held on November 14, in Haddon Heights. And, the fourth hearing will be held on December 5, in Perth Amboy.

So obviously, we would appreciate it if the individuals who desire to testify at those hearings would contact our Committee aide, Leonard Colner.

I am just going to briefly introduce the members of the Committee who are present. We have Assemblyman Robert Hollenbeck, the Chairman of the Assembly Environmental Protection Committee, and Assemblyman Felice with us today. Leonard Colner is the Committee aide.

What we are here for, basically, is to review the present rules and regulations in the State of New Jersey, as they deal with the problem of asbestos and asbestos removal; to discuss the Governor's Task Force Report, which has been drafted -- at least a draft has been presented and there are hearings being held on that draft, as I understand it; and then to review what is taking place in the administration and development of asbestos removal policies.

There are a number of bills at the present time in both the Assembly and the Senate. These bills have been sponsored by me and many other legislators. What we want to see is, number one, will they deal with the problem effectively; number two, is there need for other legislation; number three, do these bills all have to be scrapped and do we have to start again from point zero; and, number four, where should we go from here?

We hope that these hearings will help to develop a program, a concerted program that will be tied together with the Governor's Task Force Report, so that we will have a program which deals with technical standards as well as with effective implementation and administration.

On that note, I would like to begin the hearing. I would like to thank everyone for coming, and then I would like to introduce the Commissioner of the Department of the Public Advocate, Commissioner Joseph Rodriguez, who will begin the testimony. Commissioner?

COMMISSIONER JOSEPH H. RODRIGUEZ: Thank you, Mr. Chairman. I feel quite honored to be the first to testify on this very interesting and great public interest issue, the presence of asbestos in New Jersey. I have to be very frank and acknowledge that I think some of the key responses to the issues that are raised will be more in the scientific and medical realm. What I can do, in keeping with the Chairman's outline, is to give you the impressions of our Department as to where we now see the asbestos question in New Jersey.

I appreciate this opportunity to comment on the potential health threat posed by the presence of asbestos in our public and private buildings in New Jersey, and how we might work together to mitigate this threat.

I think personally, as a result of many things that have occurred, we now have enough information about the threat of asbestos to enable us as a State to adopt intelligent policies to deal with the problem. We have before us now, an interim plan from the State Asbestos Policy Committee. We will, by the end of the year, have a final plan. I feel that this plan will respond to the concerns and recommendations contained in the Public Advocate's Report to the Asbestos Policy Committee.

What we need is to spend time working together coordinating the Executive and the Legislative efforts, and developing programs that will properly serve the needs of the citizens of this State. Our Department offers its resources to assist this Committee, or any legislator, in the development of appropriate legislation that will serve to implement and complement the program developed by the Policy Committee.

An important element for the success of the plan, whether it be done legislatively or by the Executive is, I believe, the proper education of the public as to the health risks involved, and the proper means of addressing those risks.

The State Asbestos Policy Committee will be addressing this issue in its final report, and we encourage the Legislature to consider appropriate public education methods so that we can ensure that there is a sensible and rational response on the part of the public to the asbestos situation. Again, we offer the resources of our Department to assist the Legislature and the Executive in that effort.

By educating the public, I think -- if I can give you the impressions of our Department as to where we feel the directions should go -- we might be able to better understand why we are saying that most of the information that has to be known about asbestos is contained in the Interim Report of the Asbestos Policy Committee.

Initially, there was a complete lack of understanding of what asbestos was. The mere fact that there was asbestos somewhere was almost like saying, "The big 'A' is present," and the reaction -- the emotional reaction -- was to the word "asbestos." What was necessary at the time -- Unfortunately, we were instructed to identify asbestos without having sufficient guidelines to determine what should have been considered hazardous, the extent to which it was hazardous, and what response should be given to the hazard. We now have a developing technology in this State that, as the technology develops through scientific exploration methods, makes it more difficult -- as I believe one scientist has already said -- to reach the technical zero. As our sophistication increases in exploring for ingredients, our hope to arrive at that zero continues to vanish because we learn more. What we have to do is to determine the level of the hazard and respond legitimately to it. That part of it, I believe, was missing early on.

But, there was a response to asbestos -- asbestos plus friable, and I am sure you are going to hear this from more expert witnesses than I am -- at the Department. We knew what asbestos was, but friable -- friable was the missing ingredient to many of the responses that were taking place when there was an emotional rush to improve.

We further learned that the emotional rush was continuing without a clear indication as to the hazard. Because, to put this in some perspective, if 85 percent of the lung cancers that exist are from smoking, we could almost say there should be the same emotional response to the presence of a cigarette with respect to a health hazard.

It is clearly a hazard; however, friable was the word that started to direct the attention of our Department. Yet, we learned again that even friable wasn't the key word; the key word was friable, plus a little bit of turbulence. Let me suggest this to you: We have all seen those little paperweights that have the snowflakes in them. If we were to visualize a paperweight here that has not been disturbed for hours, the water would be clear in the paperweight. Yet, there is potential hazard if we associate the snowflake with the asbestos at the bottom of the paperweight.

We were identifying the paperweight. That wasn't enough. We had to identify the paperweight plus the snowflakes on the bottom, which were friable. That we started to do. But, as we started to do that, with the rush to address asbestos, unfortunately we started to cause turbulence in the paperweight, and in causing turbulence in the paperweight we caused the friable problem to become an airborne problem, which increased the hazard. That became the problem.

What was then required was to be sure that those who were put into the position of removing, or handling, the asbestos really understood what they were doing, because that was the nature of the real crisis. That sort of created the progression.

The Task Force Report clearly indicates the nature of the hazards in some places with greater strictness than any State in the United States; and, with that, we feel very proud of the Report. Its implementation now becomes important. The implementation must be with the coordination and the assistance of the Executive Branch and the Legislature, in addressing what we know now is the progression of the problem.

I can say very frankly that the bill which was signed yesterday, sponsored by your Chairman, really does address what turned

out to be one of the more critical issues, and that was its handling -- not simply its presence; not simply whether it was friable; but the handling of this material. So, we now have the first piece of legislation which addresses what I believe was the real aggravating problem, if we were to let it lay the way it was before.

We now have to step back and say, "But, as this goes into place, the other recommendations that are being made should be in a consistent package. That package calls for coordination and a very careful selection of the resources we use to address the problems. As legislative efforts are generated, they should be put in some priority form so that we can continue to address the turbulence in that paperwork.

One final thought. Perhaps the priority should be, as we now understand what we are dealing with, to determine the distance we are now standing from that paperweight. Of course, those who are in areas where there has been turbulence -- that must be addressed. We were addressing that this summer; we were addressing what was then called "the school crisis," because there was a turbulence, and as it was identified it did call for immediate remedial action. That remedial action didn't mean the problem was not understood, but it was aggravated to the point where we thought it was not being properly understood.

Then we had to determine where, throughout our State agencies and institutions, the citizens or the residents of those institutions stood in proximity to that paperweight. Those who were closest to the paperweight have to be addressed first, and I suggest the institutionalized citizens of our State, who are constantly present in buildings, and who have greater exposure, should be the first populations that are addressed as we move in a very efficient manner, from the paperweight down to the least so-called restrictive alternative.

So, I see that we do have the facts on the table. I see from the nature of some of the legislative responses that they are addressing the Achilles heel by making sure that those who touch it know what they are doing, because they can create a greater hazard.

Now it is a matter of putting in priority form the citizens who are in contact with it and the degree to which it is hazardous, so that we can properly set those priorities and work very efficiently.

I think I can see that happening, and I am very optimistic because I can. Because I am optimistic, I don't think there is any fear of contradiction when I say that when we begin to do that -- and we can do it very efficiently -- New Jersey will be a model for the 50 states, because in our analysis, we don't know of any other state that has reached to the position that New Jersey reached to date. I think we have to continue that leadership.

Basically, I am here to offer the assistance of our Department by saying we have addressed the problems we have seen, and I think they are being addressed in a proper manner. But, it calls for some very strict priority-setting regarding the degree to which our citizens are in contact with that hazard which we are now clearly identifying.

With that opening, I am willing to respond to any questions you may have.

ASSEMBLYMAN DORIA: Do any of the members of the Committee have any questions at this point? (no response)

I have one or two questions, Commissioner. One of the things you emphasize -- and I think it is of great importance and basically why we are here -- is the need for coordination between the Legislative and the Executive Branches of government in the area of asbestos and asbestos removal. Obviously, the interim committee report of the Task Force is a step in that direction.

What I would like you to do is to highlight those areas that you see at the present time as areas of primary concern, where we do need to have greater cooperation and a greater type of articulation.

COMMISSIONER RODRIGUEZ: Okay. Number one, is the recognition of the problem. But, we can't spend too much time trying to recognize a problem that many in government now know exists. So, I don't think there is any more to be known about the hazard of asbestos. What is yet to be known, as technology improves, is if we will find it in more minute places. But, what there is to be known

today -- and I think this report recognizes that -- is the recognition of the problem.

I would hate to see some school districts, or any institution, rush to judgment because they see the presence of asbestos, without doing a careful analysis and then putting it in the correct position of hazard.

The plan addresses that through its management plan. Someone made that judgment, and the plan is going to call for ordering the resources and determining to what extent the resources should be made available and in what quantities. Adopting that plan and placing the hazard where it properly belongs is very important, but we have a great educational process that has to take place with the public because many react to the word asbestos almost as they would react to the word AIDS -- like it is unknown. There is a known. The report addresses that; and, in addressing that, if we understand that "airborne" is the crisis -- and if the public understands that -- there is time for careful analysis, because the rush to judgment makes it worse. I think that, as a legitimate answer and a legitimate response, this has to be conveyed to the public.

The health concerns: The interesting thing with the health concerns is, I think you just can't say it is a hazard. The public should know to what extent it is a hazard. This is where we start some interesting dichotomies. If you look at what asbestos does with asbestosis, to the extent that we identify that as a crisis, we should also be concerned with emphysema, because it is of the same nature, and we can just go tracking in one direction.

So, what is the hazard, and how can you properly address it? Mesothelioma, what does it mean? We say that everyone has some asbestos in their lungs today, yet 85 percent of the cancers are still considered to be from smoking. The combination of asbestos and smoking -- that is the entire educational process.

The evaluation: How does that State mobilize its forces, go to these areas where it is seen, properly evaluate it, and put it in the order of priority? That, I think, is probably one of the critical areas, because you would then have to look to see the extent to which

people are close to it, in the presence of it, and inhaling it. That has to create the priority, as we identify the hazard and place our citizens in it.

What that hazard is, is explained in this interim report. Therefore, I think that is where coordination and identification of the hazard comes in. Yes, I think the scientific community should come in and continue to assist us to keep updating our information, so as we move to this -- as was said before -- vanishing zero, we can continue to move in that direction also. The fact that we are being the strictest shouldn't be considered a weakness because we should work to meet that strictness.

So, I guess basically what I am saying, Mr. Chairman, is, with your bill in place, it starts to quickly address those who are going to touch it, and now we have the time to determine what should be touched. So, I think the first piece is in place.

I think if we look at that report and try to implement it through education, identification of hazard, priority setting, and then handling by way of removal or encapsulation, and all that is contained in the bill, that is the process; that is progress. I see us moving in that direction. There isn't anything I can suggest beyond that except to say that whatever legislation is finally put in place has to have some teeth in it, so that if someone defaults or if a contractor is found not to be doing proper work, or fraudulent work, there should be some punitive measure, because we know the nature of the hazard involved. But, that can come at the end. What we have to do now is to identify it.

ASSEMBLYMAN DORIA: Yes, Assemblyman Felice?

ASSEMBLYMAN FELICE: Commissioner Rodriguez, the educational process is the big factor here today, because of the emotional problems that arise from this. As there are standards in the field of radioactivity, where scientifically and with technology, one can actually measure the degree of protection needed, don't you feel one of the things that has to be organized, through the scientific fields and the educational process, is the field of standard-setting? There seems to be, not only in the State of New Jersey but in some of the

scientific journals, varying standards from one area to another and from state to state, as to "what is a hazardous condition?" I think as part of the bill, and as part of the educational process, that should be clarified, so that everyone understands it: If there is a level of radiation that is more dangerous "x" to "y," then a level of asbestos, in a certain form and in a certain area, would also be more dangerous.

I think the report is excellent in that it states there is asbestos that would be better off if left alone, rather than rushing into a process of removal before there is a hazardous program available and before one can be established which can take on the priorities you speak of.

I think as you speak about the educational process to the general public and to the people who are going to be handing it -- the contractors -- an important priority is to rush to get everything uniform throughout the State. I think that is a thing many people are looking to see: What is uniform?

COMMISSIONER RODRIGUEZ: I agree, and I see what the report has done. In our judgment, when we first looked at asbestos, we knew that throughout the nation they were using a volume measure: so many fibers per so many cubic centimeters. And, I don't want to infringe upon Dr. Goldstein -- who is here -- but they were looking to find the presence of fiber. We know that when one is dealing with asbestosis or mesothelioma and he looks through the electron microscope, he finds asbestos fibers. But, that measurement was looking at numbers of fibers and in what length -- a size. Well, New Jersey has gone beyond that and it is looking not just for volume, but for weight.

I would suggest we have established a standard -- or recommended a standard -- that is more strict than any standard I know of in the United States. My suggestion is this: That might subject this to some criticism. I would not be critical, because I think as technology improves, we should strive for the strictest standards. So, in the analysis of that standard -- I think the thinking that analyzed all the other standards has already taken place -- what is in place is a combination -- not just volume, but volume and weight, which I think, if it can be accomplished, is tremendous. I keep suggesting that the

difficult part for the public would be that we would probably never get to the point where we can guarantee a zero. I think the world has to know that. We have to do the best we can with the technology we have. That is what they are striving for with that standard. I would applaud the effort to accomplish this goal, so that the standard is carefully analyzed.

But, then you get to areas where, if you know you are dealing with something that is microscopic, there are times we look, when inspecting, with the eyes; there are times when we look through microscopes; and, there are times when we have to determine what the content is from within. I think New Jersey is doing a commendable job in arriving at the identification of the hazard. Once identified, the modality of care concerning how you remove it then becomes of critical importance, because it doesn't do you well to identify it and then not address it properly. That is why I say the first bill is in proper position as we now identify it.

I think the standard doesn't give me any concern. I applaud their effort to reach it, because I think it is a very aggressive standard.

ASSEMBLYMAN DORIA: I just want to emphasize that. I want to emphasize what the Commissioner has just said, because I think, in basic terms, it means to the general public that there is a standard and the standard is going to be met. But, all asbestos is not necessarily harmful; that is, some asbestos can stay where it is and it does not interfere with the health of the individuals who are using the facility. That determination has to be made based upon standards.

I think too often there has been a misunderstanding of this fact; and I think in laymen's terms, it is important to continue to emphasize that only some asbestos is dangerous, and other asbestos is not dangerous.

COMMISSIONER RODRIGUEZ: Let me give you this example: If I were to suggest this to you -- and I am not sure; this floor is probably not -- that this floor is asbestos, by looking at its condition, and the fact that there is a great deal of cement with the ingredient of asbestos, none of that is flaking. We can take plenty of time to consider what to do with this floor, if anything at all.

There may be asbestos in that column. Looking at it, it is not flaking and we have plenty of time to consider what to do.

That ceiling tile is asbestos. It is new. We have time, not as much time as we would have with the column, not as much time as we would have with the floor, but we would have time. But, if now somebody is running through here with a stick and scraping the ceiling, we don't have as much time.

So, just the word asbestos didn't mean anything. Asbestos plus "F", friable; asbestos plus "F", friable, plus airborne -- if we approach it that way, we have time to address the priority items in the State of New Jersey, and not simply react emotionally to the word asbestos. That is the educational component that I think might be missing. So, if bills are generated that simply address asbestos, we are not doing a service to the priority list. First, I think we have to address it by understanding it.

This report does break down its components so that I can say from my unsophisticated reading -- because I am not a doctor -- that they addressed it to my satisfaction because they broke it down into its components. If there is any concern with that breakdown, there is a sufficient scientific community in this State to react to that. But, I don't think there will be because what we have to know is known. What we have to do now it to properly address it.

ASSEMBLYMAN DORIA: All right. Are there any further questions from the Committee members? (no questions) I want to thank you, Commissioner Rodriguez, for your very lucid presentation of what has been happening and where we are at.

I also want to welcome Assemblyman Otlowski and thank him for being here.

At this point, I would like to call on Commissioner Goldstein, from the Department of Health. Commissioner Goldstein?

COMMISSIONER RICHARD GOLDSTEIN: Thank you very much. I want to thank you for inviting me here today. I have a short testimony to read and then I will take questions. We also have graphics available to go into some detail, depending on how far you want to go.

If we are to address the issue of asbestos in schools and other buildings in a rational manner, it is extremely important that a number of facts be clearly understood by health professionals, school administrators, other owners or operators of buildings containing friable asbestos materials, and, most importantly, the general public.

The mere presence of asbestos does not, in and of itself, pose a health risk to anyone. Asbestos-containing material, in good repair, is not likely to emit airborne fibers and, therefore, there is no reason to remove them. They will only become a problem when a building is being renovated, whereby the asbestos will be disturbed, or a building is to be demolished.

Two, asbestos-containing material should be removed when there is visible evidence of natural deterioration and asbestos flakes observed on shelving, desks, or other horizontal surfaces, and when there is significant damage from vandalism, water damage, or other trauma. The removal work must be carefully planned, conducted, and monitored.

When asbestos removal is indicated, it is important that an emergency atmosphere not be created. Careful analysis must precede any decision to remove asbestos. Contractor qualifications and references must be scrutinized to ensure that the contractor has the experience and resources -- i.e. personnel, equipment such as HEPA vacuums, negative air ventilation units, etc. -- necessary to successfully perform a removal job of the size and complex being proposed for a site.

It cannot be overemphasized that a poor removal job may result in significant exposure to building occupants, as well as removal workers, and that such a job can be avoided by careful planning and supervision of the removal work.

Four, there are circumstances where asbestos-containing material only minimally gives rise to exposure, and where careful maintenance can satisfy the situation.

Five, health officials and other governmental agencies must recognize that the manner in which the asbestos issue has been presented to the public has generated apprehension and panic regarding

the actual health risk to teachers and students, or to other individuals in buildings containing friable asbestos materials.

The public must be advised that under most conditions non-occupational exposure to asbestos in buildings has not been demonstrated to pose a significant health hazard. It is the maintenance personnel who are required to work on or in the immediate vicinity of damaged asbestos material who may be at risk of developing asbestos-related disease. So, personnel must be knowledgeable about the potential risk and the correct means to avoid such risks.

Six, under present EPA regulations, asbestos must be removed from a building before that building can be demolished. Ultimately, therefore, all asbestos will have to be removed. This should not be used, however, as an excuse to create a panic situation and insist that all asbestos be removed now. It provides an opportunity to develop a long-range plan for the removal of asbestos in a rational manner by considering the eventual necessity of removal in the master plan for the building. If renovations are planned, it may be necessary, or advisable, to consider the removal of asbestos at that time, and plan accordingly to ensure that the removal is accomplished in a suitable manner.

The Asbestos Policy Committee, on which I serve as Chairman, is presently working on the development of assessment protocol that calls for the ordered evaluation of several sources of doubt: building construction records, field observations, and material and air samples, prior to selection of the remediation option. The policy, therefore, serves to ensure that asbestos management decision-making will be completed in a rational and uniform manner for those types of facilities addressed by the policy.

These facilities are public schools and State-owned and managed buildings. The remaining issue to be decided concerns asbestos decision-making in non-State-owned or managed facilities, publicly owned buildings, and other privately owned buildings that are occupied by the public. In this regard, Assembly Bill No. 1820, Assemblyman Doria's landmark legislation that was signed by Governor Kean, provides the initial framework which will minimize exposure to asbestos hazards from shoddy work practices.

The bill provides authorities for the training and licensing of asbestos contractors and workers, for enforcement authorities and penalties, and for the promulgation of regulations and standards. The latter includes protective equipment specifications, enclosure removal, encapsulation procedures, waste disposal, and project monitoring, among other operational topics. Administration of these activities is to be shared by the Departments of Labor, Health, and Environmental Protection, as Bill 1820 provides reasonable assurances that any asbestos remediation project initiated in this State will be accomplished in a manner that protects the health and safety of both workers and building occupants.

That is my formal statement. We also have charts and I can run you through how we are proceeding with protocol plans for schools, etc., and how we are going to divvy this up among all the different State departments.

ASSEMBLYMAN DORIA: I think that would be good, Commissioner, in the sense that it would give us an idea of exactly what is taking place and what has to be done in the future. The only problem is, if the charts can be brought close to you, we can then have the mikes close to you.

COMMISSIONER GOLDSTEIN: I apologize if the print isn't large enough for everyone to grasp. Fortunately, I am sitting close; if I were sitting there, I wouldn't see it either.

ASSEMBLYMAN DORIA: You can read it to us. There is no difficulty.

COMMISSIONER GOLDSTEIN: Okay. This is a chart which depicts how the State departments are divvying up who does what to whom with regard to asbestos.

The Department of Health will be the lead agency. Our roles are as follows. We probably should have shaded these to show the departments: department, department, department, department, and then the rest are the functions of the departments.

This is the Health Department. (indicating) We are going to certify private asbestos consultants. Those are the people who come in and do evaluations of buildings. We are going to prepare certification

standards for private laboratories that do air and bulk monitoring. As the Public Advocate's report raised earlier on, a variety of laboratories do asbestos laboratory work, and we are going to make certain they are all doing it the same way. We are also going to develop an asbestos remediation management and prioritization program for State-owned, State-leased buildings. That will be done in conjunction with the Health Department, Treasury, DCA, and whatever department happens to be in the building at that time, because if we plan to remediate it, they are going to have to make some plans to move people out and find other locations for them.

The Health Department will do the evaluation and develop the remediation plan for State buildings. We will also be preparing the standards for the training program, and the training program will be performed on a contract basis through the Health Department. We are also going to be developing the certification of the removers, inspectors, and contractors, and prepare the standards and certification of all those who do the training.

The Department of Labor will have the responsibility for licensing the contractors and the removers, as well as consultant services regarding workers' safety.

The DEP will be responsible for all the disposal.

The Department of Community Affairs is going to play a very large role in this effort, with the issuance of construction permits, and, most importantly, monitoring the actual removal work and the final inspection to issue the Certificate of Occupancy.

In addition, the Department of Treasure is involved because they approve the funding and monitor the removal in buildings under its jurisdiction, as well as provide consultant services.

The basic protocol has been established by the Policy Task Force, and I would point out it differs substantially from the EPA test which was used in the past to determine whether or not asbestos should or should not be removed. The problem in this area is the development of protocol which is consistent, which different inspectors would agree upon, so it has consistency, and which has a level of objectivity, so that reasonable people would not disagree with the ultimate findings.

Basically, we start off very simply: "Is asbestos present or not?" That is a physical inspection. And, there may be a question about it; sometimes you can't tell. So, we answer that with, "Maybe it is present," or, "No, it is not present." If it is not present, nothing further has to be done. If it may be present, then we simply do a laboratory analysis to determine, "What is that white stuff in the ceiling?" If it is less than one percent asbestos, then there is no need to do anything further; no remediation need take place.

If it is over one percent in, let's say, that ceiling, we then ask ourselves, "What is the physical condition of the asbestos?" And, there are a variety of detailed questions that we will ask in order to determine the physical condition.

If it is in good condition, we then go ahead and perform an air monitoring test so that we can establish the air level. Now, our information indicates that if it is in good condition, then the air level will be below the standard we are recommending. So, if it is below the standard, then we are simply recommending an asbestos management program, which means we are going to look at it; we are going to make certain the asbestos does not become damaged in the future through water damage or something else; and we just monitor it.

If, on the other hand, it is in good condition and it is greater than 100 nanograms, that simply says, "We must have missed something;" therefore, we have to go back and reevaluate that building, because it is not logical, from our information, to have that number exceed our standard if, in fact, the asbestos is in good condition. It only tells us we missed something; therefore, we go back and evaluate it and run through that protocol again.

If it is clearly in bad condition, if it is clearly falling off and you see it on the desks and on the floor, it has to be remediated; there is no question about that. We don't need to do an air standard in that kind of a situation. If it is in bad condition, it has to be remediated.

So, what it all comes down to then is, what do you do in the middle zone? What we are doing in the middle zone is, when it is a potential hazard, we are determining an air level and if the air level

is below the standard, then we are going to do a case-by-case evaluation. We are simply saying, "Okay, let's examine this and we will have objective people, informed professionals, make a decision as to whether we should remediate, go to an asbestos management plan, etc." That is basically the protocol, and this is all going to be backed up with very detailed types of check lists, so that different inspectors, if they went to the same site, would be in complete agreement.

Now, this is all very complex because of all the different aspects of it. This chart was prepared to try and simplify it. This one just deals with the school situation. First of all, the schools would be inspected. The Health Department would train the inspectors in the business of protocol that I have already discussed. If it appears that something needs to be done -- and that is, they have to develop a remediation plan -- it is the school boards' responsibility to develop that plan, but the Health Department will be issuing guidelines. So, we assist them.

They then develop a remediation plan and then we have to approve it to make certain it is accomplishing what it is supposed to accomplish. The removal project is then initiated. At this time, they will be hiring certified contractors. The contractors will be employing certified removers, and the air samples will be done by a certified laboratory. The removal project then takes place. The project is monitored by the DCA. We will have trained and certified their inspectors by that time. They will be the ones doing the monitoring. Then there is a final approval and inspection, where DCA comes in and inspects to make certain the work has been properly performed; and, in addition, there is a final air sample, and the Health Department laboratory will be performing that. performed, and, in addition, there is that final air sample, and the Health Department laboratory will be performing that.

All right, what is left? You have asked the question many times this morning about how the Policy Committee and the Legislature can work more closely together on this. This is a map of New Jersey, but it is a diagram; these are not actual counties. What we are trying

here is, there are many pieces to the asbestos puzzle. We have glued a number of them together. There are still some remaining pieces, and this is where we are going to need your help, on the remaining pieces.

One is the policy issue about public buildings. How do we address a movie theater or places of public assembly which are privately owned? That is a major issue. How do we address private dwellings — homeowners, for example? What is our plan going to be for dealing with that particular situation? What legislation is going to be necessary to deal with these subjects, depending upon what the Policy Committee decides is the most appropriate way to go? And then, lastly, the funding. This program is going to cost money, and we are going to need your help with funding. In fact, we are discussing now, in terms of the recommendations in the interim report, how to fund; and it is possible that the administration may require supplemental funding. If that is going to be the case, then, again, we are going to come to ask for your support.

This is the overall presentation. Again, I have more details if you want to go into the training programs and what the other components are — removal specifications, etc. So, we can go into more detail if that is your area of interest.

ASSEMBLYMAN DORIA: I would think we would be interested in the training program. Why don't we talk about that, because that is something I think was of concern, and 1820 did address that to a degree. Maybe we can talk about exactly what the training program will look like. We know that the individuals who are going to be removing asbestos will be properly trained and they will, number one, not endanger themselves nor endanger the individuals in the facility in which they are removing the asbestos.

COMMISSIONER GOLDSTEIN: Okay. This is the basic course curriculum. Now, we do not have the details to go beyond this. We are asking for funding in order to hire a contractor to fill in all the days to put on a comprehensive program. That is our estimate. So, we are recommending a 32-hour training course.

Second, the course will discuss the health hazards involved with handling asbestos: physiology; asbestosis; lung cancer; smoking

cessation; mesothelioma; etc; and how to recognize asbestos material, because there are a variety of different types -- where do we find them and how are they used? There will be a review of the Federal and State standards -- HEPA, etc. -- because we want the workers to be familiar with the laws and regulations that are in effect; the protective clothing and equipment, such as respirators, that the men will necessarily work with as part of this; the minimum specifications for asbestos removal which the contractors will be obligated to meet and, therefore, the workers will be meeting those for them; the methodologies to control airborne asbestos, the containment procedures, and the ventilation procedures that are required; and general safety considerations, such as electrical hazards, heat, stress, scaffolding, and other injuries. I should point out that what we are planning in many of these areas is a hands-on approach to it; it is not just going to be a slide show of, "This is a job site." It is our intent that they are going to get hands-on experience in terms of actually using the plastic, sealing it, dealing with the hepafiltration systems, negative pressures, etc.

There is going to be a written examination. They are going to have to pass that test. There is going to be a photo I.D. issued which they are going to have to carry, so that when inspectors go to job sites these people are going to have their I.D. cards on them, and they are going to have to make them available to the inspectors. There is going to be a continuing education program as well, so that as we develop new information we will have a mechanism to upgrade the knowledge base.

ASSEMBLYMAN DORIA: Commissioner, we will be the first state, probably -- or one of the first states -- to develop this type of training program, I suspect?

COMMISSIONER GOLDSTEIN: Yes. This is a much more comprehensive program than has ever been done before. There are training programs. Indeed, our State, through the Treasury Department, had a training program, but we are not getting really serious about this. The training program we had before covered several of these topics, such as health hazards. I know that because the Health

Department was giving that portion of the course. It was a three-hour program, and this, obviously, is a much more comprehensive program, and it has a real written examination to go with it.

ASSEMBLYMAN DORIA: Do you feel concerning the asbestos removals that have taken place in the past that some of the workers were not qualified, or that they did not have the experience necessary to do the type of job they should do?

COMMISSIONER GOLDSTEIN: The Health Department didn't investigate that. But, I think the Public Advocate certainly did. His report went into that, and based on his report I find that to be valid information. I have no reason not to agree with his findings.

ASSEMBLYMAN DORIA: So, you do agree with the report of the Public Advocate in that area?

COMMISSIONER GOLDSTEIN: Oh, yes. The Health Department assisted the Public Advocate as he developed information in this regard.

ASSEMBLYMAN DORIA: Are there any questions from the Committee members? Assemblyman Hollenbeck?

ASSEMBLYMAN HOLLENBECK: We have had asbestos removal from various public buildings?

COMMISSIONER GOLDSTEIN: Yes.

ASSEMBLYMAN HOLLENBECK: that has occurred?

COMMISSIONER GOLDSTEIN: By public buildings do you mean schools?

ASSEMBLYMAN HOLLENBECK: Schools or any other public buildings?

COMMISSIONER GOLDSTEIN: Well certainly the schools. I would have to look into the available information to see the extent of non-school removal.

ASSEMBLYMAN HOLLENBECK: All right. Where it was removed, did it go through any type of an evaluation procedure or a decision protocol, such as you described?

COMMISSIONER GOLDSTEIN: The decision protocol I presented here was just developed, so, obviously, it didn't go through that decision process.

There was an EPA test that was in effect prior to this one which was similar but it did not have our air standard.

ASSEMBLYMAN HOLLENBECK: Who made the decision to remove the asbestos from the various buildings?

COMMISSIONER GOLDSTEIN: The school boards.

ASSEMBLYMAN HOLLENBECK: Was that with the advice of your Department? Did you advise them?

COMMISSIONER GOLDSTEIN: That particular issue is not totally clear. Now let me tell you what I mean by not totally clear: The Health Department, since, I believe, 1981, has inspected 666 schools. Now, of those 666, we recommended removal in approximately 25 percent. That is one piece of information.

Now, secondly, there was a lot of activity which occurred this summer. I don't have the final number on how many schools went through remediation projects. You will get that, presumably, from Commissioner Cooperman. They removed it.

Now, we haven't cross-checked the list to see how many of those who removed it did so because we recommended that they should remove it; how many were the other 75 percent, where we did not recommend removal; or, how many were those that we never inspected. So, until we can cross-correlate those two lists, I can't exactly answer your question.

ASSEMBLYMAN HOLLENBECK: Of course, the point is, if we didn't go through property evaluation at the time, it was a move of hysteria rather than one of rationalization, which I think your report even says it should be carefully calculated and looked at very carefully in order to develop the program. We might have unnecessarily risked exposure for the people who were in those buildings at the time because of somebody's hysteria. Now, we are formulating a program and trying to close the barn door, but we let the horse escape in a lot of cases already.

COMMISSIONER GOLDSTEIN: Well, I agree with the first half of your statement. To the extent that the damage has already been done -- whatever the damage was -- that is also true. But, to say the barn door was shut, I don't think that is quite the situation.

Even though there are 1500 schools in New Jersey, I think the program will now at least address those 1500, and we have all the State-owned and managed facilities, plus we are trying to examine a policy on how to deal with the rest of the "universe."

ASSEMBLYMAN HOLLENBECK: The damage, of course, was the exposure to the students in the schools, and to the employees in the schools.

COMMISSIONER GOLDSTEIN: I don't think that was the primary damage. I think that Commissioner Cooperman will comment on that, because I don't think that was the damage at all.

ASSEMBLYMAN HOLLENBECK: Was there exposure?

COMMISSIONER GOLDSTEIN: I think there were two damages. The first damage, I think, was the unnecessary expenditure of resources to correct a deficiency when, in fact, the deficiency may not have needed correction. The second area was the potential health hazard to the workers who may not have been properly instructed regarding how to protect themselves.

The third area, in terms of the schools, the school children, and/or the teachers -- none of these schools were opened prior to the passing of a final inspection. So, the damage was contained at that point and did not move to the school children or to the teachers. That was prevented.

ASSEMBLYMAN HOLLENBECK: Do we agree that when you disturb it you will create an airborne problem, and once it is airborne and it settles down, it is difficult to clean?

COMMISSIONER GOLDSTEIN: No, the fact of the matter is that under proper procedures it does get airborne, and obviously that is a potential hazard; but, the space is supposed to be very tightly sealed with plastic and tape. Secondly, as it becomes airborne, they are supposed to have a vacuum suction unit sucking all that air with the fibers in it, into a hepafiltration, and into a sealed bag, so that none of it can escape. That is the proper way to do it.

ASSEMBLYMAN HOLLENBECK: Was that the procedure followed in every case?

COMMISSIONER GOLDSTEIN: No, that procedure was not followed well in every case.

ASSEMBLYMAN HOLLENBECK: So, that is the way it will be done, and should be done; but, it was not done that way.

COMMISSIONER GOLDSTEIN: No, but the rules at that time said that was the right way to do it. The fact is, in many situations, the rules were not being properly followed.

ASSEMBLYMAN HOLLENBECK: Then, of course, my original statement regarding exposure to the students and to the people who work in those particular areas—

COMMISSIONER GOLDSTEIN: (interrupting) No, no; the schools were closed at the time. So, even if it escaped from those areas, the cleanup that followed dealt with all those areas.

ASSEMBLYMAN HOLLENBECK: You are referring to the fact that after the disturbance you then cleared it all out, there was none left, and now you will not detect any asbestos, airborne or friable, that could have become airborne?

COMMISSIONER GOLDSTEIN: Right. The cleanups that followed, even with the bad practices used, were comprehensive. The inspections that occurred, once we had the knowledge these procedures were not being done properly, were very comprehensive. No school opened that wasn't properly cleaned up and safe.

ASSEMBLYMAN HOLLENBECK: No school had any asbestos particles of over 100 nanograms?

COMMISSIONER GOLDSTEIN: Well, that is a different question.

ASSEMBLYMAN HOLLENBECK: That is after the cleanup now.

COMMISSIONER GOLDSTEIN: Yes, I understand your question. I am going to give you an answer to it.

ASSEMBLYMAN HOLLENBECK: Because that is the criteria used to start a cleanup now. I am saying after the cleanup, did any of those schools, or any of those buildings, meet that criteria?

COMMISSIONER GOLDSTEIN: Well, what I didn't point out in my testimony was, in order to do that kind of air standard requires an electron microscope. The State does not currently own an electron microscope. We are in the process -- Treasury approved it -- of purchasing that electron microscope.

This is a forward-looking policy.

ASSEMBLYMAN HOLLENBECK: I am not disagreeing with the policy now. What I am disagreeing with is that somebody jumped the gun -- unnecessarily maybe, but it seems some people jumped the gun -- and with that, they caused some unnecessary exposure and risk. That I disagree with.

COMMISSIONER GOLDSTEIN: I agree with you. I think school boards did jump the gun, and I think when we look at the reasons why they jumped the gun, they thought they were doing the right thing.

Let's look back in history: This was created by the EPA saying, "You must put a sign up stating that you have asbestos." As the Public Advocate indicated, that is putting the "Big A" up, with no guidelines, no procedures, and nothing regarding what to do about it. That generated a very strong public outrage, not only in New Jersey but across the nation. The fact is, I think New Jersey did have an enhanced reaction. We have to look at the history of New Jersey, which you know much better than I do, with the Johns Manville situation we had here; the fact that the original studies on mesothelioma and lung cancers, related to high occupational exposure, were done by Dr. Solokoff, a New Jersey resident; the fact that Governor Byrne was very much involved in this by setting up an Asbestos Policy Task Force under his Administration; the fact that he asked EPA to develop standards and protocols, which they did not do; and the fact that New Jersey has been out front in this field for years, and we are continuing to be out front in what we are doing about asbestos.

ASSEMBLYMAN HOLLENBECK: But at that time was it even known that there were no known exposure cases to people who were not in the occupational fields that used it?

COMMISSIONER GOLDSTEIN: No, the risk exposure information was something--

ASSEMBLYMAN HOLLENBECK: (interrupting) There were no known cases of cancer from it?

COMMISSIONER GOLDSTEIN: I'm sorry, would you repeat that question, sir?

ASSEMBLYMAN HOLLENBECK: You reached the conclusion in your own report, that when people don't use or work with it -- people who

have had just casual exposure to it -- there were no known cases in the State. Wasn't that known at that time?

COMMISSIONER GOLDSTEIN: Not necessarily, no. We are dealing with the latest information. We are not the only--

ASSEMBLYMAN HOLLENBECK: (interrupting) This was during the period between 1970 and 1980, was it not?

COMMISSIONER GOLDSTEIN: No, because the most recent information, and the most comprehensive study of the asbestos situation, in fact, was done by the Canadian Government. They did a report that is thousands of pages thick, and that is the most comprehensive recent documentation of all the information. We were fortunate that we had that study available to us, as well as additional information which they did not have.

I can't speak exactly to dates, regarding exactly when we knew something. What I am saying is, the information we have in our report is the most current possible.

ASSEMBLYMAN DORIA: The question only deals with the period between 1970 and 1980. I will use your own statement, from your own interim report. Was this known during the period between 1970 and 1980? "There were no documented cases of lung cancer associated with low-level asbestos exposure over a lifetime."

COMMISSIONER GOLDSTEIN: (interrupting) The fact that there were--

ASSEMBLYMAN DORIA: (continuing) "The models used to determine--"

COMMISSIONER GOLDSTEIN: (interrupting) Yes. I am certain it was known that there was no documentation for substantiating low levels of lung cancer due to asbestos. That doesn't mean it didn't necessarily exist at that point in time; it just hadn't been found. So, this report takes that information one step further.

ASSEMBLYMAN DORIA: I am not disagreeing with your report, I am only trying to say that information was known even back between the periods of 1970 and 1980.

COMMISSIONER GOLDSTEIN: Many scientists, at that point in time, were arguing that even though one didn't find it did not mean it didn't exist.

ASSEMBLYMAN DORIA: You know, we still have a Flat Earth Society. People still believe the earth is flat. So, the disagreement is there.

COMMISSIONER GOLDSTEIN: Well, with a long lead time -- there is a 30-year potential exposure -- there are a number of people, and this is part of the education program, who believe that one asbestos fiber can result in a case of either lung cancer or mesothelioma. And, with a 30-year lead time and with other environmental elements in our society, it is very difficult to prove that could not exist as a possibility. So, this is very difficult to refute. What we are concerned with is putting it into a reasonable perspective.

They will also admit, at the same time, that even if this were the case, the odds against that happening approach those of being struck by lightning. So, we are talking about infinitesimal odds in order to make a point which cannot, in fact, be proved.

ASSEMBLYMAN DORIA: As I said, I agree with your report; I don't disagree with the report. I only disagree because, as you said, it has become very expensive: Money has been spent, and we have had the possibility of unnecessary risk of exposure, where we shouldn't have risked exposure.

COMMISSIONER GOLDSTEIN: Yes. I agree with that.

ASSEMBLYMAN DORIA: I only wonder how that was allowed to occur.

COMMISSIONER GOLDSTEIN: Well, it wasn't so much that it was allowed to occur as it did occur. I tried to indicate that we think the primary reason for that was due to the EPA requirement to post that sign.

In the previous years, we had been running 30 to 40 such projects over the course of the summer, and this summer the number was extraordinarily high. When we learned that the number was going up dramatically-- This policy test was performed before the summer situation hit. We were aware of problems with asbestos removal. That is why the program was put together. What we did not anticipate when the Governor signed that Executive Order, were the events that happened in the summer -- the rush to judgment, if you will.

But, when we learned about it -- and we learned about it in June or July -- then the Health Department and the Department of Education stepped up its efforts, and that is also when the Public Advocate stepped up his efforts, in order to cast more light on what was happening that summer.

But, the reason the Policy Task Force was set up in the first place was to avoid a situation such as the one that happened. We just had no foreknowledge. We simply just did not expect that it would transpire the way it did. We were basically going to allow 30 or 40 such projects to go ahead, and have our plan in place for the following summer.

It took a great deal of time and effort for all these different State agencies, individuals, scientists, etc., to reach agreement. This is not something that was just put together in a week by saying, "We need a plan, and we better look good." This thing was studied in-depth.

ASSEMBLYMAN DORIA: I don't disagree with that. All the departments were aware of the Task Force? Was the Department of Education aware of it?

COMMISSIONER GOLDSTEIN: Of the Policy Task Force?

ASSEMBLYMAN DORIA: Yes.

COMMISSIONER GOLDSTEIN: Of course; they sit on it.

ASSEMBLYMAN DORIA: Thank you. Are there any other questions?

ASSEMBLYMAN OTLOWSKI: Mr. Chairman?

ASSEMBLYMAN DORIA: Mr. Otowski.

ASSEMBLYMAN OTLOWSKI: Commissioner, one of the things that bothers me, from an administrative point of view, is some of the testimony that was developed here today. The testimony that has been developed so far indicates that in some cases it would be better to leave the thing alone, because there is no proof that it is causing any damage, or that it could cause any damage.

Second, the testimony showed that, under the present circumstances, if you removed it, you could cause more harm than good at the present time.

Third, there is a question of, how far and how widespread is the job and how is it to be tackled?

Now, under those circumstances, with some of the sad experiences we have had with bureaucracy and with inspections generally — and I am familiar with that from two points of view, one as an administrator and one as a legislator — from a legislative point of view, we have been conducting hearings about the overlapping of inspections, and the contradictions from one inspector to another. As a result of that, of course, all kinds of chaotic situations result and all kinds of escalated costs result.

Now, from an administrative point of view, in view of the testimony that has been developed so far, how are you going to prevent all of these inspectors, that hordes that would undoubtedly be created by this legislation, from contradicting each other, causing chaos, and causing all kinds of problems? What efforts will be made? What kind of mechanism will be used to cage those inspectors so they will all be on one track, and they won't be in a position to escalate cost, to cause confusion, or to cause more cost and confusion than any good they could bring about through this? How do you propose to deal with that?

COMMISSIONER GOLDSTEIN: That is a very good question. Quite simply, I think the thrust of that is, A, there has to be a standardized protocol, and, B, the training all has to be done by one party. The protocol has to be established in such a way so that different inspectors, going to the same site, would agree. And, this is exactly what the Policy Task force is recommending.

In this case, the Health Department is developing the standards for the training program, and the Health Department is to certify the removers, inspectors, and contractors. In addition, we are developing the standards and the certification of all those doing the training.

The number of inspectors here is not comprehensive. DCA plays a key role in this, and the Health Department plays a key role in it. That is about it. So, we don't really have two groups of inspectors, and it is not possible to have the confusion you mentioned because of the responsibilities the different departments have. DCA

has the Uniform Construction Code within it. They are the ones that issue permits to do construction. They are the ones that develop and monitor. And, they are the ones that issue the Certificates of Occupancy. So, their inspectors are the ones that are going to need to be trained, and the Health Department, in fact, is going to train them in exactly the same way we train our own people.

So, there is going to be standardization of the training program and there is going to be a standardized protocol. We have great objectivity built into this, not only in the way we do a physical inspection but also due to the fact that the air standard will be performed by our laboratory, and we will be acquiring an electron microscope to use in that test.

So, everything should be much more consistent and much more uniform than it has ever been, and it is being done this way to attack the issues that you very legitimately raised.

ASSEMBLYMAN OTLOWSKI: Let me ask you this: Under the proposals — and, as a matter of fact, I am not familiar with the legislation that has been proposed, nor with the details of it — and under the legislation, would the Commissioner of Health, for example, have the authority to review the work of those inspectors in order to make sure that they were toeing the line, that their inspections were sensible, legitimate, and in conformity with the law, rather than everybody dancing in different directions?

COMMISSIONER GOLDSTEIN: Yes.

ASSEMBLYMAN OTLOWSKI: The Commissioner would have the authority to review that?

COMMISSIONER GOLDSTEIN: Yes.

ASSEMBLYMAN OTLOWSKI: And the Commissioner would have the authority to reverse inspectors who were arbitrary, capricious, or ignorant?

COMMISSIONER GOLDSTEIN: Well now, that comes under the Commissioner of the Department of Labor. He has to have that authority. There are two Commissioners involved, the Health Commissioner and the Commissioner of Labor.

As far as lousy work practices are concerned, the Health Department would identify lousy work practices, but it would be the Department of Labor that would oversee the license.

ASSEMBLYMAN OTLOWSKI: I think that with legislation, such as this, when you are getting into an area that is so swampy, great care has to be taken so that you don't create inspectors who are going to create more havoc than the problem itself creates.

COMMISSIONER GOLDSTEIN: I absolutely agree with you, and we are not going to do that. We find that Bill 1820 is a terrific piece of legislation; it is very well worked out. We are confident it goes a long way. As a matter of fact, we are so confident that when we put our puzzle up, we showed it in white and not in red, and this thing (referring to aforementioned puzzle) was developed before the Governor signed the legislation.

ASSEMBLYMAN OTLOWSKI: Commissioner, let me ask you this question, in view of the testimony that has developed here today. Again, the testimony has shown that in some instances it is better left undone than to touch it. Are you prepared, or when will you be prepared— As a matter of fact some of the questions that were asked by my colleague, Assemblyman Hollenbeck, also refer to the possibility of your rushing into this, tearing buildings down, and just creating activity so that the people will feel something is being done and hysteria is being allayed. When will there be a real, intelligent, measured approach to this, in your opinion?

COMMISSIONER GOLDSTEIN: Well, I think the intelligent measured approach is occurring right now. The implementation of that measured approach is in the future. The Task Force expects to complete its work by the end of this year, and then we will have recommendations. Hopefully, through dialogue with this Committee we will establish the legislative priorities, react to some of the bills you have been considering, and give you our judgments on them in order to establish what the funding mechanism will be

Our timetable shows that the training program should be on line by February 1, and that the DCA will be in the school-monitoring business by April 1, so that the events which occurred last summer will not occur again in the upcoming summer.

ASSEMBLYMAN OTLOWSKI: Thank you very much.

ASSEMBLYMAN DORIA: Assemblyman Felice?

ASSEMBLYMAN FELICE: Commissioner, one of the things you brought out was the fact that initially your group did a study of approximately 666 schools. Of that percentage you found approximately—

COMMISSIONER GOLDSTEIN: (interrupting) Twenty five percent.

ASSEMBLYMAN FELICE: (continuing) --twenty five percent. I am sure that information was given to the Department of Education and Mr. Cooperman's office. Was that ever given to the school districts?

COMMISSIONER GOLDSTEIN: I would have to check the exact flow of information. I doubt if it was the same in all 666 inspections.

Peter, do you have an answer on that?

MEMBER OF AUDIENCE: It was primarily given to the school boards. We were actually serving on a consultant basis. When we went into a school and assessed it and found a need to remove the asbestos, it was brought to the attention of specific school boards, as well as the local Board of Health. Now, whether or not the school board took the initiative to push it upward to the Department of Education -- that took place sometimes, and it did not take place at other times.

ASSEMBLYMAN FELICE: In other words, we don't know right now if the 25 percent, as you mentioned, were ever actually accomplished -- that the removal took place?

COMMISSIONER GOLDSTEIN: That is correct. We have not cross-checked our inspection list with those projects that actually occurred, and that needs to be done. That points to another bill, which has to do with paying school districts for having done those removal projects. The question is, if they removed it in the face of a report from the Health Department which said they should not remove it, do we really want to repay them for that effort?

ASSEMBLYMAN FELICE: Well, that is important.

COMMISSIONER GOLDSTEIN: Right. So, it is very necessary for us to cross-check our list to see whether or not they went ahead with it after they received a report from us which said "don't do it," versus a report from us saying, "go ahead, remediate it."

ASSEMBLYMAN FELICE: That information would be very beneficial to this Committee. I think we should also know if there are school districts that were in that 25 percent where maybe nothing has been done.

COMMISSIONER GOLDSTEIN: Yes.

ASSEMBLYMAN FELICE: So then, the school boards took it upon themselves, even when they were notified that they weren't in a hazardous position, to go ahead and remove the asbestos?

COMMISSIONER GOLDSTEIN: That's possible. I don't know if they did or not. I don't know if our 666 relate at all to any of the projects that we are talking about.

ASSEMBLYMAN DORIA: There is a problem here and I would just like to clarify it. I think the problem is that the Department of Health never communicated with the Department of Education, so the school districts may have known but the Department of Education never knew. So, there could have been a lack of coordination, where the Department of Education was requiring that the school districts do a survey and make a determination of what the problems may have been. So, a district may have been told one thing one place and then they may have been told something else by someone else.

As an example, a lot of school districts brought in an outside consultant as part of the survey process. The outside consultant may have said there was a problem. That then went to the Department of Education and the Department of Education was informed there was a problem, but they had nothing from the Department of Health telling them there wasn't a problem. This just points up a very bad bureaucratic situation that, hopefully, will now be rectified by what is taking place. But, there was a lack of communication there that I think was very bad.

I do not think anyone is to blame for this. I am not placing blame. But, what I am saying is, that was going on. In one place they were being told one thing and in another place they were being told another thing. There was pressure from the general public, and things were getting confused.

COMMISSIONER GOLDSTEIN: Let me comment on that. The Department of Education was not telling school boards to remediate. The Department of Education was simply enforcing the EPA ruling which said, "You are required to post a sign telling us if you have asbestos."

ASSEMBLYMAN DORIA: But then the public pressure came about which said, "you should take it out because it is bad," even if it wasn't really bad. This follows what Assemblyman Hollenbeck said during his questioning.

This is the thing, we see here a great deal of public confusion, more than anything else, which resulted in hysteria in some instances — maybe it was unjustifiable, but, still, people felt there was a problem and they were doing what they thought was right because of the impression created, and because of the consultants' findings. Many consultants, as you know, came into the districts throughout the State and they were telling them things. These reports went to the Department.

I think that, as Assemblyman Felice said, it is necessary — and, I would ask you to work together with the Department of Education and Commissioner Cooperman on this — for you to try to come up with some kind of a list of schools where you found a problem, and how many of them were remediated. Then you should come up with a list of those where you didn't find a problem, but which subsequently removed it, and why they did the removal. Maybe they had a consultant's report saying that there was a problem. Try to find out exactly what took place, because in the end maybe the school districts were doing what they thought was best because of a lot of confusion on their part.

I think this is really something we definitely have determined; there was confusion. It is a shame that the Task Force was not able — and we understand that there were a lot of experts involved and it takes a while to develop the standards; it is a very good report — to begin this a year earlier so that we could have dealt with it prior to it becoming more than an emergency because of the confusion created.

COMMISSIONER GOLDSTEIN: Right, you are not the only one to make that comment.

ASSEMBLYMAN DORIA: That is a shame. I have a couple of questions.

ASSEMBLYMAN OTLOWSKI: Mr. Chairman, before you ask your questions, can we just develop the point you just made and that Assemblyman Felice and Assemblyman Hollenbeck made? Let's just stay with that for a minute, because I think it is very, very important.

We have several departments that are involved here, and as soon as I see that I get terribly frightened. We have the Department of Education, we have the EPA, and we have the Health Department involved. If I am going to send my kid to school to be educated, I would want that problem to be handled by the Department of Education. But, if I am talking about health -- a health problem, and I think asbestos is a health problem -- I want to see that handled from a health point of view. I would want to see that handled by one voice and by one person so that there wouldn't be this mass confusion, and, as a matter of fact the introduction and encouragement of hysteria which occurs when so many departments get involved with it. You then have a crisscross of information and all kinds of undercurrents going on.

Now, with our approach, the approach we are talking about, are we going to make sure that this is pinpointed; that it is centralized; that one department is going to be handling this; that this is a health problem and that it is going to be handled from that point of view? Is that the approach we are taking?

ASSEMBLYMAN DORIA: I think so, yes, Assemblyman Otlowski. That is what we trying to encourage. The Task Force report that was put together is also saying the same thing.

I think what we are trying to determine here is, "What did happen in the past?" in order to try to prevent problems in the future. I think that is one definite recommendation that has to be made and that we have to encourage. I don't know if legislation is necessary. The proposal is in the interim report. However, I definitely think it is necessary for one department to accept responsibility and then to coordinate the process, rather than doing what has taken place in the past.

I remember going to meetings -- and I am not going to belabor this -- on the asbestos bill, for the removal of asbestos in the elementary and secondary schools, and I remember EPA coming in and saying one thing, and the Department of Health coming in and saying another thing. Environmental Protection, the Department of Health and the Department of Education were all saying something else. It was confusing. I think that now it is necessary for one department -- in this instance it seems to be the Department of Health, and that is fine with me -- to take over the leadership and do the coordination; this will prevent a lot of the confusion that has occurred in the past.

To go on with that, I want to ask the question that always comes up during these discussions: Do we remove it, or do we encapsulate it? It seems like there is no answer to that question. I have people from your department telling me one thing, and then I have people from other departments telling me another thing. Are both allowable at the present time? As you know, the schools were told they could not encapsulate it, that they should remove it. Now, are we going to allow encapsulation? There are arguments pro and con on this, and I understand that, because eventually it will have to be removed before the building is torn down. I understand that. But, will we allow that, or will we just be going for the removal? Will there be one policy on that, and will there be a clearly-defined policy on that?

COMMISSIONER GOLDSTEIN: There will be a clearly-defined policy on that. But, let me quickly point out that it is not a choice of "a" or "b". It depends on the situation. In some situations, removal is the only logical thing to do; in other cases it is encapsulation; and in other cases it is enclosure. Encapsulation, although it sounds like enclosure, technically means to apply plastic paint over it, which just seals it more tightly to the surface so it can't be disturbed.

Sometimes simply surrounding it with a physical barrier is the solution. So, it varies. It depends on the life expectancy of the building, so it has a cost implication. It is a disruption. It depends on how many occupants there are in the building. It makes no sense to do the same thing in a classroom that is done in a boiler

room, a service tunnel, or in an office. So, there are different environments, different situations, and different approaches. But, all have the same effect, and that is to create a safe environment for those who are going to be in the buildings.

ASSEMBLYMAN DORIA: So then what we are saying is encapsulation, given the appropriateness of the procedure, will be allowed. Because I have had somebody from your department come to committee meetings and say that you are saying encapsulation should not exist at all and it should not be included in any legislation.

COMMISSIONER GOLDSTEIN: No. Peter do you want to comment on that?

MEMBER OF AUDIENCE: That was part of interim policy that was developed back in the Byrne Administration -- that encapsulation was not allowed. A lot of things have happened since then.

ASSEMBLYMAN DORIA: I had somebody from your department at a committee meeting two weeks ago who said that. I don't remember his name -- Doctor "somebody", who came to the Education Committee meeting in the Senate on the bill dealing with removal in Higher Ed, and he was saying that the word encapsulate should be removed because we do not encapsulate in New Jersey.

MEMBER OF AUDIENCE: Well, the interim report you have before you clearly indicates that is a possible alternative for temporary remediation. You have to underscore the word "temporary."

ASSEMBLYMAN DORIA: But, from what the Commissioner said, it depends upon the situation. It can be used, or it cannot be used. In the past it could never be used. So now we are saying, depending on what the situation is and what the problem is, we can use it. I just wanted to get that clear because I did have someone from the Department of Health testify against encapsulation, just about two weeks ago, at a hearing before the Senate Education Committee.

COMMISSIONER GOLDSTEIN: All right. I can find out who did it and the context in which he did it, to see if maybe he would want to set the record straight on that.

ASSEMBLYMAN DORIA: Yes. As I said, I was getting confused because I couldn't figure out what was going on. Once again, there is

a need for some of the information to flow to all elements of the department. That is always a problem too, and I understand that; but that did occur.

The next problem is the question of public buildings and the question of public institutions. You present those as two areas that are, at the present time, in the red. There has not been any answer on them. My questions are, what are we discussing here?

Number one, obviously inspection is one thing. That is the first step. And, obviously, from that inspection process a determination will be made as to whether or not it is safe or unsafe. Is that correct?

Then, who is going to be responsible for that? Again, will it be through the Department of Health and then DCA inspectors will go out and do this? I am not talking about our public institutions; I am not concerned about our public institutions. We know that obviously we are going to have to get involved there. But, what about buildings open to the general public? For example, movie theaters that have asbestos ceilings that are peeling?

COMMISSIONER GOLDSTEIN: I can only ask questions, as you are asking questions. The Policy Task Force has yet to address this.

Let's take a movie theater for an example.

ASSEMBLYMAN DORIA: (interrupting) Where the ceiling is peeling and it is asbestos.

COMMISSIONER GOLDSTEIN: Okay, the ceiling is peeling and it is asbestos. First of all, the question come up, "Should the State be involved in assessing a private building and who is going to pay for that assessment?"

Second, where is the health hazard? If you are in a movie theater for two hours, is that the same as being in a building eight hours? Do we have a different standard? One could say it doesn't affect the patrons, but what about the people, the ushers and the person in the projection room? How do we protect them?

So, it starts getting very involved as we move to different types of buildings. Similar questions don't necessarily have the same answers. I have no answers for you today, but it is going to be--

ASSEMBLYMAN DORIA: Will the Task Force be addressing this? That is my first question.

COMMISSIONER GOLDSTEIN: Yes.

ASSEMBLYMAN DORIA: It will be addressing it?

COMMISSIONER GOLDSTEIN: That is most critical to the issue.

ASSEMBLYMAN DORIA: Okay.

COMMISSIONER GOLDSTEIN: Then, once we have that, we can put the funding piece together.

ASSEMBLYMAN DORIA: Again, I don't want to get into a situation where we create mass hysteria. We have a bill that was introduced to inspect every private home in the State for asbestos before it is sold. Now, that is a problem. We are talking about a very difficult situation here, and I just don't want to find ourselves with pieces of legislation like that, or other legislation that comes through and creates hysteria when it is not necessary.

But, at the same time, there is a problem and we should be addressing that problem in an intelligent manner. What I would like to do, and one of the things I am going to ask our Committee aide, Leonard, to do at the present time is to get a listing of all the bills that deal with asbestos.

COMMISSIONER GOLDSTEIN: We would appreciate your sharing them with us.

ASSEMBLYMAN DORIA: And then we can get that to you and your department.

COMMISSIONER GOLDSTEIN: They seem to be developing faster than we can answer the questions they address.

ASSEMBLYMAN DORIA: Well, that is my concern and that is the reason why we created this Committee. That is the reason why the Assembly voted to create this Committee, in order to try to prevent these bills. We can't stop them from being introduced, but we have to know what type of priority they should be given, and what the general public policy in this area should be. Because this is going to be a situation that is going to get worse, not better, unless we come up with some kind of clear definition -- and the sooner the better on the definition -- so we don't have people going out to movie theaters and

looking up at the ceiling. That is going to happen. And, we are going to see it happen more and more.

COMMISSIONER GOLDSTEIN: If you can hold up the development of those bills until we complete our work, that is going to be a tremendous assistance to this Policy Task Force. Otherwise, we are then faced with reacting to those bills, because the Governor's office calls us and says, "What is the Task Force's feelings on these bills?" and we are reaching conclusions before we have thought our way through the entire policy implications.

So, to the extent that you—

ASSEMBLYMAN DORIA: (interrupting) We can't stop the development of the bills. When they come up for discussion, we can then deal with them.

COMMISSIONER GOLDSTEIN: All right, just so you give the Task Force time to finish its deliberations. We are on record as having promised to get this completed by the end of this year. As soon as we have thought our way through this, then we can go into a dialogue about what we have found and what you have considered without having to take a different tact during our own deliberations. That would be extremely helpful.

ASSEMBLYMAN DORIA: I think that is important. I was the sponsor of a number of bills. The bills I have gotten involved with are bills that at that time seemed to be obvious, such as funding for something that was being done in education for a number of years, and that people have been screaming about.

I think that is what we are here for, to determine the direction in which legislation should be going -- not so much the funding areas, but the actual policy areas -- and to develop legislative policy. That is what we are concerned with, I think, more than anything else.

COMMISSIONER GOLDSTEIN: We are in full agreement.

ASSEMBLYMAN DORIA: Are there any other questions?

ASSEMBLYMAN OTLOWSKI: Yes, Mr. Chairman. May I just say this in that connection? I think that this Committee really can perform a public service -- a great public service -- one, because the

hearings are obviously developing a number of things that we have heard today which are bringing this whole question into focus. If we play that role, and and play it wisely we are performing a great public service.

Second, if, with all of the bills that are being introduced like peas in a large drum, we take a look at them, and as a matter of fact if they are put under the searchlight of the work of this Committee, a lot of those bills will disappear by themselves. So, I think that this Committee has a great function to perform, primarily in the area of the information that will get out to the public from this Committee.

Third, there is the fact that we will bring this problem into focus.

And, fourth, we will bring some sense and coordination into the approach to this whole problem.

None of us are going to be killed tomorrow by going to the theater and looking at the ceiling.

ASSEMBLYMAN DORIA: There is no question about that. I think that is very, very true, and I just want to second Senator Otlowksi's remarks.

COMMISSIONER GOLDSTEIN: In some of our movie theaters one might be better off looking at the ceiling.

ASSEMBLYMAN DORIA: I think that is important. We are trying to bring some rationale into this whole discussion and I think the work on both sides has to come together so that we don't find ourselves at odds.

COMMISSIONER GOLDSTEIN: Right, and I appreciate the forward-looking attitude of this particular Committee. You know, we can go over and over the events of last summer endlessly, but in terms of getting on with the job at hand, I certainly appreciate the emphasis of this Committee: To put that behind us and to get on with the job.

ASSEMBLYMAN DORIA: Again, that is past. We want to make sure that we don't have those problems again. I agree.

If there are no other questions, I want to thank you very much for your presentation and for your time. Thank you, Commissioner.

At this time, I would like to ask Commissioner Saul Cooperman to come forward.

COMMISSIONER SAUL COOPERMAN: Chairperson Doria, Assemblymen Felice, Hollenbeck, and Otlowski: I have to my left, Jake Piatt, who is an Assistant Commissioner in the Department. Vince Calabrese has been ill all week. He wanted to be here, and I wanted him to be here, but he can't be.

I would like to make a brief statement; but, before I begin discussing this, I would like to say I think it is good to look back because if you look back, you see the mistakes that were made and you plan more intelligently for the future. One of the overriding concerns that I had -- the only one -- was the safety of the kids.

Our involvement in asbestos goes back -- rather than going back to a Governor's Committee in 1977, and all that -- to January, 1984. There was an amendment to the State Uniform Construction Code Act which moved responsibility for public school construction from the Department of Education to DCA. However, the Department of Education was to retain responsibility for educational adequacy. In March and April, the Department of Education and the Department of Community Affairs met to discuss just what educational adequacy was.

In the course of that discussion, DCA representatives asked us to continue inspection of asbestos removal projects in schools. They said their people weren't trained properly, they couldn't get them trained, and they asked if we would carry it over for a while. We said, "sure."

According to this agreement-- And, I think the next three points regarding exactly what the responsibilities were, under the old rules, are very important:

First, local districts were to determine whether asbestos removal was appropriate, and to submit removal plans. So, as Commissioner Goldstein said, almost when the "A" went up for asbestos, parents said, "Asbestos -- not my child; we have to take it down." It was sometimes almost a knee-jerk reaction.

Our first job was to approve those plans and to make sure, by checking with Treasury, that the people were qualified.

The second thing was, the district, when it was ready to take down asbestos, had to call us in for what is called a pre-removal

inspection. So, we would send our inspectors in, make a check list, and they would go down the list to make sure everything was in good shape, properly sealed off, and so on.

The district would then have to monitor, on a day-by-day basis, the taking down of that asbestos. When they thought they were ready for a final inspection, they called us. We were to go out and do three things: Check their day-by-day monitoring schedule; hold a complete and thorough inspection; and see that their air sample met the "specs" that were in force at that time.

Between August 31, 1983 and August, 1984, 355 districts filed for removal projects. That was more in one year than in all the previous years combined. As the removal projects were going on during the year, I directed Vince Calabrese to write a letter, and this is the letter, dated April 12, 1984. My concerns at that time -- and I will just relate them -- were to establish a definitive measure of contamination. If you don't have a definitive measure, how do you decide to leave it up or take it down? We did not have one.

The second thing I wanted -- and I won't go into all the things in the letter -- was to fix responsibility. I didn't really want the responsibility because I am an educator and an administrator. I don't know that much about nanograms, etc., but I was concerned that the responsibility wasn't fixed, so I said, "You must fix the responsibility."

The Public Advocate's report of August 29 -- the interim report -- talked about many of these concerns. The left hand didn't know what the right hand was doing, and they were right. They talked about when the asbestos went up, and about the schools wanting to take it down. The also said that shoddy work had been performed.

When I asked the people in our Department about how many projects were still going on that had not requested final inspection, they informed me that there were slightly over 100.

I called the Public Advocate's office because I wanted to determine whether I should act in a way that a Commissioner had not acted before. In short, a school district was allowed, if they sealed off an area, to conduct the removal of asbestos when children and

teachers were in that building. That is a very, very important consideration. They could take the asbestos down when the kids and the adults were in the building.

I was convinced, beyond a reasonable doubt, that while the overwhelming majority of school boards and their administrators acted wonderfully, there were, however, several that had not. I was convinced that at times people who had been poorly trained, or who were not trained, were taking down asbestos. There were instances where windows were opened and asbestos was being taken out of the windows and just pitched. There was another instance where people were taking down asbestos and they were wearing cutoff jeans; they were barefoot; and some of them were tracking this through the hallways. Of the over 100, I could not be certain about how many were scrupulously abiding by the rules. My sense, which was not good enough for me, was that the overwhelming majority were playing it straight and they were doing it right. But I felt that, at least in some, there was a clear and present danger to children and staff.

As I said before, until this year, the Department allowed schools to open as long as they were properly sealed off; and, the local administration and boards had the responsibility to monitor it carefully and correctly. The possibility, as I said, of a clear and present danger had been introduced. Because of this possible danger, and because inspections were not required, I decided to order all schools with asbestos removal projects in progress to remain closed until I was convinced that the final inspections were conducted and they had a clean bill of health. Then, and only then, were we going to issue occupancy permits.

I also realized I had to know what districts were ready and what districts were not ready. In short, what was their status? I found that the record-keeping system in the Department, in the Bureau of Facilities Planning, was not properly organized. In essence, this is what they did: They would have a folder on, let's say, Perth Amboy. Let's say there were six projects going on in Perth Amboy: repair the roof; macadam the driveway; fix the football field; put shelves in the library; and do asbestos. They put all the projects

together; so, when we tried to get the current up-to-date asbestos projects, it took us over two days. We erred in our record keeping, and I apologized then, and I say it now to approximately 20 districts, because when I got the information I said, "If you are not absolutely sure of the status of these districts, you don't tell the press and to the rest of the media that everything is okay if it is not okay. I want it verified and cross checked."

Once we realized the problem, I believe the Department staff performed an admirable job. Throughout the Labor Day weekend, our staff worked many straight 48-hour shifts. They determined the status of every asbestos job in the State. We did inspections of every school district that had not been inspected. We had some pressure to allow schools to open. We would not. We were checked by the Department of Health and by regional EPA after our inspectors went in, and everyone verified the results of our inspections. I felt this was a major accomplishment during that Friday through Tuesday, when some schools were going to open.

There was justifiable criticism in the press, that "the number is 82 today, then it is 79, then it is 84." I would like to just take a moment to tell you how this happened, because when we messed up originally, it was on the numbers — in not being able to specify them. We would go into a district and say, "Do Elementary School Number One," because they had properly filed, had a pre-inspection, and so forth. And, when we went in to inspect Elementary School Number One, we found out, in a couple of districts, that they, without submitting any plans, were taking down asbestos in their Junior High School. So, instead of the number going down by one, it might have gone up by two. As I said, most of the school districts were great. Some were not.

During this period, the Department listed as "ready to open" only those schools we were certain had Certificates of Occupancy. By September 10, every school in this State that indicated a removal project in process, had been carefully inspected, and granted a Certificate of Occupancy. Only five schools in this State had to delay their opening for more than 72 hours.

I think the question must be raised, "What if we did not act?" If the Public Advocate had not submitted his report, and if we had not taken what I think was the proper action, it is most likely that schools would have opened with projects in process. That is a fact. Some students and staff would have been exposed to hazardous levels of asbestos without being aware that a project had been in progress. And parents, teachers, school board members -- many, many people -- would have suffered continued anxiety over whether their schools were safe. One thing is clear: The confusion had to be cleared up; responsibility had to be fixed; and, contamination levels had to be set. I think that has happened.

I am not going to repeat all the things Rick said here. I just feel very good that the threshold questions delineating responsibility, fixing responsibility, defining the training, and holding people responsible has been accomplished. I also feel that although it was very tough during about five or six days in August, this State is ahead of the other states, and those states are probably going to follow. When someone goes first, everyone profits from the mistakes of the original effort.

I know that in other states, as I am speaking right now, schools are closed because they are discovering contamination levels.

I will just skip some of the other things I was going to say, because I think Rick said them better. I will try to respond to some questions.

ASSEMBLYMAN DORIA: I want to thank you for those comments, Commissioner Cooperman. I think it is important. I think the first comment you made earlier was important. It is important to understand that the Legislature, in its wisdom, determined that the inspections for a school building should be moved from the Department of Education to DCA. That was part of the problem that occurred this summer, in the sense that DCA was not yet in a position to take over the inspection projects; yet, you were not aware, until a latter date, that inspection projects were going to begin.

COMMISSIONER COOPERMAN: Correct.

ASSEMBLYMAN DORIA: That is, I think, part of a bigger problem -- the problem of coordination between departments -- that, hopefully, we will address as a result of this Committee's report.

Are there any questions from the members of the Committee? Assemblyman Hollenbeck?

ASSEMBLYMAN HOLLENBECK: Just going back and dealing with the schools that did have the asbestos removal -- where you gave the approval and they were cleaned up, etc. -- was their approval based on any testing of the facilities to see if they met the standards that are now recommended by the report, the standards for the airborne asbestos in public schools?

COMMISSIONER COOPERMAN: No, sir. Approval was based on -- and we can get copies for you -- the rules that were in effect at that time. So, the rules that are coming out now are "after the fact." In other words, we had other rules to go by. The rules were essentially laid out in what is called -- this is from the EPA -- "An Asbestos Removal Project Check List." They would look at certain things, such as, "were all surfaces cleaned with amended water or an HEPA filtered vacuum?" There were a whole list of things that our inspectors would go in and look at. One of the things that was required was an air sample. What we are talking about, regarding an air sample, was required up until that time; and, what is called for in the interim rules is very different.

As Commissioner Goldstein said, we don't even have a machine that would be capable of measuring the contamination level they have set. So what we did was, we had a set of rules and we enforced that set of rules. When we gave a Certificate of Occupancy, that school had to be clean, according to the rules we had -- and still have.

ASSEMBLYMAN HOLLENBECK: Of course, the only question then is, we don't know whether those schools that had the asbestos were done -- whether the cleanup was done; whether it was approved; or, whether they can meet the standards we have set forth right now.

COMMISSIONER COOPERMAN: That's correct. I asked that same question of Doctor Goldstein, and his comment to me was that if they did a thorough cleaning and they passed the inspection, he felt it

would be unnecessary for the State -- in other words, the authority that would be taking over after the legislation is enacted -- to go back in and inspect again. He feels that if it was cleaned up, it will meet the new criteria.

However, if there is any school that says, "Well, we are not so sure, we would like to have the inspection," I certainly would not be opposed to having another team go in and look at it.

ASSEMBLYMAN HOLLENBECK: To do the air samples and see if they met the air quality standards, as you set in your report?

COMMISSIONER COOPERMAN: I beg your pardon?

ASSEMBLYMAN HOLLENBECK: To see whether they met the air standard qualities that you set in your report, or that are in the interim report?

COMMISSIONER COOPERMAN: That are in the interim report, which is from the State Task Force. Exactly. They would have to have this new machine in order to go in and measure. We were measuring under different rules, and not only were we sure, but Health and EPA came in after us and said, "Those schools are clean."

ASSEMBLYMAN HOLLENBECK: Electron microscopic examinations are available, I assume, from sources other than the State, aren't they?

COMMISSIONER COOPERMAN: I do not know much about electronmicroscopy.

ASSEMBLYMAN HOLLENBECK: I would assume they are available. If you wanted to take samples from those schools, you could have them tested to see if they met, and have, those standards. You could have those samples done by another agency, other than the State.

ASSEMBLYMAN DORIA: There are probably laboratories, I suspect that do these types of tests. No? There aren't?

COMMISSIONER GOLDSTEIN: No. There may be one other electronmicroscopy in the State, but most of this is being done in Mount Sinai Hospital in New York City. It is not readily available.

ASSEMBLYMAN DORIA: At the present time it is not readily available, so the likelihood is that most of the schools were not tested according to the standard in the interim report.

COMMISSIONER GOLDSTEIN: I think the important point, which tends to get lost here, is that our 100 nanogram standard is for pre-inspection, in order to reach a decision on whether or not to remedy. That is going to trigger our decision regarding whether or not to remedy. After they have removed the asbestos, we expect not to have an air level higher than it was when they set out to remove it. So, there has to be consistency. That becomes the post-removal standard. Then the question arises: "Well, do we now have a lower post-removal standard?" The lower post-removal standard is primarily being applied in order to make a decision on whether or not to remedy. Obviously, you couldn't have a higher standard after you remove the asbestos.

Now, in terms of whether or not it would or would not meet our new standard, our evidence is that if the asbestos is in good condition and the environment is clean, that building will be less than 100 nanograms. So, having removed it, and having gone through the vacuuming, the wiping, and everything else, and then letting several days go by, which would let anything that happens to be left in the air escape, if we get our electron microscope in — which is six months after the fact — and then do the measuring, I am confident we are not going to find anything.

ASSEMBLYMAN DORIA: Okay.

ASSEMBLYMAN FELICE: Mr. Chairman?

ASSEMBLYMAN DORIA: Yes, Mr. Felice?

ASSEMBLYMAN FELICE: Commissioner Cooperman, there is one thing I do have in the back of my mind from listening to the report, and that is, there were school districts that evidently went ahead and did the removal process on their own. Is it then possible that, since some of these school districts never requested a final inspection, they have never been inspected? Is that possible?

COMMISSIONER COOPERMAN: I think there is a possibility, but it is very remote, because we had such heightened awareness. We were receiving hundreds of calls. We logged every single call that came in, and we checked out every single call. If someone called and said, "In Roosevelt Junior High School, in West Orange, they are taking it down," we would go down the list to check it and we would say, "Well,

Roosevelt Junior High School didn't file a plan." We would then call, or go out there, and we would find that report not to be so. So, most of the time it was just rumor. There were several schools that were doing it.

We have talked about "projects." A project could be taking down six feet of asbestos from a pipe that was down in the pump room. So, I have to answer your question in this way: We can't know every area, but we feel that most people played it straight, and when we went out to inspect them, they passed the inspection the first time. There were only about — this is from memory — 20 to 25 percent of the inspections, I think, where they failed the first time and they had to clean it again.

ASSEMBLYMAN FELICE: So, basically, the major areas in the schools were inspected and taken care of? They did the removal in areas such as the boiler rooms, pump rooms, and other similar areas, areas that would not expose the students or the educators?

COMMISSIONER COOPERMAN: They have all been inspected. We have inspected where anyone has filed a plan. We have inspected them; they have taken the air samples; and, they are clean.

ASSEMBLYMAN DORIA: May I just go through the procedures that existed in the past? What you are basically saying is that in the past a school district had to have an inspection. Every school district in the State was required to inspect for asbestos, a report — by private consultants, or whoever — would come in and they would then make a determination. We had a copy of that report at the Department, obviously — or did they not have a copy?

COMMISSIONER COOPERMAN: I'm not sure. I don't think we got a copy of that report.

ASSEMBLYMAN DORIA: You didn't get a copy for each district, so you really didn't have the information on which districts had a problem and which districts did not have a problem?

COMMISSIONER COOPERMAN: No.

ASSEMBLYMAN DORIA: You are saying that you still don't have that information?

COMMISSIONER COOPERMAN: The report went to EPA, and what we did— Our authority was such that if a district submitted a plan and they said, "We want to take down asbestos," we had to see that it was done properly; that the inspector was pre-qualified; who the architect was; and so forth. But, they could make the decision to take it down.

ASSEMBLYMAN DORIA: My question is, did the Department collect all the data from all the school districts, and did it know which districts had problems in some buildings, and which ones did not? Was that data collected?

COMMISSIONER COOPERMAN: I don't think we did. Maybe Jake can answer that.

ASSEMBLYMAN DORIA: Jake Piatt?

JAKE PIATT: No, that data was not collected. The actual requirement was that they had to make an assessment and report on friable asbestos, but there was no requirement stating that they had to send it to the State. I want to add, however, Assemblyman, that what we have done is, we have sent a survey to every school district in order to make an analysis of any asbestos planning -- current and right through next summer. We have done that for two reasons: One is in anticipation of any planned projects that might occur during vacation periods this year, and certainly through the summer. Now, we acknowledge the fact that there will be a crossover in responsibility.

The second advantage of that survey is, it would be providing information for the other departments that will be assuming the role.

But, on the original question, no, there was no requirement to do that.

ASSEMBLYMAN DORIA: My only problem is, when we were going for the information regarding asbestos and a determination of what the problem was in the elementary/secondary schools, I was given information regarding the number of schools that had asbestos problems; the number of schools that had removed it; and how many were left. Where did that information come from?

MR. PIATT: That information came about because if the local school district made a decision to remove the asbestos they, of course, had to submit plans for approval; so, 355 schools, for example, triggered those plans into the Bureau of Facility Planning.

ASSEMBLYMAN DORIA: What happens if they didn't submit a plan? We don't know yet whether they have a problem or not.

MR. PIATT: That is precisely right.

ASSEMBLYMAN DORIA: Then, really, the information we used in the bill was not the most accurate information to use in order to determine the total cost of the removal of the asbestos. So, we will say that the figure we used was not the proper figure. That's not what I was told when I went through the process, let me just say that. I was told: "This is what the Department says the total cost is; this is the amount of the existing problem; there is no other problem but this."

COMMISSIONER COOPERMAN: When was that, Joe?

ASSEMBLYMAN DORIA: That started three years ago, and continued until six months ago, when the bill finally went through the committees and was passed in the Legislature.

COMMISSIONER COOPERMAN: I don't know who gave you those figures, nor what they were based on. I wish Vince was here.

ASSEMBLYMAN DORIA: Well, I know Dennis was there, and this was the impression that was created. I would at least like Dennis to comment, Dennis Crowley. Wasn't that the impression that was created?

DENNIS CROWLEY: Yes.

ASSEMBLYMAN DORIA: Yes. That is the impression that was created, at least for me as a legislator: The Department had all the information regarding the total number of schools in this State that had a problem; how many of them had already dealt with the problem; and, how many of them had not dealt with it. So, we had the total universe of schools. We knew, out of that total universe, how many had asbestos problems and how many didn't have asbestos problems. And, of those that did, we knew how many had removed the asbestos and how many still had to remove the asbestos. This was the impression that was created.

COMMISSIONER COOPERMAN: The key is -- and I wouldn't want to say anything with preciseness on this question -- what is a problem? Vince would have to answer this. A problem was defined in the past as, "If the school district says, 'We have a problem.'" There are 2400

schools. We have had approximately 620 or 630 asbestos removal projects. Three hundred and fifty-five were submitted this year.

So, there could be a problem in a school district, but if they haven't defined it as a problem, there is no problem.

ASSEMBLYMAN DORIA: So, it is a self-definition of a problem?

COMMISSIONER COOPERMAN: Sure.

ASSEMBLYMAN DORIA: So what we are saying then is, once we go into -- let me then just continue on -- the new system that is going to be developed, and hopefully implemented by spring, every school in the State of New Jersey that has not submitted a plan to the Department of Education has to be inspected.

COMMISSIONER COOPERMAN: Well, the key is--

ASSEMBLYMAN DORIA: (interrupting) Because you don't know whether there is a problem or not.

COMMISSIONER COOPERMAN: The key is what Commissioner Goldstein said: You go in and you measure beforehand.

ASSEMBLYMAN DORIA: That's what I am saying, yes.

COMMISSIONER COOPERMAN: That's the right way to do it. Again, we were trying to say in the spring of this year, "First define the problem." If you let everyone define the problem, they will define it in a different way. Sometimes you use the term hysteria. Well, there was pressure, and people would say, "When in doubt, take it down." Therefore, it raised the problem because there was a cost. If someone said there was an asbestos problem, maybe there was no problem until they took it down.

I have talked to Rick and I have listened to him several times. Taking it down can cause you a problem where there was none if it wasn't friable.

The whole thing is, we were operating under EPA guidelines; fragmented authority; and, the definition of "what was a problem" was defined by the local district. They did their best, but that is not right.

ASSEMBLYMAN DORIA: I would just say that if someone said that to me a year ago, or two years ago, my first reaction would have been -- and I am surprised at the Department's reaction -- "what really

is the extent of the problem, and why don't we require everybody to give us information on what they did, or did not do, and really see what happened?"

To me, it sounds like we went merrily along our way, basically accepting reports from districts that may have been a little paranoid, so, they were removing asbestos that they may not have had to remove; while other districts, who didn't give a damn, might have left a school that had a real asbestos problem sitting there. So, there may be schools in the State of New Jersey -- and I don't want to create hysteria -- that have a real asbestos problem and we don't really know if there is a problem with them.

COMMISSIONER COOPERMAN: Again, the situation comes back to fragmented responsibility. The EPA said, "You have to look into your schools." You could have had a consultant come in. Health would come in. But, the fact of the matter was, if someone came in and gave them a report, the question is, Assemblyman, who was in charge?

Now, I either extended my responsibilities, or overstepped them -- and I would do it again--

ASSEMBLYMAN DORIA: (interrupting) I don't think they were extended enough, but go ahead.

COMMISSIONER COOPERMAN: Okay. (continuing) --when I said, "This is what we have to do." But, the rules of the game, even as we sit here right now, are that the school district can determine whether or not there is a problem. That is the fact, and those are the rules. So, you have to change that.

Again, going back, but looking forward, the Governor's Task Force was working. A lot of people were concerned. I was concerned. They have now done something. In other words, the critical questions have been defined.

But, going back and looking at what was wrong, that is why we had the Task Force. I don't think anyone who is sitting here waiting to testify will say it was carefully coordinated, beautiful, and everyone knew what they were doing. Not so.

ASSEMBLYMAN DORIA: So, again, I think what we are saying is, there are schools that haven't even complied with the EPA requirement.

COMMISSIONER COOPERMAN: No, they--

ASSEMBLYMAN DORIA: (interrupting) Every school in the State has definitely done a consultant's report?

COMMISSIONER COOPERMAN: I can't--

ASSEMBLYMAN DORIA: (interrupting) You have no way of knowing for sure?

COMMISSIONER COOPERMAN: That's correct.

ASSEMBLYMAN DORIA: That's the problem?

COMMISSIONER COOPERMAN: That's correct.

ASSEMBLYMAN DORIA: So, there are probably schools in the State that never did that.

COMMISSIONER COOPERMAN: Could be.

ASSEMBLYMAN DORIA: So, there should have been a rule in the State of New Jersey saying that they should have done that, and there should have been a rule requiring them to submit that report. Every school district should have had to submit a report to the State in order to determine what their problem was.

COMMISSIONER COOPERMAN: They should have.

ASSEMBLYMAN DORIA: But, it was never done. I am just saying "should have," but it was not done.

COMMISSIONER COOPERMAN: That's right.

ASSEMBLYMAN DORIA: So, what we are saying is, we really don't know the true definition of the problem.

COMMISSIONER COOPERMAN: Yes.

ASSEMBLYMAN DORIA: We don't know the true definition of the problem. So that \$40 million figure that I had, and that I thought was the actual figure -- I just told school boards that the figure given to me by the Department was the outer extent of what the total cost would be for the removal of asbestos from schools, elementary and secondary schools in the State -- right now, is not the actual figure.

COMMISSIONER COOPERMAN: Again, how Vince estimated that-- It is an estimate. It is totally an estimate.

ASSEMBLYMAN DORIA: Oh, I know it is an estimate, but it is an estimate that I thought was based on total facts and not just on specific areas.

COMMISSIONER COOPERMAN: To repeat again, that is what the rules were: A local school district, if they started inspection, had to post if they had any asbestos. Those were the rules. The local school district would then make a decision to remove it or not to remove it. So, could there be a situation where a local district might not pass an inspection under the proposed-to-be rules in the proposed law? Sure. But, who knows what that ultimate law is going to be, or what the final report is going to be?

The rules are what they were.

ASSEMBLYMAN DORIA: Oh, the rules are what they are now. But, what I am saying is, that means we don't really have a total handle on what the extent of the problem might be, or what it is.

COMMISSIONER COOPERMAN: Over the whole State, not only in schools, everywhere.

ASSEMBLYMAN DORIA: Oh, we definitely will have it in other areas. I thought we did have a handle on the schools, and now I am finding out that we really don't have a handle on them. I always thought there was a handle there.

Commissioner Goldstein?

COMMISSIONER GOLDSTEIN: Well, that's true. What you are saying is, the schools should be remediated and they have not been remediated. Our information suggests that approximately 10 percent of all the schools in the State, under our new standards, would require remediation. Now, we don't know how accurate that 10 percent is until we have gone through them. But 10 percent of 2400 schools, is 240; 20 percent is 480. More than that number has already been remedied. So, we suspect that area has been much on the high side. Much more remediation has already occurred than was necessary.

Now, whether or not there are a few schools out there, or how many are out there that should be remediated but for which there has been no plan -- or we don't know about a plan -- we will soon establish.

But, it seems to me, in context, much more has already occurred, and there is probably going to be very little remediation required.

ASSEMBLYMAN DORIA: Necessary. But, that is a good point to emphasize here, because I think, with relation to Bill 633 -- which is sitting there for the Governor's signature -- what we are saying is, up to this point the people who did their job may not have had to do it, but they did it because they thought there was a problem. I am just presenting this at this point. I will say this out loud because I want to make sure that those people are not penalized because they were more than conscientious; they should be reimbursed because they were more than conscientious -- even though they may not have had to remove the asbestos according to the new standards. They should not be held to the new standards.

COMMISSIONER GOLDSTEIN: Unless we had already inspected and said they didn't have to remediate.

ASSEMBLYMAN DORIA: Okay, I can understand that, in those instances. I have a few other caveats, however, because if they did that, if they went to the Department, and if the Department approved the plan they gave them, or if it was approved by the Department of Education, they should still be reimbursed because they received approval from someone in the State.

Again, because you didn't coordinate with the Department of Education, and vice versa, a school district should not be punished. I want to bring this out into the open now, because I don't want this coming back to me as a CV. When the time comes for a conditional veto, if that occurrence is based on these facts, I would be upset because I don't think the school district should be punished on the basis of what seems to me to be a lot of bureaucratic problems. And, I am not saying the Departments are at fault; I am saying that there was, to my mind, a lack of information and a lack of initiative, not because people didn't care, but because there wasn't enough information available in order to get the job done in a proper manner.

As you can see from what I am trying to say, I am trying to be very careful by saying you are not at fault, but I think there was a problem. I think the problem of coordination always exists and this is a perfect example of how bureaucracy doesn't work.

COMMISSIONER COOPERMAN: Yes, when you are in a situation-- I would be the first to admit that. Whenever we have lots of people and lots of letters, we are going to have problems. We are going to have problems with defining problems and resolving problems. This is a very, very complex area.

If you are on the tact of, "could there be a school out there that has asbestos, and is there is danger?" yes; but the other side of the coin is probably much more true. Just as a very practical matter, it is apparent. If I didn't know, after talking to two or three people, and I said, "Is it a danger?" and they said, "Well, we don't think so," or, "We don't know," or, "We are not sure," before we had Rick's report and everything that has been done, if it were my school and if it involved my child a year ago, I would say, given the givens, "take it down." I would want to err on that side. So, did school districts spend too much money? Possibly. Did we then get inundated with numbers of things? Of course we did. Whether I made the decisions I made over the summertime or not, a minority of school districts were messing up. So, I said, "We are going to inspect them all."

So, we have a situation where it is not carefully defined or orchestrated, and everyone is trying to do the best they can. What you have here is, instead of a pro football team -- if I can use this as an example -- when we were kids, I would say, "Jake, you run out there ten yards and throw the pass, and "you" go out there and do this, and we will wing it a little bit." I think that if any money was spent, or if there was an error, it was an error on the side of safety and concern for kids on the part of school boards and administrators, and probably more has been taken down than was necessary. But, if they took the money, then we have to get into reimbursement. However, we know right now that those schools are safe because they have been inspected several times.

ASSEMBLYMAN DORIA: I agree with you wholeheartedly. That is what I am trying to emphasize. I agree with that statement. I think errors on the side of safety should be commended, because they did do it. The problem is not theirs, that it what I want to emphasize. I

agree with you. They should not be punished because they were concerned and they did something that they thought they had to do.

So, I agree wholeheartedly there; we should commend those districts and say to them, "Maybe there wasn't a problem; maybe you over-reacted; but, in the end you thought you did what was right." That is why I want to make sure those districts don't get punished by saying, "You can't be reimbursed at this point in your life, because the bureaucracy now has its act together and we know that you really didn't have a problem. Too bad we couldn't tell you that four years ago." I just agree wholeheartedly that that's the situation, and I want to reemphasize that.

One other thing that concerns me about your testimony is the problem regarding the safety of the individuals in some schools, where asbestos was removed prior to this year when schools were open; schools were open and asbestos removal projects were going on. There were no rules and regulations, I suspect, on that removal, prior to the beginning of this year; so, sometimes students were placed in situations where asbestos removal projects could have been going on next door.

COMMISSIONER COOPERMAN: Sure, but, again, those were the rules.

ASSEMBLYMAN DORIA: Those were the rules at the time.

COMMISSIONER COOPERMAN: That's absolutely right. In fact, what I did was to go beyond those rules when I said, "No." The interim report then, in that instance, confirmed what I did and said, "There is not going to be any removal while human beings are in the school." So, I am not just saying I applaud that because it is what I did; I just thought it was the right thing to do.

ASSEMBLYMAN DORIA: It was logical.

COMMISSIONER COOPERMAN: Yes. But, the thing is, there is logic to the other side. Let's say that taking down asbestos in one part of one room when it is properly sealed and you have capable people doing it -- I don't agree with this, but why can't you take it down? Why can't you be careful with it and conduct it that way? Most school boards, most administrators, and most people who do this work are very

conscientious. They are not going to deliberately do a sloppy job. Therefore, one could argue, "That is not so bad; you seal off the place; you seal off the basement; you let them take it out; and, you do the projects during the fall or the wintertime," etc. I don't agree with that logic, but I do think it can be argued.

ASSEMBLYMAN DORIA: I agree with you. The only problem I have is that sometimes, as with this whole process, you can be well-intentioned, but not really know what you are doing. So, your intentions may be good, but the results may be bad.

For instance, in some cases where people were removing this asbestos, they may not have been properly trained, or they may not have used the proper equipment. They could have created a greater danger for the children in the school while they were removing it than if it had just stayed up there during the time the children were in school.

COMMISSIONER COOPERMAN: That's absolutely right, and that goes into the training. I think the Public Advocate's statement stands on its merits. I agree with it. I checked it with him very, very carefully, to make sure it wasn't that "someone heard that someone heard," nor that people were attending the session but they were standing in the hallway. There was enough credence to it to make it part of what stuck in my head and make me say, "Stop it;" because I was concerned about some of the people's training.

ASSEMBLYMAN FELICE: Mr. Chairman?

ASSEMBLYMAN DORIA: Assemblyman Felice.

ASSEMBLYMAN FELICE: If I may, I have a question that is sort of in a grey area. What happens to school districts that have schools -- school buildings -- they are no longer using as schools; however, they are using them as public facilities for extracurricular activities, and adults and people are using those buildings? On the basis of what criteria are they going to be inspected? Are they still going to be under the public education system as schools, or are they to be considered as public utility buildings? That is an area that is going to be wide open, because a lot of the older schools have been closed due to the decline in enrollment. Those buildings are more susceptible than the schools, and they are now open and being used for

education. I think that is something that has to be addressed, and addressed pretty readily because—

COMMISSIONER COOPERMAN: (interrupting) I agree with you. I think that I might find the Committee has already addressed this, but I may be wrong. My simple definition would be: If the school board owns it, it is theirs; therefore, it is their property and whether they have it open to senior citizens or whether they are using it for extracurricular activities, gifted and talented, or whatever, it is their responsibility, so they have to keep the responsibility concerning whatever the new rules are. I think that would be the clearest definition: "If you own it, it is yours; you have to provide for it."

ASSEMBLYMAN FELICE: Okay. Because that is important. The onus and the priority, naturally, are going to be on the schools that are being used by school children, and by parents who are going to be observing them. Yet, there may be schools that were treated, and had removal processes done which needed it less than the buildings that they have not abandoned, but which are no longer being used as school buildings.

COMMISSIONER COOPERMAN: As long as they are being used -- the way I understand the interim report -- by human beings, they are no different from this building here. There has to be a provision for the inspection and ultimate remediation of the problem. So, I disagree with you.

ASSEMBLYMAN FELICE: Okay. I think that is a priority. When you left it open to the school districts to decide if they wanted to remove asbestos or not, they certainly weren't going to the schools that they were no longer using for classrooms; they were going to do the emergency process in schools that were actually used for children and the teaching process. That worries me, because there are a lot of school buildings out there that are not being used primarily for classrooms; they are being used for other purposes, and they may be more in need than the school buildings we are concerned about now, the buildings with the classrooms.

COMMISSIONER COOPERMAN: I agree with that. But, one thing is probably a over-sensitivity on my part, and that is when you said I am letting the school districts make the decision. That was in 1977. The Governor's Task Force said that the responsibility for determining whether or not a plant should be submitted rested with the local officials.

So, once again, I am not trying to hide behind, "It is not my responsibility," because some would say that I have even exceeded my responsibility.

But, I just feel that what you are saying is absolutely correct. I am extremely pleased with what has happened in this interim report. I am looking forward to the report being done just as soon as possible, and its meshing with the laws, with the funding made available to follow the law, and — no pun intended — then I think everyone will breathe a lot better.

ASSEMBLYMAN DORIA: I just want to say that the questionnaire which is being used for the schools should be used for other public purposes and tie in with other public buildings, municipal buildings and other public buildings that are open to the general public and are owned both by government and non-government agencies. I think that has to be dealt with. There is no question about that.

I also just want to say that, again, it seems to me what we are doing now — both the Task Force and this Committee -- is very essential, because it seems as if there has been, for too long a period of time, a lack of coordination among the executive departments and a lack of information in this area that should have been there, but never was. I was working under the impression, and I think most of the legislators were working under this impression, that the information was there. So, I think now at least we know where we are at, and at least we know where we have to go and that there is a need. I have to emphasize this -- and I always say this -- there is a need for greater coordination and less concern about turf problems among all departments.

As I said in the beginning, I used to go into meetings where every department was fighting with each other over what the best

solution to the asbestos problems was. And, from what I can see, the reason why we have taken so long to get to this interim report is because the departments fought with each other. There was no cooperation. This is exclusive of the Education Department. I think the Education Department was a bystander in this process, unfortunately. And, unfortunately, Commissioner Goldstein hasn't been here during this whole period, but I think he probably got his act together because he did come; before that time, what we got out of Health was unbelievable. The lack of coordination and the lack of cooperation was unbelievable. I think that is the reason why it has taken so long to get to this interim report. I hate to say that. I am not trying to lay the blame on someone again, but it seems to me that is part of the problem here.

So, I want to thank you, Commissioner Cooperman, for your comments and for the information. You have definitely enlightened me. Commissioner Goldstein, I would also like to thank you again. Your information was very enlightening and I want to thank you for providing it.

At this point, I want to read a letter from Commissioner Renna, who could not be present. I will just read it into the record, and give a copy of it to our stenographer:

"Dear Assemblyman Doria: Thank you for your invitation to appear before your Committee to present testimony on this very important subject. Unfortunately, my schedule prevents me from appearing personally. However, I submit this letter for inclusion as part of the public record.

"The Department of Community Affairs has been actively involved in the Governor's Task Force on Asbestos since its formation and has been an advocate for the development of a unified State Asbestos Policy that provides for traditional, uniformly-enforced regulations for proper asbestos management.

"It is my firm belief that any regulations, to be effective, must also be predictable and enforceable. I strongly support the concepts included in the Asbestos Policy Committee's interim report to Governor Thomas H. Kean. In that report this Department has agreed to

assume the responsibility to inspect asbestos management projects in all schools and State-owned buildings. These inspections will be conducted by State employees properly trained and certified by the New Jersey Department of Health.

"The proposed policy would require that prior to the removal or encapsulation of any asbestos material, a permit be issued by the Department of Community Affairs. This permit process would insure that the work be done by a qualified contractor registered and trained by the Department of Health. This permit process would also insure that any asbestos that is removed from the building would be replaced by a suitable material that meets the Uniform Construction Code. When asbestos that is serving as a fireproofing material is removed our inspectors would insure that it is replaced with a non-asbestos material having an equivalent fire rating.

"This same inspection staff would also insure that an asbestos management program is properly set up before work begins, that a full time independent monitoring team is on the job, and that the job passes an air sampling test after the work is completed. Only then would occupancy of the building resume.

"I am confident that with the cooperation of all the various State departments this asbestos management program of the State of New Jersey would be second to none. In my opinion it would become the model for the rest of this nation to follow. Signed, Sincerely yours, John P. Renna, Commissioner," Department of Community Affairs.

We will include this in the record.

At this point, I would like to call Edithe A. Fulton, the President of the NJEA. With her is Bill Greenberg, the NJEA counsel.

EDITHE A. FULTON: Thank you for the opportunity to testify today. The New Jersey Education Association is gratified that the Legislature is acting on the issue of asbestos in public buildings. We commend you not only for holding these hearings but for the recent passage of A-622, Assemblyman Doria's bill providing funds for asbestos removal in schools. We earnestly hope the Governor signs that legislation.

We also look forward to the passage of A-1997, which provides funds for the same problem in our public colleges.

The presence of friable asbestos in schools is not a new issue, but it is one which has captured wide attention in the past several months. We welcome the attention because public awareness is an important ingredient in alleviating any health hazard. But the way the issue became a front-page item has created fear and confusion. Thus, action to deal with the real dangers, and at the same time allay people's fears is imperative.

The dangers posed by the presence of friable asbestos are real. While the Governor's Asbestos Policy Commission believes that we do not yet have definite evidence of the dangers of low-level exposure, we know that many medical experts disagree.

In view of the fact that inhaled fibers remain in the body indefinitely and accumulate, we believe it is prudent to proceed on the basis that exposure to airborne fibers should be eliminated wherever possible.

It is possible to eliminate exposure in our public schools. We owe the assurance of a healthful environment not just to the people who work in our schools but to the students who attend them. Medical experts assert that the danger of exposure is even more hazardous to children, because of their breathing patterns. That increased vulnerability demands that we give particular consideration to the environment in our schools.

Removal is, of course, the only permanent solution to asbestos hazards. We recommend that approach. But, it is not a solution without problems.

Removal, as we have learned, can actually increase the dangers. Removal, done improperly, releases more fibers into the atmosphere than were present before removal. Moreover, inadequate or sloppy removal places workers in heightened danger, bringing them to the level of exposure faced by workers in asbestos-related industries.

All of us in New Jersey became sharply aware of the dangers this past summer, with the release of the Public Advocate's report. That report revealed a number of problems with asbestos removal projects in schools: poor performances by contractors, inadequate

certification procedures for contractors, overworked and under-trained inspectors, uncooperative school districts, very questionable air-sampling techniques, and the lack of a State agency willing to assume the responsibility for coordinating and administering an inspection of asbestos removal projects.

The experiences of some NJEA members this past summer reinforced the Advocate's report. Many were in buildings where asbestos work was being done. That, of course, should never have been allowed. In fact, students were also in those buildings on incidental tasks.

Other school employees were actually involved in removal projects. They confirm that accidents occurred because of a lack of standards, inadequate training, or haste. They also agree that districts and contractors "hid" these problems from inspectors, who often didn't spend much time at the sites.

Blame can be laid at the feet of many — local districts, the State Department of Education, State government in general, the Environmental Protection Agency. But, blame is not the issue, nor is it the answer.

Clear lines of authority are. Some agency must be responsible for the orderly, safe removal of friable asbestos. We believe that agency should be the Department of Education. Indeed, in July, before the issue became a front-page item, we petitioned the Commissioner of Education to take that responsibility.

The constitutional and statutory provisions requiring a thorough and efficient education for the children of New Jersey include providing a safe school environment. Thus, we believe our laws and courts support the Commissioner's right and obligation to oversee this issue.

The Commissioner denied our petition, again before the issue became headline news. His main objections were his alleged lack of authority to make a declaratory judgment and the lack of specific standards to determine dangerous levels of asbestos exposure.

We do not accept those objections. NJEA has filed an appeal with the State Board of Education, asking for reconsideration of the

issue. We feel that a first step is for the Department to hold hearings, hearings like this one, so that districts and other interested parties can air their concerns, problems, frustrations, and needs.

We know that standards for removal must be clear and that monitoring is necessary to ensure that those standards are enforced.

Some local districts have, moreover, simply ignored the problem. An agency of the State must have the authority and responsibility for making sure that districts have complied with the Environmental Protection Agency regulations concerning inspection and notification.

Beyond that, the State must require removal. The EPA has neglected to require that. Their negligence must not be repeated by the State of New Jersey. In addition, there must be some mechanism for dealing with districts that do not fulfill these requirements; in those cases, we recommend withholding of State aid and/or closing of hazardous schools.

I am aware that the Governor's Asbestos Policy Commission has recommended that the major responsibility fall to the Department of Health. Their recommendations limit the role of the Department of Education in assuring that local districts comply with EPA regulations and providing consultative services to local school boards, upon request.

But the Task Force does not recommend requiring districts to remove asbestos where it has been found to be dangerous, nor does it provide for any means to deal with districts who choose to ignore the problem. We find that omission is a serious one.

Safe schools are indeed within the jurisdiction of the Commissioner and the State Board of Education. They must have the authority and the wherewithal to assure a healthful environment.

With that belief in mind, we continue to believe that the Department of Education should maintain jurisdiction over asbestos removal in schools, and have the authority to require that removal. Our students and our school employees deserve no less.

I would be happy to entertain any questions you might have.

ASSEMBLYMAN DORIA: I just want to agree with a number of comments you made. I think that there is no question a problem with coordination existed, as we have heard from earlier testimony. There is no question that there is a significant problem still in existence.

I think you learned something; I know I learned something when I found out there is no accurate record of all the schools in the State that do have a problem with asbestos. I was working under the assumption that we had that information. I don't know if you were working under that assumption too, but I was working under that assumption. In fact, I will ask you that question: Did you know this?

MS. FULTON: No, I think we were aware of it.

ASSEMBLYMAN DORIA: You were aware of it?

MS. FULTON: There was no accurate record.

ASSEMBLYMAN DORIA: Okay. That is something we were not aware of. So, you obviously had more information than we did.

I also agree with you, that the whole question of the removal process -- the handling of it -- leaves a lot to be desired, especially how it was handled in the past. We heard testimony on that, that in many instances it was not handled properly. This was learned from the report given by the Public Advocate's office and through testimony given by the Commissioner of Education.

I can only say that I agree with your comments. I think there has to be some centralized responsibility, whether it rests with the Department of Education or the Department of Health. If the Department of Health is the final place where this responsibility rests, and if the government chooses that, then I think we have to make sure there is effective coordination between all the departments in order to make sure we do not again have happen what happened this past summer -- or in the past -- and that we get accurate information on what the problem is, the extent of the problem, and how we should handle it.

MS. FULTON: Let me just point out four things that I think substantiate any of our concerns here: Number one, we have had schools call us since the lists were out saying, "We have had projects, now come nobody knows about it?" So, we will track those down, and we will add those to our other suit, as districts that have had asbestos.

I have heard boards sit at meetings and assure the public that everything is safe. I couldn't do that. I don't think you could do that. So, there has to be a standard that allows somebody to do that. You know, I don't have that information.

I am very concerned about the validity of the testing. I know that the testing, in many districts, was done with a test that EPA said is not recommended. And, we talked about the microscope before. To me, that is the only valid way to go, and that test was not used in districts where people touted that it was all safe and fine.

ASSEMBLYMAN DORIA: Well, I think that is how the Department of Health would now -- obviously working with the Department of Education, if that is going to be the way it is developed in the final report from the Study Commission -- have to deal with it because there is no question that we have to determine what the reality of the situation is, what the dangers are, and if the dangers are to be dealt with.

I think the 10 percent figure Commissioner Goldstein gave before is a low figure. I don't think it is realistic. But, again, we don't know if it is or if it isn't. There is no way of knowing. It is just a "guesstimate," and all of our guesstimates seem to be just guesstimates. That's a problem. That is what is bothering me the most in this whole process, that we are doing nothing but guess work.

MS. FULTON: Well, in one particular case -- I won't name the district, but I will tell you this just so you have a case study; there were several similar areas -- it was kept sealed, even after the school was opened, awaiting further testing; and, the parents in that district were very concerned and they insisted that, indeed, the school should not be opened, even after they got their certificate of occupancy.

The board acceded to further testing and further cleanup. But, they wanted the parents to agree that there would be no further testing. Now, they opened one facility on the basis of a first set of tests, which was not a recommended test; it only tested down to a zero point one, one nine (0.119), which doesn't even fit the State standard. So, those kinds of things have to be eliminated.

In another case, just two days ago, I received a letter from two custodians who wanted to know how we could help them to protect their jobs, because they are accused of being insubordinate by not doing a removal of asbestos project they had been asked to do. We, of course, will pursue that.

ASSEMBLYMAN DORIA: Well now, under 1820, they cannot do it unless they are trained and certified.

MS. FULTON: That's what we will be telling them.

ASSEMBLYMAN DORIA: And, 1820 already immediately protects them from that.

MS. FULTON: But, how many other people have already done that under the guise of it being part of their job?

ASSEMBLYMAN DORIA: That's a problem, and that is why the bill was put in, because that problem did exist. That went in prior to this summer. The bill went in last-- I guess I put in in last March or April, because we were aware that this was a difficulty.

Are there any other comments? Assemblyman Felice?

ASSEMBLYMAN FELICE: I also would like to commend the NJEA President. A lot of things concerning health that came about were stirred up by the NJEA, and I say that affectionately because a lot of the problems were brought forth and pressures were put on, not only on the school districts themselves but also on governmental agencies, to really do something about the problem.

Unfortunately, as you heard today, and as we all heard, there was sort of a mass confusion about who the responsible department was. The thing that really bothers me the most -- and I am sure it bothers the rest of us -- is the fact that information which should have been distributed through the different departments was not distributed. The liaison which was so badly needed at the time this project was underway last summer was lacking. I think one of the benefits of this Committee, and of the people who are testifying, is that it will ensure that this doesn't happen again. Thank you.

ASSEMBLYMAN DORIA: Thank you, Assemblyman Felice. I just want to agree with that wholeheartedly. I think the NJEA, and you as President, should be commended for your vigilance in this matter. I

think we have to maintain vigilance. It is unfortunate that other organizations, such as yours, do not exist in other areas, where the problem also comes up and where there are other problems.

I do think that everyone works in the best of faith, and I want to reassert that. I think the school boards were trying the best they could, and some of them did more than they had to. But, also, I do think there are problems with some people not doing the job in the proper manner, as you pointed out.

I think we have to be assured that this will not happen again, and that can only be done by having someone responsible for this, someone on the administrative level, or on the cabinet level.

That is what has not occurred, and, hopefully, we will now get that. The interim report is moving in that direction and I think this Committee's hearings will bring that about even more so, by making it much more visible.

MS. FULTON: I am concerned, in looking through the report, about two statements I wish the Committee would think about. I don't know who approves this.

ASSEMBLYMAN DORIA: This is a report to the Governor, so the Governor would have to accept it.

MS. FULTON: Yes. There are two underlying things here that I hope do not become the party line, and by that I don't mean either Democratic or Republican; I am talking about the party line on asbestos.

On the very first page in the Executive summary, they state that there is no definite information on non-occupational exposure to friable asbestos present in our schools, nor whether or not that would be a health risk.

And, on page 11, in the middle of the page, it talks about the Committee concurring with an Ontario Royal Commission Report -- whatever that is -- which states that perhaps we are in greater danger from things we do in our other lifestyles, and everyday risks, than we are from facing exposure to asbestos in buildings. I find those two statements a little incongruous with what this Commission's task was.

Later on, they refer to the economics of removing it or not removing it. I hope we are not going to make these kinds of things the reason for not doing what has to be done. This is a very thick report and it says a lot of things; it has a lot of good stuff in it. I mean, I have one page at home, which is a death certificate. Now that, to me, is related to asbestos, as you might well know. So, I don't want us not to protect the present people in the schools, nor the future people in the schools; and, as a matter of fact, those people who have already been exposed need some protection. I hope this doesn't end up being a way to get around what should be done.

ASSEMBLYMAN DORIA: I share your concern. I agree with you. I think we should not try to get out of this in the easiest possible manner. Obviously, this is going to be costly. Obviously, it can't be done immediately. But, we should realize there is a problem and deal with it. Thank you very much.

Would you like to make any comments, Bill?

WILLIAM GREENBERG: I have my statement, which perhaps the Committee doesn't have.

ASSEMBLYMAN DORIA: No, I do not have a copy yet.

MR. GREENBERG: I am content to have my statement made a part of the record.

ASSEMBLYMAN DORIA: Maybe you would just like to make a few comments on it.

MR. GREENBERG: Yes. I would like the statement to be made part of these proceedings and to make specific comments that will be in addition to the ones I heard made here this morning.

I am a lawyer in private practice. The New Jersey Education Association is one of my clients, and they came to me with a very serious problem which is now in litigation in the State courts. I wouldn't want this Committee, Mr. Chairman, to leave here today with the impression that, once these rules and the procedures are adopted by -- by my count -- at least six of the twenty governmental agencies that have asserted, or have, some legal responsibility for asbestos, the problem is going to be cured or that it is going to go away.

A very serious problem is the exposure to friable asbestos which has occurred over the past decades to the employees and children in the school districts who have not been, and who ought to have been, made aware of that danger.

Again, I will rest content with the statement, as the Committee now has it, and I will point out only one thing. In our view, one person -- and I agree with Mrs. Fulton, it should be the Commissioner of Education -- one Cabinet head, one Executive department head should be responsible. It could take two decades, the way State government works, to get through the process outlined by the Commissioner of Health here this morning, of six or seven different departments having the responsibility for consultation, evaluation, rule-making, adjudication, finding fault, and not finding fault. One person, one Executive head, should have that responsibility. There is no doubt in my mind that the expertise is available, but one person must be responsible. In our view, it ought to be the Commissioner of Education.

ASSEMBLYMAN DORIA: I have to agree with you, one person should be responsible. I will take it one step further, the person who has to be responsible is the Governor; he is the man responsible for all the Executive branches. Unfortunately, you are right about Education. I can see your point of view, through the point of view of somebody in education. Unfortunately, it is not just the education area we are dealing with here; we are dealing with public institutions and agencies. That means we are dealing with Health and Human Services, and we are dealing with the general public at large. So, the problem spans so many areas that I think one person has to be responsible, and that is the Governor. He then has to -- in my opinion -- work with the various departments heads to try and come up with the best system.

I agree with you also -- here, I agree with you 100 percent -- that what we are doing today does not abrogate responsibility. In fact, it helps to clarify what the responsibility is. For too long the departments did not coordinate effectively; for too long we did not have accurate knowledge; for too long people were exposed to danger

that they should not have been exposed to; and, for too long we were removing some asbestos that we did not have to remove, thus endangering other people by doing that. None of this should have occurred if the whole area had been properly managed and properly coordinated.

So, I have to agree with you wholeheartedly.

MR. GREENBERG: I just want to conclude by saying this -- and I am grateful for that point of view: I understand that the role of this Committee is much broader than the area we are interested in, public schools. There are many of these public buildings -- compared to the other kinds of public buildings that have been constructed in the last 50 years -- and that clearly contain, or have contained, asbestos. I wouldn't want the good work of this Committee, nor your recommendations and oversight, to be diluted in any way by the, I will call it mumbo jumbo regarding the particular expertise that lies in one department versus another department. We are talking about governmental responsibility for the care of its citizens -- the health of its citizens, its most vulnerable citizens: students, teachers, and others who have no choice but to be there every day, day in and day out.

It seems to me, Mr. Chairman, that whether or not the Department of Health assumes responsibilities for other public buildings, responsibility has to be with the Commissioner of Education. He can take all the expertise he wants from the other departments to get the assistance. The electron microscope shouldn't be the reason why we do not know the level of asbestos in the public schools. That electron microscope is a \$2.00 toll ride across the George Washington Bridge, and there is probably one in Philadelphia as well. So that shouldn't be the reason why the Department of Education will not take what we, in our view, believe is its responsibility.

I thank the Chairman and the Committee.

ASSEMBLYMAN FELICE: If I may, Mr. Chairman?

ASSEMBLYMAN DORIA: Assemblyman Felice.

ASSEMBLYMAN FELICE: Mr. Greenberg, I can understand your feelings, but we have to look at the overall picture. The Department of Health is the department we have in order to ensure the health of

all the residents of New Jersey. I think the ultimate position regarding whether it should be the Commissioner of Education or the Commissioner of Health's responsibility, is something that will be determined by the input from all these different hearings. But, I want you to feel-- And, I know your position: There are people in institutions seven days a week, and they also have the same right to protection as the students and teachers have. I just don't want that to get lost in what you call the mumbo jumbo. In a sense, everything in New Jersey affects the health of the people.

There are people who are dedicated, just as much as the people in the teaching profession. I know, I have two members of my own family who work seven days a week, and who are exposed many days a week in different institutions; we can't lose sight of that.

MR. GREENBERG: I agree with you 100 percent. What I am saying is, conceptually the Commissioner of Education should be responsible for every public school. Maybe the Commissioner of Health should be responsible for every other building. What I wouldn't want to see is the back-and-forth committee approach: "We are going to take one part of the problem, and you will take another part." Meanwhile, nothing gets done.

ASSEMBLYMAN FELICE: The "it is not my job" type of attitude.

MR. GREENBERG: That's right. That's exactly the point.

ASSEMBLYMAN FELICE: We understand that. We saw that here today. Thank you.

MR. GREENBERG: Thank you.

ASSEMBLYMAN DORIA: Next, we have Doctor Peter Frasca, Director, Electron Microscopy Services Lab; President, Asbestos Analysis Consultants. (not present)

Eileen Kirlin, CWA. Is she here? (not present)

She is not here either. Okay, that makes life much easier. We will ask Leonard to contact both of these people and they can appear at the public hearing next week at Jersey City State College.

I would like to remind everybody that we are going to have a public hearing on November 7. It will start at 12 noon, in Hepburn Hall, at Jersey City State College.

We know that we can invite these two individuals, together with whoever else is interested in testifying. I am inviting someone from EPA because I think they should be present. I am also inviting people from the Division of Corrections, as well as the Department of Human Services, to come and discuss what is going on in that area.

I think we have learned a lot today. On behalf of the Committee members, I just want to thank all those who were present.

I would like to say that one thing that has been made clear during this first day of testimony is that there was a total lack of coordination and a lack of information in the area of asbestos. As a legislator, I was working under the supposition that there was enough information available and that we knew where we were at. It appears that we did not know where we were at, and that the lack of coordination was worse than we thought it was.

So, I am happy that we are now moving in this direction, and that the interim report has been submitted to the Governor. I think we have to move further on this and determine exactly what type of coordination there should be. I think this interim report is moving in that direction.

I think we have definitely found that we were much more ignorant than we thought we were, and that is important.

Assemblyman Felice, would you like to make a final comment?

ASSEMBLYMAN FELICE: Yes, I would. I think this was a very educational meeting today, in a sense, for myself as well as the other members. The other thing I would like to make sure we do is to get the information about the 25 percent of the 666 [sic] schools. I think it is important that we follow this completely to the end because it seems to have been left hanging somewhere. I think that is an important part of what we are doing here today.

ASSEMBLYMAN DORIA: I would like to direct Leonard, our staff person, to write to Commissioner Goldstein and ask him to please provide that information, and to work with Commissioner Cooperman in order to determine exactly what schools were involved; how many of them actually had the asbestos removed; how many did not; and where we stand with reference to that situation.

So, if you will do that, Leonard, and, in addition, get the list of bills I said we would send to Commissioner Goldstein, I would appreciate it. The Committee will begin to develop its report, working with our staff person, to determine exactly what the problems are and where we are going to go from here.

I would like to thank everybody for being here today. We welcome you and ask you to please join us at our hearing next week, and at the two which will follow that one, one at the Haddon Heights Municipal Building at 12 P.M. on November 14th, and the second one which will be held in the Council Chamber, City Hall, Perth Amboy, on December 5.

I want to thank you all again. One final thing, I want to thank Leonard for all of his fine work. We appreciate the assistance he has given us. We really wouldn't be where we are today if it were not for his support. I also want to thank our reporters for being here. Thank you.

(Hearing Concluded)

APPENDIX



Statement by William Greenberg,
Attorney representing the New Jersey Education Assn.,
To the Legislative Hearings on Asbestos,
November 1, 1984

Removal of asbestos hazards is everyone's top priority. But I'm here to tell you of another NJEA concern. That is the long term effects of exposure to friable asbestos.

Because asbestos was used in the construction of school buildings from the end of World War II through 1973, many of our schools have indeed been hazardous places to work and learn. How much asbestos individuals have inhaled varies, of course, depending on the condition of the asbestos as well as the employee's particular job, length of exposure, and so forth.

But, as Mrs. Fulton mentioned, many in the medical field believe that any exposure is potentially damaging. The latency period is as long as 40 years, thus making it difficult to predict both when and how many people may actually suffer medical problems as a result of asbestos exposure.

The effects can be very serious. Asbestiosis is the most well known effect, but various types of cancer have also been linked to asbestos exposure.

School employees are faced with an enhanced risk of contracting serious diseases due simply to the places in which they have worked. It seems to us that there is an obligation to provide some type of protection for those who may suffer because their places of work are dangerous.

That is why we have filed suit on behalf of all school employees who have worked in buildings that contained or still contain friable asbestos. What we are seeking is a trust fund for diagnostic medical care.

We all know that early detection of a problem, particularly one such as cancer, increases the chances of successful treatment. Such a program for protection would also do a great deal to allay the legitimate fears of those who have worked in these hazardous environments.

We believe ours is a forward-thinking, reasonable approach to what may become a medical nightmare in the next several decades. Diagnostic care may well reduce not only individual health problems but a collective drain on our medical system.

Such diagnostic tests now cost about \$150 per person. How many people are affected still must be determined. We will be seeking the records of who worked in affected buildings since 1978.

Why 1978? That year the United States Secretary of Health, Education, and Welfare sent the governors of all states a letter encouraging them to survey all schools in their states for asbestos exposure. That date also establishes a reasonable time period limiting this case to employees who have been exposed to asbestos in the schools recently enough so that the medical surveillance will be meaningful.

The fears created last summer just before school opened indeed heightened our awareness of this issue. But NJEA raised the issue of long-term effects even before that.

At a public hearing held before the EPA last June, NJEA testified that employers should be required to provide screening programs for asbestos-related diseases for individuals who have been associated with districts and may have been exposed to friable asbestos materials.

Yes, the employers are accountable. The hazards of asbestos exposure have been known for years. Many districts have delayed action on the problem; many failed even to implement the regulations of the EPA simply to inspect and notify; others failed to act until public pressure forced them to; and others still have not acted. Additionally, many districts increased the dangers by not ensuring a careful removal, thus increasing exposure of employees and students.

Why does our suit name local districts and not the State? The Commissioner of Education has asserted that individual districts are responsible for the presence and the removal of asbestos. We have reservations about the Commissioner's position, but we have taken him at his word and not named the State or any of its agencies.

Let me also tell you what we have found about the lack of coordination and accountability among government officials dealing with this issue. The districts named in our suit come from the records of the state Department of Education and the federal Environmental Protection Agency.

Yet we have had many calls from NJEA members telling us that their districts were not named but should have been. Some have even sent documentation to support their assertion. No one yet has a definitive handle on what the statewide situation is. How can we deal with a problem if we don't have accurate information on its scope?

Of course, local school districts are not the only ones named in our suit. The even more culpable organizations are the asbestos firms. We believe they knew about the hazards nearly 50 years ago, yet they allowed greed to subvert their obligation not use a carcinogen in the buildings of America.

The need for medical surveillance is a legitimate one. Employees need other rights as well. The Legislature recognized that when it passed the New Jersey Public Employees' Occupational Safety and Health Act. This law requires that employers provide a safe workplace and it outlines procedures for employees who believe that a hazard exists. Yet that legislation will not go into effect for school employees until July 1986 at the earliest. We urge that that date be moved up.

The problem of asbestos is immense, but it is not overwhelming. There are rational steps to take. Mrs. Fulton has discussed abatement of the hazard and how to ensure that. Our suit looks at one more aspect -- how to protect employees who have already been exposed.

All levels of government have to do their share. We are talking about the people who work for the government and the children whom government is charged to educate. Unfortunately, the federal government has been very slow to react. The EPA has provided regulations that don't go far enough and has not assured compliance with even those regulations.

We hope that the New Jersey Legislature will look at all aspects of the problem, including long-term effects on those who have been exposed in our schools, and help be part of the solution.



STATE OF NEW JERSEY
DEPARTMENT OF COMMUNITY AFFAIRS

JOHN P. RENNA
COMMISSIONER

363 WEST STATE STREET
CN 800
TRENTON, N.J. 08625

November 1, 1984

Assemblyman Joseph V. Doria, Jr.
District 31
235 Broadway
Bayonne, NJ 07002

Dear Assemblyman Doria:

Thank you for your invitation to appear before your committee to present testimony on this very important subject. Unfortunately, my schedule prevents me from appearing personally. However, I submit this letter for inclusion as part of the public record.

The Department of Community Affairs has been actively involved in the Governor's Task Force on Asbestos since its formation and has been an advocate for the development of a unified State asbestos policy that provides for rational, uniformly enforced regulations for proper asbestos management.

It is my firm belief that any regulations, to be effective, must also be predictable and enforceable. I strongly support the concepts included in the Asbestos Policy Committee's interim report to Governor Thomas H. Kean. In that report this Department has agreed to assume the responsibility to inspect asbestos management projects in all schools and State-owned buildings. These inspections will be conducted by State employees properly trained and certified by the New Jersey Department of Health.

The proposed policy would require that prior to the removal or encapsulation of any asbestos material a permit be issued by the Department of Community Affairs. This permit process would insure that the work be done by a qualified contractor registered and trained by the Department of Health. This permit process would also insure that any asbestos that is removed from the building would be replaced by a suitable material that meets the Uniform Construction Code. When asbestos that is serving as a fireproofing material is removed our inspectors would insure that it is replaced with a non-asbestos material having an equivalent fire rating.

This same inspection staff would also insure that an asbestos management program is properly set up before work begins, that a full time independent monitoring team is on the job, and that the job passes an air sampling test after the work is completed. Only then would occupancy of the building resume.

I am confident that with the cooperation of all the various State departments this asbestos management program of the State of New Jersey would be second to none. In my opinion it would become the model for the rest of this nation to follow.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "John P. Renna", with a stylized flourish at the end.

John P. Renna
Commissioner

