Public Hearing

before

ASSEMBLY OUTSOURCING AND OFF-SHORING COMMISSION

"Testimony concerning the impact of outsourcing and off-shoring on private and public sector employment, which employment sectors are most affected, ways to reduce outsourcing and off-shoring in the State, and possible relevant changes in State laws and regulations"

LOCATION: Committee Room 9
State House Annex
Trenton, New Jersey

DATE: November 16, 2007
2:00 p.m.

MEMBERS OF COMMISSION PRESENT:

Assemblyman Jeff Van Drew, Chair
Jim Leonard
James P. Marketti

ALSO PRESENT:

Gregory L. Williams
Office of Legislative Services
Commission Secretary

Christopher Jones
Assembly Majority
Commission Aide

Mary C. Beaumont
Assembly Republican
Commission Aide

Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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ASSEMBLYMAN JEFF VAN DREW (Chair): I'd like to call the Assembly Outsourcing and Off-Shoring Commission meeting to order.

Please rise for the flag salute.

(Participants recite Pledge of Allegiance)

Mr. Williams, may I have a roll call, please?

MR. WILLIAMS (Commission Secretary): Certainly.

James Marketti.

MR. MARKETTI: Present.

MR. WILLIAMS: Jim Leonard.

MR. LEONARD: Here.

MR. WILLIAMS: And Chairman Van Drew.

ASSEMBLYMAN VAN DREW: I am here.

I want to thank you all for being here.

As you know, the purpose of these meetings has been to determine, within the State of New Jersey -- which is symptomatic, obviously, of what's happening in the United States of America -- how outsourcing is affecting our state: what the loss of jobs means. Has there also been a gain of jobs? Is there a plus and minus to this? And, ultimately, are there any recommendations, is there anything that we can do as a Legislature and as a State to try to stem the flow of the loss of jobs?

What has been particularly good about this particular Commission is that we have had broad support, both from labor and, of course, from the business community as well -- that we're pretty much on the same page, at least to this point, in trying to determine what it is exactly we need to do within the State of New Jersey.

With that, I would ask if any of the members have any comments you'd like to make before we begin today.

Mr. Leonard.

MR. LEONARD: Thank you, Mr. Chairman.

Again, I do appreciate the opportunity to be here.

As you did say in your opening statement, the business community needs to work together with labor and everyone else in order to move this state forward, creating jobs, growing our economy. We are united in that regard.

I also wanted to congratulate you on the election results last week.

Thank you.

ASSEMBLYMAN VAN DREW: Thank you.

Mr. Marketti.

MR. MARKETTI: No.

ASSEMBLYMAN VAN DREW: Good.

Okay.

With that, we'll start with some testimony. And we're going to start with Rae Roeder, the President of the Communication Workers of America, and Tony Miskowski.

While they're getting ready, I actually believe that this is going to be one of the greatest challenges that we're all going to face, again, both in the business community and in labor. As we compete with nations that don't have the same standards that we do, that don't have the same employment practices, that don't have the same environmental conditions or environmental standards, or way of life, I think it's going to be, I guess at the least, interesting, at the most, problematic and very difficult for this country to maintain the standard of life that we want to maintain.

RAE C. ROEDER: When you said you wanted 15 copies, we wanted to make sure you had 15 copies. (laughter)

ASSEMBLYMAN VAN DREW: You weren't kidding.

MS. ROEDER: First of all, I'd like to thank the committee for allowing us to speak today.

And I'd like to introduce myself. My name is Rae Roeder, and I'm the President of CWA Local 1033.

And this is Tony Miskowski. He's our executive Secretary of the Local; and he's also the Assistant Curator of the State Museum, and the person who does huge amounts of research on the issue of outsourcing for our Local.

First of all, I should say, Chairman -- or Senator-elect -- Van Drew and distinguished members of the Assembly Outsourcing and Off-Shoring Commission, CWA 1033 represents more than 7,000 members in State government, primarily in the city of Trenton, including workers at -- all workers at the Banking and Insurance Department; Department of Education; Katzenbach School for the Deaf; Military and Veterans Affairs; and in Treasury, all the departments -- the divisions: Taxation, Revenue, Lottery, the State Distribution Center, Pensions, and the Division of Investments itself; Motor Vehicle Commission; and in Law and Public Safety, the Division of Law, Civil Rights, the Alcohol and Beverage Control, Consumer Affairs, Highway Safety, and all the civilian -- 98 percent of the civilian workers in the State Police, including the forensic scientists in Hamilton; also the Secretary of State's Office, which includes the State

Museum, the Office of the Public Advocate, the Public Defender, the State Library, and the Library for the Blind and Handicapped.

We would like to thank you today for the opportunity to present testimony concerning the serious matter of the wholesale exportation of millions of American jobs to labor pools overseas in the practice known as outsourcing and off-shoring.

We commend the efforts of the New Jersey Legislature to focus on the insidious practice of off-shoring, by virtue of enabling legislation that created this Commission. We are aware that New Jersey has been on the forefront of this issue. Senator Shirley Turner, in Senate Bill S-494 signed by Acting Governor Codey on May 5, 2005, protects jobs from outsourcing to foreign countries by requiring all services under State contract or subcontract to be performed within the United States. At the time of introduction, Senator Turner's bill truly represented a voice in the wilderness. New Jersey was only the fifth state in the nation that -- at that time to enact legislation, or executive action, on outsourcing analysis.

Since enactment of S-494, states all around the nation have sponsored hundreds of legislative bills to stem the practice that is not only displacing our workers, but also diluting the salary/wage base of highly skilled, professional American workers. However, the members of your committee need to realistically assess if it's a case of too little too late, or whether the entities of government and labor can still work together to stem the snowballing momentous trend, encouraged by corporate America, that views outsourcing and off-shoring as a means to trim costs and thereby increase the bottom-line profits and shareholder dividends.

Furthermore, the practice is vigorously promoted by an active foreign lobby, such -- primarily the Asian market -- that seeks to evaluate (*sic*) their national domestic product of their country through utilization of an enormous labor pool. The business processing outsourcing centers -- or industry -- what we call the *BPO* -- is expected to generate $13.8 billion in the year 2007, according to a recent article. The economic clock is ticking.

And in the past decade, we have witnessed the unabated expansion of a practice that had appeared to be relegated primarily to telemarketing and phone center functions -- to much more specialized areas like data processing, data entry, computer programming; to professional services provided by accountants, auditors, and yes, even lawyers.

To paraphrase the Reverend Martin Nielmoller -- and realizing it's only a paraphrase: "First, they came for the phone center workers. And since I purchased my cell phone in Denmark (*sic*), I didn't speak up. Then there came the data processing and the tech workers. Having just purchased a laptop manufactured in Japan, I didn't speak up. And then came -- they came for the clerks who process the property tax relief applications and sent their work to India. Having just received my property tax assessment, I didn't speak up. And then came -- they came for the accountants. Having just been audited by the IRS, I didn't speak up. And then they came for the lawyers."

The outsourcing and privatization of American jobs overseas has become an increasing concern across the American labor landscape. A recent *New York Times* article -- and all of this information is backed up in the tabs of information you have in your book -- there was an article of

September 25, 2007, that was entitled "Outsourcing Works So Well, India is Sending Jobs Abroad" -- underscores the extent of the situation.

Since your Commission appears to focus on key issues, we shall not dwell on preaching to the choir. Needless to say, apparently no segment of labor is immune to the contagiousness -- or contagion of outsourcing overseas that includes many job functions performed by State workers or public workers.

A foreign business based organization, called *business processing outsourcing centers* -- have become so lucrative that they are engaged in outsourcing on yet another level by sending the workers that they trained at their training and processing centers to other countries, and establishing these BPO subsidiaries in countries other than their own.

What message are we sending our kids in college -- our college-age youth -- who have been fed the promise-- I too, and most of you sitting up there, have been fed the same promise: "If you go to a trade school, a community college, or a private/public university and train for years, learning your discipline-- If you do this and do enter the labor market for years, and if you pay every escalating cost of your education, you will be rewarded by acquiring a professional skill that will feed you and your family for the rest of your lives."

However, the training conducted at these foreign training centers doesn't take years, it takes six months or less. And their certifications are measured in days. You mark our words -- that the certificates, and the licenses, and the degrees, and the diplomas offered at American educational institutes will not be worth the paper they're printed on at, very possibly, outsourced printing facilities.

And people say, “Teach a man or woman to fish, and you will feed him or her for the rest of her life.” But in America, we’ve been teaching our youth to fish, but then granting the fishing rights to off-shore waters and telling them, in effect, that there are no fish to be caught.

However germane our testimony here -- is to inform the Commission of the State of New Jersey, that is -- is actively investing in outsourcing, then our legislative bills or Commission recommendation--

I apologize. Let me try that again.

However germane to our philosophy here -- is to inform the Commission that if the State of New Jersey is actively investing in outsourcing, then any legislative bill or Commission recommendation that ideologically opposes off-shoring merely represents ineffective lip service. We repeat, in case you missed what I just said: The State of New Jersey is, right now, investing in off-shoring and doing so by using State workers’ public pension funds to do that.

I’m going to turn over the next part to Tony Miskowski, who will explain that to you, which is explained in the booklet in front of you.

ANTHONY F. MISKOWSKI: Okay.

CWA Local 1033 has been actively opposing the alternative investment program of the State Investment Council now for the better part of five years -- actually since its inception. The reasons are really too complex to outline today. But for the most part, we believe that the outsourcing of the investment functions to consultants and external managers on Wall Street is not in the best interest of the workers that we represent at the Division of Investment.

Furthermore, the outsourcing of the investment is not in the best interest of the active and retired participants of the pension fund, who we consider the stakeholders and the shareholders of the pension fund. And certainly it is not in the best interest of the taxpayer, both on the State and national level. Furthermore, CWA will contest this in a court of law -- on the legality of the use of external managers.

But that type of outsourcing is a side issue here today. Because our fight continues. And we attend the monthly meetings of the State Investment Council held at Rutgers University. And the past three months, we have sent a busload of our members to see, firsthand, the so-called *transparent decision-making process*.

As you may know, the SIC has established an investment policy that, thus far, has committed $12.8 billion of the State workers' $82 billion fund. And by the way, good news to report. We were there yesterday.

MS. ROEDER: We have $84 billion--

MR. MISKOWSKI: --$84 billion--

MS. ROEDER: --in funds.

MR. MISKOWSKI: So that's the good news.

But they've also been investing $12.8 billion of that money in these alternative funds -- a whole truckload of 50 private equity funds, 40 real estate funds, 35 hedge funds. Many of these funds are partnerships and therefore hold an IRS tax advantage. Also, many of the private equity companies have established reinsurance companies registered in Bermuda, for instance, that enable them to legally invest hundreds of millions of dollars tax free, once again, thanks to legal tax loopholes. Needless to say, such off-shoring practice diverts billions of dollars from the national and state economies, and deprives our country of hundreds of millions of dollars in tax revenues.

Therefore, we request that the Outsourcing and Off-Shoring Commission vigorously oppose the allocation of pension funds of public workers in the private equity firms that invest in outsourcing/off-shoring enterprises, or have direct ownership in companies that actively engage in the practice. We provide, in our notebooks, one such example for your review and your consideration. And I will just briefly tell you about it.

By far, the lowest blow of all is illustrated by the case of Oak Hill Capital Partners, a private equity company that owns 40 companies, including two reinsurance companies registered in Bermuda, and five other companies that are actively engaged in the practice of outsourcing and off-shoring. Our members were, at the least, incensed and insulted to find out that their pension funds were utilized to invest in companies that some day could potentially displace them with lesser-educated, lesser-trained foreign workers.

The New Jersey Investment Council committed a $75 million allocation to Oak Hill Partners II in July of '05, plus an additional $250 million to Oak Hill Capital III in September of '07. That's close to one-third of a billion dollars -- it's $325 million -- as part of their alternative investment strategy in private equities.

Now, according to our research -- and the information is documented in this notebook -- Oak Hill boasts a 30 percent ownership in Genpact, formerly known as GE Capital International Services, or GECIS. Genpact claims to be the leading global outsourcing company, and it's headquartered in Gurgaon, India.

CWA Local 1033 brought our objections, in writing, to the SIC at their October meeting. We were told by Director Clark and Chairman Orin Kramer that the nature of the global economy was such that if you excluded investment in Oak Hill, you would also have to exclude investment in GE Capital. And GE Capital was producing interest of 15 percent annually. GE Capital owns a 40 percent stake, along with Oak Hill, in Genpact. We do not agree with the current investment policy and insist that they do more intensive due diligence to prevent our money from investing in an unconscionable anti-worker practice.

Subsequently, our review of the SIC investment report for October 2007 revealed that substantial investments were made to acquire $30 million worth of shares in GE. Further research also revealed that Wachovia bank signed a seven-year contract with Genpact by establishing a Wachovia subsidiary business processing outsourcing center in India. What we're talking about here, now, is an investment web. And sure enough, the October SIC report indicated that substantial funds in Wachovia stock were purchased to the tune of 810,000 shares, or $40 million.

Again, in correspondence to the SIC, dated October 24 -- copies of all of the correspondence are included in this binder -- CWA Local 1033 submitted our objections, in writing, to the SIC.

We respectfully include in these binders all of the documentation that outlines the scope of our concerns today. We know that you will find it informative, we know that you will find it useful. We, ourselves, are just scratching the surface of the problem as related to our testimony that we provided here today. We will, however, provide the Commission with other information and data so that we can contribute to the understanding and the extent of outsourcing; and in terms of the investment side of the equation.

We especially would like the Commission to focus on the New York state senate bill -- also included in this binder, under Tab 13 -- which is sponsored by Senator Lavalle, that prohibits the investment of New York public pension funds in corporate entities engaged in outsourcing and off-shoring enterprises. This Commission should recommend that the New Jersey Legislature likewise sponsor such a measure.

MS. ROEDER: And we thank you--

MR. MISKOWSKI: Thank you for your time and consideration.

MS. ROEDER: --for your time.

And we'd like to add a footnote, because we read your last -- your first Off-Shoring committee's report. And the footnote is that President Marketti, who is President of Local 1032, presented an impressive list of questions at the beginning of your last public hearing. And, as usual, Jim focused on the complex issues and questions that require intensive research.

Many of our members-- And we were especially struck by question number 35: Does the State of New Jersey offer or grant any sorts of public subsidies to companies that outsource or off-shore jobs? Part of that answer appears to be, absolutely, yes. And that is in the form of the investments from our State Employees Pension Fund that will be utilized to perpetuate even more off-shoring. In a sense, ladies and gentlemen, the off-shoring juggernaut has become institutionalized in the State of New Jersey.

ASSEMBLYMAN VAN DREW: Thank you very much. Very good testimony.

A few questions and-- I'm on your side. I agree with you.

With that being said, a couple of questions: Is there anywhere where it has actually been enacted into law -- that New York state assembly bill, something -- senate bill, rather -- something similar to that, where actually the law of the state is that you are not allowed to invest public pension dollars in companies that off-shore or outsource?

MR. MISKOWSKI: It has not been enacted. In April of 2007, it went to the -- their pension committee. I don't know where it stands at this particular point.

ASSEMBLYMAN VAN DREW: This bill did -- the New York bill did.

MR. MISKOWSKI: Yes.

ASSEMBLYMAN VAN DREW: Okay. And that's the-- Is that the only example that you have that you know of?

MR. MISKOWSKI: Yes.

ASSEMBLYMAN VAN DREW: Secondly, with that being said, did you do research in other states? While there may not be legislation preventing it, in other states, is it as common a practice as it is becoming in New Jersey? Do you know?

MR. MISKOWSKI: I am very sure it is. In reviewing different states' pension plans, there is quite a bit of money that is being invested in all different types of companies, through external managers, into many of these private equity companies that are investing. I do not know of any pension fund that specifically prohibits it.

MS. ROEDER: In New Jersey-- New Jersey has the pride that all -- presently, all of the investment people that work in the Division of Investment were State workers, up until about two years ago -- or three years ago -- when the State of New Jersey made the decision to outsource some of the investment capabilities of the Division in external managers. Those external managers are handling hedge funds, private equities, and alternative funds.

But the problems, sir, exist from the fact that we can't get a hold of these contracts. So the reason we want to see the contracts with the external managers is because we want to know what are the costs to the pension fund for whether they invest successfully or don't invest. Because you still have to pay them.

And one example would be in the state of Pennsylvania. In Pennsylvania, the external managers handle all the pension funds. It costs approximately -- this was research done two years ago, so I'm sure it's higher now -- about $250 million to pay external managers; where, to invest the same amount of money in the State of New Jersey, it costs $6 million.

MR. MISKOWSKI: No, actually-- I don't want to correct the President.

MS. ROEDER: No, go ahead.

MR. MISKOWSKI: But we're paying $200 million to $250 million--

MS. ROEDER: Now.

MR. MISKOWSKI: --to invest $12.8 billion of our money, versus $6 million to invest the balance of it.

MS. ROEDER: And what's very interesting-- The 2006 financial report has just come out this past -- was it July?

MR. MISKOWSKI: Yes.

MS. ROEDER: And the 2006 report shows that the investments that were accomplished by the State workers-- We received about 21-point-- Was it--

MR. MISKOWSKI: Twenty-one point eight-three percent.

MS. ROEDER: Return on our investment, whereas the external managers who were dealing with alternative funds made--

MR. MISKOWSKI: Thirteen percent.

MS. ROEDER: So that's a big difference in return.

ASSEMBLYMAN VAN DREW: So what you're telling me, objectively -- comparing apples to apples -- that they have not had a higher return on their investment?

MS. ROEDER: No, they have not.

MR. MISKOWSKI: Right, they have not.

MS. ROEDER: And, in fact--

MR. MISKOWSKI: So if that 8 percent--

ASSEMBLYMAN VAN DREW: And when you ask them that question -- which I know that you have -- you must have -- what do they say is the reason for that, too short a period of time to evaluate?

MR. MISKOWSKI: What they say is -- especially in terms of the hedge funds -- that they're not producing the interest rates. They're producing the interest rates that they expect, in terms of what the economy is doing now. But once the economy starts to dip down, and go down, the hedge fund investments will kick in, and those will do very well.

MS. ROEDER: But the issue is: How much of our State pension money is being paid to these external managers, whether or not they got 13 percent, 8 percent, or lost it all? There is still a cost. And we have been unable to secure copies of the contracts, understanding -- at least minimally -- how much is -- how much State pension money is being paid to these external managers. We know how much it costs the State workers to do the job, because it's not on the budget line, it's out of the pension money. And it's at $6 million. And now we're talking about a great deal more money that's coming out of our pension fund to pay external managers.

ASSEMBLYMAN VAN DREW: Is that not open public record?

MS. ROEDER: Well, we'd like to encourage you to ask for it, sir, and see exactly what they tell you, to see whether or not -- as an up-and-coming New Jersey Senator -- why you can't have that. Because they won't give it to us.

ASSEMBLYMAN VAN DREW: We will. But out of curiosity, what did they tell you?

MS. ROEDER: They told us that we were not allowed to have it. In fact, our national CWA has filed to get copies of this.

MR. MISKOWSKI: Under OPRA.

MS. ROEDER: And we have filed OPRA requests, and they've been denied. And I believe, at the present time, we've been in Superior Court over this particular matter. So we're looking to get these contracts, because I believe that, certainly as legislators looking into a budget, and certainly being highly concerned about the pension system, those are issues that you need to find out, and that we are struggling very diligently to find out.

ASSEMBLYMAN VAN DREW: I'm curious about that. You would think that would be open public record.

MS. ROEDER: Yes, any contract.

ASSEMBLYMAN VAN DREW: Questions?

MR. MARKETTI: I just want to comment that what they will tell you -- what Orin Kramer will tell you, at the State Investment Council -- is that they're investing in these alternative investments to spread the risk out across different asset classes. But the problem is, some of these asset classes that they're going into are inherently dangerous and complicated by their lack of transparency.

They say that they will not give us what the contractual arrangements are, because these companies have a proprietary interest in those contractual arrangements. That's what they've said in court in their court pleadings. But more importantly, they won't tell us what the investment strategies are of these hedge funds. So nobody really knows what they're using the money for and where they're investing.

For example, we'd like to know how much the hedge funds that we're invested in have sunk into the subprime mortgage problem. They won't tell us. They say that's just the way hedge funds are, which is a good reason why we shouldn't invest in them.

Be that as it may, the comment-- Can we-- I know we accept volunteers who come here to give testimony. Can we ask people to come and give testimony?

ASSEMBLYMAN VAN DREW: We can. We don't have subpoena powers, but we certainly can request that they do.

MR. MARKETTI: Well, I'd like to request that we ask Orin Kramer to come here and give us testimony as to why they're investing in companies that have outsourcing and off-shoring as one of their business strategies, and how much of the employees' pension money is being used to cut our own throats.

MR. MISKOWSKI: Thank you.

MS. ROEDER: Thank you, Jim.

ASSEMBLYMAN VAN DREW: Last question I have, and then I'll -- members from the committee.

Any sense of where they describe -- and we should be asking, obviously, Orin this -- but of the supposed safety net? By safety net, I mean, as investments go up and down, and some of those--

MS. ROEDER: Well, pension funds are dedicated funds. These are not discretionary funds that you can spend. And they are about-- They speak to people's livelihood, and their ability to retire, and their ability to have something at the end of the road. In the last 10 years, the majority of the pension funds have come out of the State workers' pockets themselves. How much money, at the present time -- in the last years -- have State workers paid? About 10--

MR. MISKOWSKI: Oh, about $10 billion, $11 billion.

MS. ROEDER: --$10 billion, $11 billion of the money. That's actually coming out of our paychecks. And the last two years, we have had money committed by the Legislature, but not to the level that needs to be committed, to pay the debt that was borrowed under the Whitman years against the pension.

ASSEMBLYMAN VAN DREW: But more than many, many years before.

MS. ROEDER: Yes.

Thank you.

And what the issue-- If you look at pension funds throughout the country, how many pension funds are invested in alternative funds? There are numbers of them. But New Jersey used to be nonexistent in that. And now we've moved up to number two or three. We've gone, in two--

MR. MISKOWSKI: We were at last place to--

MS. ROEDER: We were at last place. We're way up in the front now.

MR. MISKOWSKI: --certainly the top quarter.

ASSEMBLYMAN VAN DREW: And you probably can't answer this. And this will be my last question. When we were in last place, any objective sense of how we were performing, in relation to those that -- I'm just curious -- to those that were--

MR. MARKETTI: We were one of the top eight or nine performers.

MS. ROEDER: He knows.

ASSEMBLYMAN VAN DREW: Even with--

MS. ROEDER: Without alternative funds.

And at having $84 billion, you can imagine how proud we are -- because both of us are State workers, just like the people who work in the

Division of Investment -- they're very proud of the fact that they can say, now, that they have $84 billion in the pension fund.

ASSEMBLYMAN VAN DREW: So what you're telling me is that, your sense is that the argument to invest in these types of companies and these types of funds -- that's based upon getting a greater rate of return -- is erroneous.

MS. ROEDER: That's correct.

MR. MARKETTI: Well, it's not proven, certainly not proven to the extent that they should have such a large percentage of the fund.

We actually, when they first proposed this, didn't out-right object to alternative investments. But we said, "Go slow. Use a small percentage of it, and let's see how it does." Instead, they plunged right in.

MS. ROEDER: And their--

ASSEMBLYMAN VAN DREW: Mr. Leonard.

MR. LEONARD: I just wanted to, first, thank you both for this testimony. This type of information, as succinct as it is -- as presented, it's fantastic. And this is the kind of information that I would hope that, through this Commission, through you, Mr. Chairman, the general public would have access to.

A couple of questions with regard to your members: Because this information is relatively hard to get -- it seems like it took an awful lot of your time and effort in order to get this information -- what steps are you taking, or what steps can others take, to get this information out? For example, if you're interested in investing in socially responsible stocks, there is a Web site you can go to, there are packets of information you can get. Do you provide to your members information on how to invest their own private money in, let's say, investments that don't do off-shoring or outsourcing?

MS. ROEDER: Well, let me explain about our members. The majority of our members-- Of the 7,000 members, ours is the local that has between 50 and 60 percent of our members who have more than one job, because they can't survive on what they're being paid in State government. So, right now, I can tell you that on the last survey, close to 40 percent have more than one job. And now we have about 15 to 20 percent that have three jobs.

MR. MARKETTI: So they don't have portfolios.

MS. ROEDER: They don't have portfolios. And if I could--

MR. LEONARD: Well, Mr. Chairman, through you, I wasn't insinuating that they had a portfolio.

MS. ROEDER: No, no, sir, I didn't take it that way.

MR. LEONARD: I'm simply saying an IRA. Could you-- How can we help people?

MS. ROEDER: Well, one of the things is, we don't get a say-so in what they invest. When we get our paycheck at the end of every other week, out of that paycheck comes 5.5 percent of our salary that goes into the pension fund. And that's the same with the legislators and everybody else that's in this fund. And the question -- thank goodness for the last Legislature, where we had -- the legislative season -- where-- I know there was a lot of discussion, and a lot of hype, and whatever, but there were some good things that came out of that. And one of the good things is that there were reports from the Office of Legislative Services and from the Attorney General's Office that clearly showed that we were more than just --

that we're really stakeholders in the process -- almost like stockholders. But we have very little to say about this.

Now, if you go to the Investment Council meeting, which -- it took us long to discover where it was, but we've been leading a lot of people to these meetings. And you will find that the majority of individuals who sit on there come from very large companies.

Now, if I could just give you one example: Recently, you read in the paper that a hundred million dollars was invested in New Jersey -- invest in New Jersey. Now, to the public, it sounds great. "Invest money in New Jersey." But the question is, what money? The money came directly from our pension fund, without approval of any of the members of the pension fund. And in addition to that, the State was -- and Orin Kramer -- was quick to say, "We've partnered with Lehman Brothers." It sounds great. They had the pictures on the TV and what--

But what you didn't know was at that same meeting, two members who are directors of Lehman Brothers were placed on the State Investment Council to determine-- And they are sitting there right now, on the Investment Council, determining how *invest in New Jersey first* is going to work. And you, or I, or anyone else-- And I agree with you. We should have a say in how our money is invested. We should be asked those questions, but we are not.

MR. LEONARD: Mr. Chairman, I apologize for not being clear enough in my comment.

MS. ROEDER: No, don't you-- It's all right.

MR. LEONARD: So let me say again, if any of your members have an IRA, or they happen to have some stock that was given to them by a parent or a relative, do you provide educational opportunities for your members so that they know-- I mean, you mentioned some banks in your testimony, for example. And you talked about the outsourcing and off-shoring activities of that particular institution. Do you tell your members about that--

MS. ROEDER: Oh, yes.

MR. MISKOWSKI: Yes.

MR. LEONARD: --so that they know to take steps? Because government tends to work slower than I think most would like. It takes a little bit of time to get things done.

MR. MISKOWSKI: Yes. CWA--

MR. LEONARD: You can take your own steps, and that's all I'm asking, if you are, and how can others learn about that.

MR. MISKOWSKI: And the answer to the question is, we do extensive training with our members. We do workshops with them. For instance, before we took the busload--

MS. ROEDER: Yesterday.

MR. MISKOWSKI: --of our members to the Investment Council, we had training with them. We viewed a videotape called "Trillion Dollar Bet" that was done by NOVA about hedge funds. And although we don't specifically recommend how they invest their money, they are becoming more knowledgeable in what kinds of investments are out there, what kinds of investments are more risky than others, and so forth. And by doing so, I'm sure that it's getting through to them that there are all kinds of different ways to invest money with different levels of risk.

The other thing that we did, in terms of that -- because it's done all the time -- the science of finance, if you want to call it that, as well as gambling -- they always make analogies to gambling, and there's a reason for that. Because the mathematics -- the stem of mathematics that we call *probability* actually resulted from people trying to control chance. And it led to a statistical basis and computer models of -- mathematical models of financing.

So we're giving them a flavor of all different types of investments: hedge funds, what is a private equity company, and how they own -- they buy many different companies. And the other thing that we have been doing, in terms of our training, has been on the pension fund itself.

MS. ROEDER: And there was a magazine done recently--

MR. MISKOWSKI: *Alpha*.

MS. ROEDER: --the *Alpha* magazine. And I only say this because I want you to understand that your question is very relevant.

When we ask these questions at the Investment Council, and when we write letters, or whatever-- There was an *Alpha* magazine. And on the front of -- the picture -- of the *Alpha* magazine was Orin Kramer, who is the head of the Investment Council. And when he described-- He was described as a warrior--

MR. MISKOWSKI: Garden State warrior.

MS. ROEDER: --and a Garden State warrior. And we were in the article. I think Mr. Marketti was in the article, and others. And what his attitude -- and he said very clearly -- that he perceives State workers to be financially illiterate troglodytes. So we laughed, and we put signs on when we went to the next Council meeting -- as troglodytes -- to show them how lacking he is in understanding that we will take the time and the effort. We brought with us-- We have a group of about 50 people we take with us each time -- from banking investigators, to taxation investigators, to people who are public defenders, and to the people who collect the taxes at Revenue -- so that we have a broad spectrum of people -- from Motor Vehicles -- so that-- Because investments -- I agree with you -- should not be a mystery. But when you open -- when you peel back the layers of the onion, and then begin to see the complexity of what it is, they begin to become very, very nervous about what is going on in the State of New Jersey in relation to their pension funds.

So we thank you for the opportunity.

ASSEMBLYMAN VAN DREW: Thank you.

MS. ROEDER: And we will continue to supply you with information if you're interested in it. And we would, more than gladly, put together other information for you.

ASSEMBLYMAN VAN DREW: Thank you very much.

MS. ROEDER: Thank you.

ASSEMBLYMAN VAN DREW: Very good testimony. Thank you.

MR. MISKOWSKI: Thank you.

MS. ROEDER: Thank you.

ASSEMBLYMAN VAN DREW: We'll ask Mr. Nathan Newman, Policy Director for Progressive States Network.

NATHAN NEWMAN: Thank you, Mr. Chairman and other members of the Commission.

I'm Nathan Newman, Policy Director at the Progressive States Network, an organization that supports state legislators and advocates across the country in promoting policies that support working families.

Parts of my testimony today are based on a report we'll be releasing in the next few weeks about outsourcing and privatization by state governments. And I wanted to address both the issues before this Commission: off-shoring and outsourcing, and the differences, since part of it is what goes overseas, and parts of it is just what we do here in the U.S. with outsourcing. And we can sometimes blame what happens overseas without always going much harder about what we can control very clearly within this country, as far as wage rates -- and looking at what states have been doing and can do to encourage more responsible policies that help raise wage standards for all workers.

On the issue of off-shoring jobs overseas, states have begun taking a number of actions to stop the downgrading of job quality due to competition. When, back in 2004, as people know, Good Jobs First and other organizations really raised the alarm that jobs are being off-shored with taxpayer dollars, states like New Jersey did take action to deny government contracts to companies using off-shore labor. That was a useful first step, and a number of states have taken action to demand that the Federal government fix a broken international trade system.

Governors from a number of states have sent formal letters to Federal negotiators, condemning the procurement rules contained in the recent Central America Free Trade Agreement, CAFTA, which would actually do a lot of things that would restrain and force international competition into government contracts, whatever state law says. So there are some very dangerous things being negotiated, internationally, which could override much of what this Commission might want to enact.

Legislators also, from multiple states, sent a joint letter, in 2005, to Federal negotiators expressing opposition to investor provisions contained in the CAFTA agreement -- and that are being, again, looked at in other trade agreements -- that would give companies the right to sue states if various investment opportunities are restricted.

A number of states, including Maine, Washington, New Hampshire, North Carolina, and California have created specific and permanent legislative oversight committees to review trade agreements and develop policy responses on behalf of state governments, to make sure they're not blindsided when some of these trade agreements are negotiated.

And this year, with a few last year, both chambers in Maine, Nevada, and Utah; and one chamber in Alabama, Hawaii, Montana, Pennsylvania, Rhode Island, Tennessee, Vermont, and Wisconsin approved resolutions calling on Congress to renegotiate the fast-track trade promotion authority, which has traditionally been used to force a sort of up-down vote on whatever trade agreement was negotiated with the President, without Congress being able to say, "What's happening to jobs?" and being able to do amendments; and also, often, without the representatives of states being able to say, "How is this going to affect state regulations?" since, as we all know, trade agreements have increasingly become, sort of, international regulatory agreements, often restricting what states can regulate.

As was discussed in the first hearing of this Commission, state leaders across the country have recently been introducing parallel -- what's often called -- Jobs, Trade, and Democracy Acts, model bills that can ensure that citizens and state legislators have access to the information on the impact of trade policy, require governors to have the consent of the state legislature before they sort of bind the states to international trade agreements, and create oversight bodies to assess these legal and economic effects of trade agreements.

So there's this broad scope, and there's obviously many other things the commissioner talked about. But in this area of off-shoring trade agreements, there's a lot of action happening in different states. And I applaud the fact that this Commission is really looking into it.

But off-shoring jobs overseas is actually only the logical end-product of the broader trend of outsourcing, of large companies and government itself seeking low-wage subcontractors to do the work that they were previously doing themselves with their own employees. And whether that work is done abroad or at home, there are serious challenges to wage standards in many communities -- people facing, like, stagnant wages, often having to work two jobs. And it is hard for government to really sort of rally, go after private-sector employers and criticize outsourcing and off-shoring trends, when it doesn't establish clear, strong standards on its own contracting policies.

Now, partly, the same ideology that's driving outsourcing and off-shoring is too common in government contracting. We hear too many government officials promoting what seems like a free lunch. You hand over control of government services or government assets to private industry, and services will end up cheaper. I mean, it sounds good. But like a lot of promises of a free lunch, outsourcing of government services rarely delivers on its high promises. And most studies show little gain, and often substantial loss, for taxpayers, even aside from its effects on workers. I mean, part of what the study we're going to be releasing in a few weeks looks at is, it's not so much to definitively say, "You never get anything out of these outsourcings." It's that there's actually relatively little data, and most states aren't doing their job of actually measuring. I'll go through a few examples of some of these failures.

One of the most spectacular flameouts, which many people might have heard about in the news, was the cancellation of a billion-dollar Texas deal with Accenture. This was, in some ways, the prototype of how not to do it. Even though it was sold by some of the smartest people, Accenture -- one of the top sort of spin-offs of the big five accounting firms -- which, of course, had their own problems with Enron and various scandals. But they were once considered, sort of, the blue-chip company for doing much of this work. They were supposed to improve the measurement of human services in the state, but instead lead to tens of thousands of children losing health coverage due to incompetent management in this private sector.

But most of the outsourcing failures are quieter, happen out of the public eye, you don't hear about them. There's very little reliable data on the benefits or costs of outsourcing, as most studies are anecdotal; and very little data on this privatization. Reports -- when you see somebody saying, "Hey, this privatization was successful," it usually has a systematic bais, because usually the companies being privatized are, frankly, the ones that were a debacle to begin with. They're not often typical of the companies that-- People then say, "Oh, let's go to this other area that never had a problem." But they say, "Oh, we've gotten success in other places. It must work somewhere else."

And one of the biggest problems -- I'll go into that in a little bit more detail soon -- is, state budgets do very little tracking of their contracting programs. They say which contracts are being put up, but they don't say the percentage of state budgets that are often going to contracting versus staying with public employees. They don't track the wages of the contractors. There's very few benchmarks of what's happening in contracting to really make intelligent statements. I wish I could come in here and say, "We're analyzing New Jersey. This is what's happening." I'm not sure anybody can, unless you do it in little microparts of it, with a lot of work going after it.

And the limits of the data available should encourage states to enact laws creating greater transparency over their state budgets of what is happening with their contracting programs. And I will say, we did, with the best data available -- looking at, sort of, the areas where you could compare privatization. And it's interesting. It's not a simple pattern, blue states versus red states, and this kind of ideology. Frankly, when you look at, at least, some areas -- food service outsourcing, human services contracting, use of for-profit hospitals versus public hospitals -- New Jersey actually ranks up there with Texas as one of the states with actually quite a bit of outsourcing. And it's-- I don't think there's simple patterns on there. I think it's been much more a case-by-case. But there isn't actually good data to sort of say, "Is the mix in New Jersey, versus Connecticut, versus Oklahoma, the best mix in those states?" just because the data has often not been there.

Now, I do want to go quickly-- I won't go into all the detail in the testimony. You can read it. But there are some very basic pitfalls of outsourcing that apply, whether it's in the U.S. or off-shore. And this goes for, actually, private companies often as much as public.

But there is one thing. I mean, lost money and degraded services. What happened in Texas was a situation where they said they could replace high-skilled people who were doing case management with call centers. It sounds good. They could have been-- There were call centers in Texas -- could have been overseas. By the time they finished the pilot project, 30,000 children had been kicked off of their state health-care program, because they didn't have the skills to process it.

The State Comptroller, Carole Keeton Strayhorn, said, "The Accenture contract appears to be the perfect storm of wasted tax dollars, reduced access for our most vulnerable Texans, and profiteering at the expense of Texas taxpayers." They had to actually backtrack, bring back the state workers, and figure it out. That's a dramatic one, but you see microversions of this in many states.

You also have weak oversight and lost expertise. And you'll hear people talking about this in the private sector. When you outsource some of your core functions, often the skills to do that over the long-term and the skills to do oversight disappear along with it. You actually become totally dependent on the people you're outsourcing to. And if you want to be more creative, you often don't have that expertise to do that.

There's the problems like the *Big Dig* up in Boston, which was another recent, notorious -- where they had accidents, even somebody died. And the bottom line was-- People were like, "How do we actually even know what Bechtel is doing wrong anymore? We don't have the people on staff to do that oversight."

I think you also do have lost democratic accountability. This is very much true for government contracting out. When you talk about moving it outwards, you're sort of subcontracting out many of the decisions. The most obvious one this Commission is talking about is, how do you treat workers? The kinds of decisions that you couldn't do if they were public employees, in many cases, are just done routinely; you also do -- and this is obviously a hot issue, right now, in New Jersey -- with the privatized roads. There is a certain part of this, which is sometimes -- you privatize out the asset or the service, and things can happen, whether it's higher toll roads or whatever, without the public debate.

But on the issue of workers, one recent study that looked at 500 city and county governments found that private-sector contracting resulted in full-time employees systematically being replaced with part-time workers, exactly the problem of lower wages, more jobs, less good jobs out there.

Again, with prisons, private police units, you do worry about the constitutional safeguards of privatizing that out there, as well.

And you do have this corruption of the political process. And I think it was mentioned before. When you have certain of the people who are getting the contracts having influence with government, you do lose what was once there, with a strong civil service ethic amongst government workers -- which is, there's a separation between politics and how the job is being done. Once you have outsourcing, there's a financial incentive for how to do that work that starts to create an iron triangle that's very dangerous.

That existed with the Texas deal I mentioned. I know New Jersey has had its experience. When there was the Coingate scandal out in Ohio in 2005-2006, which cleared out much of the political leadership in that state, there was a lot of that problem of pay-to-play corruption because of outsourcing. So New Jersey has taken some very admirable steps to cut down on pay-to-play corruption, becoming, in some ways, models for some other states. But there are definite areas where you can always improve and tighten them.

And then -- and this is the one where -- honestly, I'm not going to claim you don't save money. Because I think it's very hard for anybody to say this definitively. But it isn't clear, with all the studies out there, that the main justification for outsourcing -- saving the taxpayer money -- has been justified. You know, at least one analysis of privatization of state and local services over the last 20 years -- very comprehensive study -- found that the majority of such projects failed because of deteriorating quality of service. And in more than half the cases, the projects didn't even save the taxpayers dollars. Other studies: people see very little difference. You can go down them.

And it doesn't mean, though, that the private companies aren't profiting from the deals. It's often they're just getting the deals, and the taxpayers aren't seeing the profit. Paul C. Light, of New York University, who has long tracked the hidden contractor workforce at the Federal level, where contracting is far more extensive than in the states -- so they have-- And we've seen some of the debacles, whether it's Halliburton, or

Blackwater, etc. But they have no data to show that contractors are more efficient than the government workers. They're just paying more.

But this is, I think, the heart of the issue that I think this Commission should be looking at: the lack of data on outsourcing. While there are-- You can goose studies back and forth. And I don't want to do the conservative scholar, saying, "This study shows it." I've talked with people. When you actually push anybody -- and you can push me, and you can push a conservative scholar -- they'll say there isn't actually enough data. There really-- When people look at it-- As I mentioned, there's often anecdotal studies. You can actually say that, "This place was a problem. We privatized it. It improved a little bit." But then again, the minute you start a big process, you're paying more attention to it, and things can improve. There's something called the *Hawthorne effect*, which says, you pay attention to anything, and it usually improves.

The problem is: People then, having done that, say, "All the things we're not going to pay attention to in any particular way, we'll privatize, and they'll have the same effect," and it doesn't.

The respected Mathematica Policy Research, Inc. argued, in a review of welfare outsourcing studies, "Research on the quality of privatized social services is very limited, but, like on cost savings, it appears to be mixed. However, experts note that these analyses may be somewhat biased in favor of the private sector, because privatization occurs only when public services are particularly ineffective, providing a point of comparison that may not be typical of public-sector provision."

And here's the bottom line of what I'm going to argue -- is, states don't publicly report the data needed for broader, less inherently biased studies. You don't have the bottom line for the routine agencies of how much is being contracted out and how much is in-state. Cornell Professor Mildred Warner, a well-respected scholar on privatization, says flatly, "I'm not aware of a consistent data set at the state level to make academically relevant statements on the level of contracting in the states." That's an academic way of saying she doesn't study it because there's just no way that she can say anything that is useful as a scholar, which is a pretty damning statement -- that she is-- She studies the local level, because local governments actually have better standards than most states for trying to track that.

Now, I'll mention -- reference it. There are a couple of studies that have tried to compare all 50 states on contracting. One is the Council of State Governments. Their most recent surveys were conducted in '97 and 2002. And the other is the American State Administrators Project, an academic consortia whose most recent surveys were in '98 and 2004.

Each of them sent out surveys, very extensively, with follow-up to state agencies, state budget heads, state procurement heads. And they-- When I talked with them, I talked with their core researchers. They're like-- They were like, "Don't try to say anything about an individual state off of what we've surveyed, because we don't have -- and no state really seems to have -- granular data to really say what percentage is being privatized." At best, they can get out of-- Essentially, they're doing a poll, and they treat it as a poll, not as something that has economically -- data. They can sort of say, "There are some nationwide trends happening in contracting."

The American State Administrators Project report said, "Apart from selected surveys at the local/municipal level, most public administration experience and research involving contracting is anecdotal, case-specific, or otherwise narrowly focused." The Council on State Governments: "There appears to be no consensus as to the effectiveness of privatization in part due to the lack of empirical data, as well as the complexity of the issue." Those are the two best studies on outsourcing out there. Both of them basically say, "We can give you some general trends. There's just no good data." And that's partly because the states aren't reporting it.

We actually-- This is an important thing by the Council on State Governments: "A more interesting finding from the surveys is that many agency directors could not provide estimates of cost savings from privatization. Nonetheless, state officials have continued to privatize, due to the perceived efficiency the private sector might have demonstrated." I just want to repeat that. They said, "We don't know whether this is being successful." That's what most of the people they interviewed said. But they're privatizing anyway, because, "We think it works."

So that's actually-- And that was-- This is from the Council on State Governments, not with a particular ideological axe to grind. They're just saying this is what they're self-reporting. People don't seem to feel, out there in state governments, that they know themselves.

As I said, one of the problems is you end up with these states not having the expertise of what they're privatizing to actually evaluate it. If you privatize much of your expertise, and you're depending on the contractors, you then lose the ability to even measure: are you being successful, is the quality you're getting the best that's out there?

But there is one other part of this story. You get a lot of these -- and I gave one -- is like these horror stories out of Texas, etc. The other story that happens, which is a smaller story, is what Mildred Warner talks about -- contracting in. Quietly, you actually have a lot of failures, and states actually quietly bring them back in, local governments bring them back in; which is one reason why, despite lots of contracting-out experiments, there actually hasn't been as massive an increase of contracting out as some people might have expected with all the, "This has been so successful, this has been so successful," except, they try something new and then move on to something else. The sort of failures from the past get sort of pulled back in.

So the last point -- and I'm going to just sort of say it -- I think one of the things this Commission could look into is outsourcing transparency legislation. What is lacking is accounting in each state of what percentage of each agency's budget is being spent through public employees, and what percentage is going out to contractors, and what those contractors pay their employees, and other relevant competitive information.

In the course of writing our report, we contacted state budget and procurement offices in states across the country. Of those that replied, really none had comprehensive data on their overall state contracting. Virginia was one of the only states, when contacted, that could actually produce data that, with some massaging, could measure contracting out in various departments, in a sort of useful budgetary way. And they collected that data because a commission on privatization had encouraged this a couple of years ago. But even Virginia doesn't make that data available in a manner that the public can look at in, like, sort of an easy way. And most states don't collect that information.

So there are a number of legislative reforms that you might look into. Measuring the costs of outsourcing: One of the strongest laws was passed in Massachusetts a decade ago, to say that before you can contract out, you actually have to do a study to say this will save money. It's actually something the private sector -- at least best practices does. Many states don't -- skip that step and, sort of as I said, have a perceived sense that it will be more effective. But those kinds of studies have been seen to save Massachusetts, and states that at least do that partly, quite a bit of money.

Budget accounting for outsourcing: An important additional reform, too, would be to require every budget include a line item listing the percentage of each agency's budget that is going to private contractors.

Also, online disclosure of outsourcing data to make sure that people don't-- Like, sometimes you have the data buried somewhere, if you actually push into the agency. It should be on the Web sites of state governments. That should be information that any citizen should be able to access, make it available. States have been making strides in other areas. New Jersey-- There is actually a report that came out yesterday by Good Jobs First. And New Jersey actually ranked relatively decently on online disclosure. This should be one of the things that is there in the State.

The last part is, once you have that data, the accountability. And this gets to the core, I think, discussion of this Commission. Once you have some of the data, it's a lot easier to start saying, "Is this contracting out, whether it's here at home or going overseas? What's being paid, what are the wages?" There's a long tradition in government of prevailing wages for public works; and now in New Jersey, recently, to make sure janitorial workers are covered. But across the country, there is $400 billion in goods and services purchased from the private sector. And Maryland, this year, became the first state to apply a living wage to all government contracts, to actually evaluate and say -- making sure that anybody working with government money gets paid a decent wage. That's a very good model.

The last few, mentioned in the testimony, are these issues of accountability. Issues like the revolving door between these governments doing the contracting and, then, the companies getting the contracts. That's been a chronic problem, and keeping those separate is very important.

And, again, a place where New Jersey has taken leadership: on banning pay-to-play contributions -- to make sure pay to play isn't influencing the contracting decisions.

In conclusion, fundamentally, the problem of outsourcing is one of challenging an ideology that using low-wage subcontractors is a route to long-term social efficiency. The saddest part of many -- much of the professed commitment by some political leaders to outsourcing, and even off-shoring, is that the evidence for even the efficiency gains are unclear; while the devastating effects on employees, as good jobs are replaced by bad ones, is all too evident. The solution is strengthening accountability standards, greater transparency, to assure that both the taxpayers and employees do not lose out from outsourcing decisions.

ASSEMBLYMAN VAN DREW: Very good.

We were just speaking up here a little bit. And we'll get some comments from the committee. But I think one of the recommendations of this committee might be that we look into -- regardless of how you feel about this issue -- that we might look into what you would classify as transparency. In other words, if it is more efficient, show me. I mean, what we are looking for in government -- and most especially in New Jersey with the budgetary problems that we have -- is efficiency, ways to save dollars. But really, if privatizing or outsourcing is more efficient, let's have some good, clean, clear, transparent statistical information that shows that to be so.

Secondly: To determine during that process exactly how much really is being outsourced would be, obviously, something -- as you so correctly pointed out -- would be of value, as well.

And thirdly, which is different, in the investment strategies that we have -- to have some kind of clear, concise, transparent, objective barometer, as well. Are we really doing the job well? I mean, I would think everybody would agree with that, whether you were in the private sector, whether you were a proponent of it, or whether you were opposed to it. I can't understand anybody being opposed to transparency, and having a full, and clean, clear evaluation of where we really are with this.

So, to be honest with you, I'm surprised more states don't. It is sort of an amazing process. And I guess because, to some degree, relatively it's new -- relatively. And maybe this is something that will be discussed more. But when you consider that the argument for it -- the only good argument for it is more efficiency, is to save money. If that, indeed, is not true, then there is no argument for it at all. So both on the investment side, and also just on the number of jobs that are lost, as well, within state government -- I think that that has value and that is something that this committee should look at.

Mr. Leonard.

MR. LEONARD: Mr. Chairman, did I have a look like I wanted to say something? (laughter)

ASSEMBLYMAN VAN DREW: You did, actually.

MR. LEONARD: You read minds very well.

ASSEMBLYMAN VAN DREW: Was I wrong?

MR. LEONARD: No, you're absolutely right.

Mr. Newman, thank you for your testimony.

And, again, this is the second witness that we've had that has provided concrete information that I think is very valuable to me.

A couple of things: First, you talk about the survey that you're going to come out -- or study, I assume. What's the date, specifically, or the time range?

MR. NEWMAN: It's going-- We're still working on it. It's the first couple weeks-- And, I mean, I do want to make clear, this is-- Actually, what I presented, at least in a summary, is a core of it. Because we ended up wanting to do actually more in depth on what was happening between various states; and came up against this data issue, and decided that that actually was the focus of what we were going to recommend -- this issue of greater transparency between the states. Because so many people we talked to were quite frank.

And to take the Chairman's point, I think if you had the Reason Foundation -- one of the greatest proponents of privatization out there -- they actually agree -- we talked to them -- they agree there's not very good data out there. And you're right, they'd probably like to see better data; and they'd use it to try to prove their point, which is all to the good.

ASSEMBLYMAN VAN DREW: Everybody wants data. Business people want data. That's how they judge--

MR. NEWMAN: Sure.

ASSEMBLYMAN VAN DREW: --they make their decisions.

MR. LEONARD: But the time frame?

MR. NEWMAN: Probably the second week in February.

MR. LEONARD: So, unfortunately--

MR. NEWMAN: I mean the second week in -- sorry -- December.

MR. LEONARD: Second week in December.

MR. NEWMAN: Yes.

MR. LEONARD: Through you, Mr. Chairman, I believe that this Commission will be closing its activities around the end of the year. The Assemblyman will now be headed to the -- as some call it -- the upper chamber, the Upper House. And so I believe that this Commission will be ending its informational gathering activities. So hopefully the sooner you get that to the Chairman, the better, in order for us to utilize that information.

I also noticed in your testimony -- and you bring up a couple of scenarios that are worst-case, or perhaps indicate some of the problems associated with the outsourcing activities. Did you come across any that proved that there is value?

MR. NEWMAN: I mean, let's be honest. Nobody advocates that the State of New Jersey go into producing paperclips. You know, there are obvious things that the State buys -- outsources. And nobody, I think, will argue against it.

The question, I think-- And there are obvious places where people have saved some money. I mentioned there were dysfunctional services. But one thing, actually, that often happens -- and this goes into this outsourcing -- or sourcing back in. Sometimes there's a problem in some sector in a state, or in a local community. They outsource it out, it gets cleaned up, they source it back in. That's actually been a pattern out there.

MR. LEONARD: So there are activities that have proven to be effective in the outsourcing arena?

MR. NEWMAN: Yes, although the interesting thing is, most of the time it usually has been because of a temporary problem, and then they've outsourced it back in and have had greater efficiencies in, partly because they then get the gains of both the expertise that has been generated, but also the savings of not actually having to pay the profit margin.

I mean, the ominous part of any issue of outsourcing is, you're trying to figure out: Is there somebody out there who can do it better, but not just as well, frankly -- but as well, plus a profit margin? So they actually have to be doing it significantly better to justify the profit margin. And, over time, that's unlikely to be true in areas where-- The paperclip example is sort of the one where there are such economies of scale, and what the government is doing is such a tiny part of it. But almost any area where the government is the major player, it's unlikely to be a place where a private player, by basically standing in for like thousands of government employees, is likely to be able to do it better. There are not that many definitive examples of that.

As I said, if there was more data, I could probably give you a better answer on it.

MR. LEONARD: Right.

One last question, Mr. Chairman, please.

ASSEMBLYMAN VAN DREW: Sure.

MR. LEONARD: You mention in your testimony a case in Texas, which I think stands for what shouldn't happen in this regard.

MR. NEWMAN: Right.

MR. LEONARD: Are you familiar with the technology infrastructure activities of the state of Texas, and particularly their outsourcing activities that just happened?

MR. NEWMAN: I mean -- what, their just general IT work? Because this was part of their technology. As I said, it had a call center aspect. It was done by Accenture. So I'm curious which part you're referring to.

MR. LEONARD: The one dealing with the 13 mainframes, Unisys activities, IBM, that kept all of the state employees whole, offered them jobs at the same salary--

MR. NEWMAN: Oh.

MR. LEONARD: --saved the state of Texas $159 million over seven years, including $25 million that has already been accounted for in the first two years of activity.

I bring this up because I'd like to know more about the good, as well as the bad.

MR. NEWMAN: Right.

MR. LEONARD: And I believe that this Commission would like to, as well.

MR. NEWMAN: Yes.

ASSEMBLYMAN VAN DREW: We would, and that's the point of this -- to have a really objective, good look at it.

That's good.

So if-- Actually, if you have any other information on that, or if anybody does, that would be valuable, as well.

MR. LEONARD: I'll provide it to you, Mr. Chairman.

ASSEMBLYMAN VAN DREW: Thank you, Jim.

Mr. Marketti.

MR. MARKETTI: I have no questions.

I would like to comment that our local union has sponsored a cost analysis bill in every session of the Legislature for the past 12 years. And if you think there is no good reason why people don't want objective data, you are incorrect. They come out of the woodwork insisting that this data not be collected.

MR. NEWMAN: That does goes to the issue of the people who benefit from inside deals on this stuff, which has always been a chronic problem. I mean, if there is objective data, it means that any outsourcing that is effective is going, because it's going to an open field rather than people who can work the system. So I think it's absolutely true that, in some ways, what I might call the *ideologs* on both sides are probably more into the honest data than many of the people who are in the practical parts of it. (laughter)

ASSEMBLYMAN VAN DREW: Nicely said.

It's a practical world at times.

Anybody -- any other members have any comments? (no response)

Thank you very much.

MR. NEWMAN: Okay. Thank you.

ASSEMBLYMAN VAN DREW: I will ask Mr. Tony Daley to come forth, who is a Research Economist with the CWA.

Thank you for being here, Mr. Daley. I know you had a little bit of a trip.

T O N Y   D A L E Y,   Ph.D. I also go lost on my way into this building, actually. I ended up in Pennsylvania for a few minutes. (laughter) So I apologize for being a little bit late.

My name is Tony Daley. I'm a Research Economist at the Communications Workers of America. I've been with the CWA since 2001. Previously, I worked with the International Union of Electrical, Electronic, Salaried, Machine, and Furniture Workers, IUE, between 1999 and 2001, before IUE merged into CWA. Between 1987 and 1998, I taught at the university level at Wesleyan University and Connecticut College. I received my Ph.D. from the University of California, Berkeley, in 1988.

President Marketti has asked me to give testimony on issues of outsourcing, off-shoring, and data collection, specifically. And to that point, I think you'll probably find there's not much politics in my testimony. I'm going to be focused exclusively on the types of data we need to analyze a problem. And so I'm not going to be looking so much at policy -- although I have my views about what should or should not be done -- nor will I look at regulation.

I prefer not to speak -- to read my testimony, as such. The first part of this testimony looks at the problem of outsourcing and off-shoring at a national level. And it's pretty serious. At one time we thought that there were maybe 14 million jobs at risk of off-shoring. Well, Alan Blinder and others have found that perhaps the number is twice that, if not more.

This is particularly important, I think, for CWA. CWA is a union of 700,000 members. We represent 66,000 here in the State of New Jersey. We represent 43,000 State workers. Many of our workers have been touched by off-shoring and outsourcing. And you can look at any segment of our union, whether it's telephone -- and you can think of call center workers; newspaper reporters -- well, Reuters has off-shored some of the work in New York to India. Government workers-- The interesting example-- The previous gentlemen spoke about the state of Texas. Those were CWA employees and the state workers whose jobs were outsourced to Accenture. Those jobs stayed in the state of Texas, but other jobs are off-shored out of the country. So at every sector of our union we have faced this problem for the last five, 10, 15 years.

And I should say that we start analyzing this problem, as the previous gentleman did, from the perspective of outsourcing. As soon as --

which is neither good nor bad. We don't consider it either good nor bad. You need to look at it on a case-specific basis. But once you remove work from an employer -- and that employer could be state government, or a large company, or even a small company -- then you detach accountability in some way, shape, or form, and you make it much more difficult to follow accountability.

There was a case in Pittsburgh of a-- We do a lot of work at -- we're trying to organize, frankly, Comcast Corporation. And they contracted construction services. And one of their contractors blew up a house because they tapped into a gas main. And Comcast -- "We're not responsible." So the whole issue of accountability is pretty serious, in our opinion.

In order to -- for public policy to address the issue of both off-shoring and outsourcing, in our opinion, we need to have appropriate data. And if you follow along in the testimony, I start looking at data on Page 6. We have neither the data at the Federal level or the State level in order to make -- to have reasoned debates and effective public policy about outsourcing and off-shoring.

I'm going to talk a little bit about Federal data problems, not because I expect people in Trenton to be able to affect Federal data problems, but some of those problems have an impact on what we do in state governments. And then I'll talk about some State-specific initiatives which I think would be useful in order to collect data in order to understand the problem.

And by the way, I agree -- and I'll just preface this -- wholeheartedly with the previous gentleman, who talked about the need for data collection at the state level on private contracting. It is-- We've looked at this at headquarters at various states. And it's in shambles. And you compare that with the Federal government. And I could walk you through the Federal Procurement Data Service and show you how they track contracts very clearly. And you know exactly where they are, and you can get copies of the contracts between vendors -- any vendor over -- doing a service or producing a good over $2,500. You can get a copy of that. And so it's very transparent. It's not in most states.

But anyway, let me talk very quickly about some of the problems at the Federal level. Most of the data that is collected on this issue of outsourcing and off-shoring is done through either the Department of Labor -- and that's the Bureau of Labor Statistics, the BLS -- or the Department of Commerce. And that's done through the Bureau of Economic Analysis, BEA; or the U.S. census. Usually, the data collected by these agencies can be subdivided by state, which is why they're very useful for state purposes, and by other categories, as well: gender, race, income category, etc. But it can serve the needs of state-level policy makers.

The following are problems in national data collection. The whole issue of off-shoring became a national news story, I would say, five years ago. It was always-- We always had-- We've had manufacturing trade deficits, etc. But the issue of jobs lost had to do with the service sector. Why? Because the service sector is 80 percent of our economy. And when service jobs, which seem so attached to localities, suddenly were going overseas, then we were shocked. Whether it was computer programmers, whether it was Web developers, whether it was radiologists, whether it was accountants, whatever it was, we were shocked.

Well, it turns out BEA now collects only 17 categories -- data on 17 service categories, compared to 16,000 manufactured goods that folks who look at import/export data collect. This is a relic of an era when services were much less important.

The census data needs to collect more data on the trade of domestic services. We know very little, for instance, about how businesses buy and sell services.

The Department of Labor needs to collect better data on wages -- broken down by job category, industry, educational level, and skill class -- paid to workers and our trading partners. I mean, much of the data comes from anecdotal studies, an occasional academic study about what the wages are in Mexico, India, whatever. But, in fact, the Department of Labor has a department that looks specifically at our trading partners. And more work should be done there.

BLS should publish consistent, long-term data connecting services to occupations. This data can be broken down by industry, state, and metropolitan area.

The Bureau of Economic Analysis, in the Department of Commerce, should collect data on more occupational categories in its surveys of U.S.-based, multinational corporations. We don't know very much about the kind of work that multinationals do, whether it's in the State of New Jersey, or whether it's in any other state.

More data should be extracted from areas of Federal policy that already collect data for WARN Act notices, Trade Adjustment Assistance, etc. In other words, agencies don't talk to each other at the Federal level.

And that data, therefore, does not disseminate to the state level. There was a GAO report that I site which spoke specifically of that problem.

The Commerce Department should publish projections on the jobs -- number of jobs created overseas by U.S.-based companies for the purposes of selling in the U.S. market. The Labor Department should publish the number and types of jobs created in the U.S. by foreign firms, insourcing.

So we need to-- We don't know this data. And we are tremendously in the fog. I mean, you're grappling with this problem here in Trenton, and they're grappling with it in every state capital in this country. But it's a national problem.

And as I say at the end, because it's a national problem doesn't mean we don't have a responsibility in the individual states. We can't necessarily wait for the feds to do something, because we may wait a long time for that to happen. There is no public data that allows us to easily measure outsourcing over time.

And here I'm interested in how changes in the macroeconomy filter into other public areas. Let me explain this a little bit. This transcends simple state contracting -- simple -- it's a big sector of our economy, but nonetheless it's still a minority of our economy. We don't know very much about why and how companies outsource services. What percentage of work once performed in a company is still performed in that company?

This is important, I think, for other areas that we might not even consider related. Retirement security: How many employers does an average employee have now compared to 20 years ago? I'm guessing it's much higher. And if you do demographic projections -- excuse me, actuarial projections by age group-- You take a 20-year-old, who is in the labor force now, and she will probably have many more employers than I, as a 52-year-old, have and are projected to have until my retirement. That tells me about a critical piece of data that's important not simply for industrial policy or labor market policy, but retirement security policy and health-care policy for that matter -- health-care portability.

So what I'm actually suggesting is that -- and this is -- and you don't hear very much about this, because there are issues of privacy -- is that the Bureau of Labor Statistics at the Federal level, and departments of labor at the state level, work with tax authorities -- the IRS at the Federal level, and tax authorities, departments of treasuries at the state level -- to think through the percentage of work done by wages and the percentage of work done through 1099s. That is a simple data point -- simple data set -- that could help us understand this phenomenon of what academics call *network capitalism* -- the dispersal of accountability in the production of goods and services -- which is-- Again, I'm not saying it's good or bad. It may be necessary for some reasons; it may be unnecessary for other reasons. But we don't know much about it, and therefore we can't make public policy around it either.

I'm laying out these Federal-level data-collection issues because, in the absence of Federal action -- and I don't think there will be Federal action on all of these issues -- the states can collect some of this data themselves. It's a compendium of what we know and whose attainment would facilitate policy making at both levels.

Now, at the state level, policy makers should decide what data is important for policy making, whether that data is accessible at the Federal level, and what it can realistically collect at the state level. Data collection will be important not just for understanding the commercial effects of outsourcing and off-shoring, and their labor market consequences, but designing state-level programs in health-care delivery, education, and retirement security.

In an optimal world, much of the necessary data, as I mentioned earlier, should be collected at the Federal level and broken down. It's an economy-of-scale issue. If you do it at the Federal level, then 50 states don't have to reinvent the wheel.

Contract work for the state should be easily measurable. Procurement offices already know the number and value of public contracts. Unfortunately, states and the Federal government do not analyze these counts very effectively, nor do they make contracts readily available. The previous gentleman talked about the Good Jobs First report. Good Jobs First also -- and this is what they did on subsidies in the last month. They did a report in 2004, and they found that most states -- or actually, we outsourced work to them. This is a good example of outsourcing actually -- is that CWA went to Good Jobs First -- one of our locals did -- out in Seattle, Washington, and said, "Could you tell me what states are doing, in terms of following contracts?" And Good Jobs First wrote a report that received some national press -- for our purposes -- because they had the expertise to track what state governments do, in terms of following work. And they found that most states do not have a realistic understanding of the nationality status of vendors for state contracts, or the place of performance. We don't know where state contracts are executed.

The New Jersey Department of the Treasury, Division of Purchase and Property, collects data on government contracts, and it makes the data available on public Web sites. But it too does not give people the opportunity to look at nationality and place of performance for tracking purposes.

Private sector work not connected to state contracts is more difficult to accumulate by definition. But it is potentially more important because it's a larger segment of the economy. At the Federal level, as I said before -- as at the Federal level, excuse me, state governments could be collecting data on the nationality of employers, as well as the nationality of vendors. Likewise, state governments could combine tax and labor market data to better understand the process of outsourcing.

Since the impact of outsourcing and off-shoring transcends the immediate impact on employees and firms, it is important for Federal and state governments to think through the data requirements related to outsourcing and off-shoring, and then to connect industry and labor market effects with education policies, health-care delivery, and retirement security.

The following areas could be addressed regardless of changes in Federal data collection: All state contracts should require the nationality of each vendor and the place of performance for the work itself. The state should then collect the data and make it available to the general public, allowing users to sort by agency, size of contract, region of the state. This rule should apply to both the prime contractor and any subcontractor.

Other data should be collected at the state level in anticipation of the unlikelihood of Federal data collections. State-level data currently is inadequate to measure the scale and scope of outsourcing in a given state. Regardless of whether Federal authorities combine BLS and IRS data, state authorities should combine tax and labor market data to find corresponding state data on the percentage of work performed by employees versus that performed by vendors.

Using tax and labor market data, states should estimate the number of employers, as I mentioned earlier, that taxpayers have had and estimate how many they are likely to have in the future. And this data should be broken down by age.

The New Jersey Department of Labor, Workforce Development, should use available data at the Federal level and State level and develop employment projections for students with different types of secondary school and post-secondary studies. In other words, students currently at all levels -- secondary schools, trade schools, community colleges, four-year colleges -- do not have a good understanding of why they should be going into particular fields. And much has been written on IT work and computer programming work, but there are a number of other fields in which -- it's not realistic anymore for students to be tracked in those areas.

The focus here is on data collection, not on legislation or regulation. I'm not trying to address particular policies. It's my feeling that we need better data in order to produce better policies. It is our hope that states will be proactive in tracking their own contracting processes. We need a better understanding of what firms are outsourcing and the effects on the workforce.

It is also our hope that policy makers in states like New Jersey will address at least some of the data deficiencies left by the Federal government in understanding processes so vital to their futures. While state agencies do not have the resources of the Federal departments of Labor and Commerce, they can supplement some of the gaps by innovative attempts at data collection.

Understanding the process of outsourcing and off-shoring gives policy makers more tools to design policies for businesses, labor markets, health care-delivery, retirement security, and education. The collection of data is the first step towards successful policy making.

ASSEMBLYMAN VAN DREW: Very good.

Thank you, Mr. Daly.

I think we're onto something here. I mean, we knew it already, and we know there have been attempts in the past. But it doesn't mean that they shouldn't be renewed, as, again, the idea that transparency, and good data, and good information, and understanding of what we're doing is smart. I mean, nobody could argue with that.

Any questions from the committee?

MR. LEONARD: Just one, Mr. Chairman.

Thank you, Mr. Daley. Great testimony. I appreciate it.

In here, you talk about -- your last line. You say data collection is key to good policy and good regulations. In your testimony you list a number of things you believe states collectively should collect. Do you have a concise and comprehensive list that, through the Chairman, we could get in order to make sure that we're collecting-- In other words, I would hate to see this group make some recommendations on data collection only to find that we missed four or five things that you, based on your expertise, think we should have collected.

DR. DALEY: I don't have that with me. I could develop that list for you. I'd be happy to do that.

MR. LEONARD: Secondly, you mentioned that your organization had outsourced with a group in Washington to do some activities. Perhaps now is the time for me to introduce a piece of information to the committee. This is an item from the *Washington Post* from July, and its title is "Outsourcing the Picket Line." And it shows that even unions are outsourcing their activities on the picket line. So I will pass this to the members of mine on the committee. And perhaps you will find it interesting reading.

ASSEMBLYMAN VAN DREW: Very briefly, can you encapsulate that? They're hiring people to walk the picket?

MR. LEONARD: Yes.

DR. DALEY: Those are the building trades, I believe.

MR. LEONARD: The particular group was the Regional Council of Carpenters. They were hiring other people to sit on the picket line -- walk the picket line for them.

DR. DALEY: If I could just make a comment, Mr. Chairman.

ASSEMBLYMAN VAN DREW: Yes, of course.

DR. DALEY: I don't think anybody that will testify before you is going to say that outsourcing is, by definition, bad. I mean, I think that we do outsourcing for a variety of reasons, and I think we need to recognize those reasons. But I also think we have to ask hard questions, just like a business does. A business will say to itself, "Does it make sense to do this in-house, or does it make sense to do this out of the house?" And I think state government needs to make -- to ask the same questions.

ASSEMBLYMAN VAN DREW: And I think you're right, Mr. Daley. And I think that's really a good point here. And that's why everybody -- and I hope we still have that consensus on this committee -- who is here-- When is it sound, when does it make sense, how is it affecting us, and when doesn't it make sense? And what I'm hearing is, we don't have the empirical data, over and over. And, again, we've known this. This has been for years -- this argument has been had. But I mean, I think it really does have value to try to get that information.

I would guess -- I would bet that there are times, obviously, when it does -- it actually does pay off. And that's not the only parameter -- the only barometer that should be used. Because there are social issues, as well. But purely from the business sense, I think there probably are times. I think, interestingly enough, there are times when it does not. And I think that's what's very important to really ascertain, as well. And, most especially, when investing -- and I'm going back to what they were speaking about before -- state dollars, pension dollars. Because that's a serious business, both for the people who receive the pension, and to the people -- the taxpayers who invest in the pension; and, of course, the people that invest in the pension themselves -- the employees. So we want to see, as well, where that is going.

So, again, I'm repeating myself a lot. But I don't know how it can be wrong to have, as you so well presented, good, empirical, clear, concise data that helps us to determine if we're going in the right direction, are we doing this right.

DR. DALEY: And it's also-- I wanted to add a footnote -- and I mentioned this a little bit in the--

ASSEMBLYMAN VAN DREW: Government screws up, and so does business. That's the point.

DR. DALEY: And I think labor unions screw up too. It's the--

MR. MARKETTI: Not often. (laughter)

ASSEMBLYMAN VAN DREW: That might be a little subjective.

DR. DALEY: I'm fallible.

But I did want to make one point that was in the testimony that I didn't articulate. And that is that, for the most part, the issue of additional data collection is not a costly issue. It may be a transparency issue. And people may or may not like transparency, but it's not a cost issue; because the vehicles exist, both at the Federal level, in terms of surveys, in terms of questionnaires, in terms of conversations with employers collecting existing data. And there will be additional costs to develop Web sites, to develop databases to explore this. But it's not a tremendous new cost, either to state government or to private sector employers.

ASSEMBLYMAN VAN DREW: Very good. Thank you very much.

Mr. Warren.

Bill Warren is the Policy Director from the Forum on Democracy & Trade.

W I L L I A M W A R R E N: Good afternoon.

Mr. Chairman, members of the committee, it's an honor to have this opportunity to testify about this important issue.

Just a word about who I am: I'm the Policy Director for the Forum on Democracy & Trade. The Forum is a network of state and local elected officials, a lot of them state legislators from both parties, various regions of the country, who have very serious concerns about the effect of international trade and investment agreements -- the WTO, World Trade Organization agreement; the NAFTA; all the agreements that have been adopted since NAFTA -- and the effect of these agreements on local democracy; indeed, about the authority of state legislatures to legislate, and the authority of state regulators to regulate, and the authority of state attorneys general to enforce the law generally.

I should also add that this work with the Forum grew out of work that we did at the Harrison Institute of Public Law at Georgetown University Law Center. I wear two hats. I work and teach at Georgetown, but really most of my attention now is focused on these questions of the impact at the state and local level of international trade and investment agreements.

Now, what I will do here is just, in broad outline, talk about why these new agreements are quite different from what we had seen before and have some rather startling implications. And then I'm going to focus in specifically on the off-shoring issue and the government procurement issue that I know is your main focus.

And I guess also before I go forward, I would commend you for having a Commission -- a special study of these issues. It's happening in a lot of states. You're focused very much on the off-shoring issue. But at this point, we're working with state legislative commissions that have been set up on a permanent basis to look at these globalization issues in California, Washington state, New Hampshire, Utah, North Carolina, Maine, and Vermont. And so you have a fair number of states that set up permanent-- Well, I guess the North Carolina commission is not permanent. But all these states have set up a permanent body to monitor the effect of globalization on the states in terms of it's economic impact, but also its effect on democratic institutions. And it's really quite remarkable.

And the reason that they've been focusing on this is that these new trade and investment agreements don't really, in any direct way, regulate trade or regulate the economy. They regulate governments. Renato Ruggiero, who was the Director General of the World Trade Organization, in a moment of candor and perhaps hubris that he probably regrets now, famously said about his work at the World Trade Organization in Geneva, is that, "We are writing a constitution for a single-world economy." And he actually put his finger on it. Because if you look at the legal detail -- and that's what we do, we're international lawyers, and we look at the legal detail in the World Trade Organization, the NAFTA, and the other agreements -- it really serves a constitutional function. Because what a constitution does is assign responsibilities and also limits on what government can do. And these new agreements regulate how governments, including the State of New Jersey, deal with the private sector in a globalized economy.

Before 1994, there would be no reason for these seven states to have permanent study commissions looking at trade agreements and their effect on local democracy, because most of the issues pre-1994 -- that were negotiated and litigated at the international level -- were so-called *at-the-border* issues. They dealt with tariffs and quotas. And they focused mainly on trade and goods, as opposed to services. And it was very much a diplomatic -- the old GATT that preceded the WTO, General Agreement on Tariffs and Trade -- it was very much a diplomatic exercise as opposed to a binding legal exercise.

What happened in 1994 -- with the creation of the World Trade Organization, the passage of NAFTA -- is that you had a shift. These agreements dealt broadly with services, as well as goods, in international commerce, thus the connection to off-shoring. And their focus was on nontariff barriers to trade, as opposed to formal barriers to international commerce. And what is a nontariff barrier to trade? It's regulation of business, the taxation of business, it's economic development programs, and it's government purchasing. And those have been the areas of focus in these agreements. And if you ask what does the State of New Jersey do as it intersects with the private sector: it regulates it, it taxes it, it provides incentive for economic development, particularly in distressed areas; otherwise seeks to grow the local economy. And you're a major purchaser of goods and services.

And, again, these new agreements are enforceable. They're through international litigation. They don't bind you automatically, as a matter of U.S. law. But if you're found to be in violation of the WTO agreement, the penalty is retaliatory trade sanctions, which is a kind of hostage taking. For example, when the Bush Administration took some action to protect our steel industry from dumping by our competitors, that was found to be in violation of a WTO agreement. And retaliatory sanctions were authorized for the aggrieved foreign steel-making nations. And those sanctions were not applied to American steel, but they were applied to other American products and services to cause the maximum economic and political pain. In this case, we're talking about Harley Davidson Motorcycles in Wisconsin; we're talking about citrus in Florida. This was approaching a presidential year.

And so even though these agreements can't be enforced by a Federal suit in Federal district court, they can be enforced from Geneva, Switzerland, by authorizing retaliatory trade sanctions. Because that really gets people's attention in a hurry when plants close and workers lose their jobs as a result of that kind of retaliation.

In the case of investment agreements, there are unlimited money damages that can be assessed against the treasury for violation of these agreements.

So now we have a lot of states that are looking at these new agreements.

ASSEMBLYMAN VAN DREW: Excuse me one second. When you say retaliatory action-- Explain that just in slightly more detail. For example, at Harley Davidson, explain exactly what happened there.

MR. WARREN: You have a case in the World Trade Organization. Let's say, hypothetically, the European union and Japan bring the case alleging that U.S. anti-dumping laws -- an application of U.S. anti-dumping laws related to steel, or the application of foreign sales corporation tax incentives, are a violation of the WTO agreement. And they go through a litigation process. It's sort of an equivalent of trial court and appeals court. They have three international lawyers who review the case, and litigation kind of drags on sometimes for a year or two. And then there's an opportunity to appeal it to the appellate body of the WTO. And then once you have a final decision, then they will seek to enforce that decision by authorizing the plaintiffs, if you will -- the plaintiff countries to retaliate against the United States by either barring the United States imports into that country, or by breaching certain international rights that the United States would otherwise have.

For example, the United States just lost a big case on our cotton agriculture program -- providing subsidies for cotton farmers. And Brazil won that case. And the question is whether or not Brazil will seek then to do -- engage in activities that otherwise would be prohibited by the intellectual property sections of the WTO agreements, so that, in effect, they could start manufacturing generic drugs, or copying videos, or writing software, regardless of U.S. copyright and patent protection.

So there are a variety of ways that they can retaliate. I assure you that when you start talking about actions that are going to result in job losses in certain locations, it's very coercive. It's a little bit complicated too. But it's very effective.

And what's interesting is, a lot of the litigation has focused on state measures. And again, it's because the focus on these agreements is about services. State governments provide services, and state governments regulate services. And a lot of the cases have come out of the state level. The big WTO case on gambling, which the United States lost, very much involved the states. Actually, we were down here -- not me, but my colleague, Bob Stoneberg -- addressing this Legislature and your

Commission on the terms of the implications for New Jersey -- U.S. losing the gambling case. The WTO appellate body found that the United States, inadvertently, had committed to opening up the U.S. market for gambling services when it committed to provide -- to open up our market for recreational services -- a potential disaster. The United States is now withdrawing that commitment, and so forth.

But the major concern of Antigua, who brought the case -- and by the U.K. and other gambling multinationals that were really pushing the Antigua litigation -- was that there was so much regulation and taxation of gambling -- or outright prohibition of gambling in certain cases at the state level -- that they wanted to crack that, and they wanted a free market in gambling services.

In the same way, a lot of land-use litigations come up in the context of NAFTA's Chapter 11 on investment. The current case, right now, is called *Glamis Gold versus the United States*. Glamis Gold is a gold-mining multinational. They operate all over the western hemisphere, and I think in Indonesia too, and some other places. But they bought some mineral rights in the Imperial Valley of California, which is just east of San Diego. And it's an environmentally sensitive area. It's also sacred land to Indian tribes.

And what Glamis Gold intended to do was to have what they call an *open pit cyanide leach* gold mine, which is a huge, earth-moving operation, where they dig up a very large area of the desert. And then they process all this material by leaching it -- using water that had been infused with cyanide to bleach the gold out of the rubble. And there are implications for the groundwater and so forth.

But because of the environmentally sensitive nature of the area, and because it's sacred land to the Indians, the California legislature and the California land-use officials took action to require Glamis Gold, if they were going to proceed with this mining operation -- they would have to refill and reclaim their open pit mine. And Glamis Gold then brought action, under NAFTA's Chapter 11, seeking tens of millions of dollars in money damages for the loss of their future expected profits. So in some ways, it looks like a routine not-in-my-backyard land-use dispute that might go through the U.S. courts as a takings claim, and so forth. But it's not the kind of takings claim that would be colorable under U.S. law, because you don't get compensated for future expected profits for an enterprise that hasn't gotten under way, and you don't have a property right in your business plan, in that sense. And there's a lot of NAFTA Chapter 11 litigation. And a lot of it focuses on state activity.

But let me cut right to the chase here, because I mentioned the areas where state government activities are covered by the new agreements. One is regulations, one is taxation, another is economic development policy. But the fourth one is government purchasing. And this effects your capacity to regulate in the area of off-shoring. The World Trade Organization's agreement on government procurement isn't simply a requirement that you not discriminate against foreign firms, but it actually sets the criteria by which you were going to make government procurement decisions. And it's a little bit complicated. But essentially, your decision making is pretty much limited to price and performance. So any kind of social or other criteria that you might want to apply to your government procurement -- whether it be to deal with the off-shoring issue, or to purchase environmentally friendly products and services, or to take into account whether or not the firm you're doing business with has a relationship with Castro's Cuba, or the Burmese dictatorship, or in the past the South African apartheid regime -- all those kinds of criteria are-- You have to do a lot of explaining to show how you would meet a social goal, while still meeting the economic tests that are in the WTO agreement and that are in most of the agreements, including the Central American agreement alluded to earlier, that have followed along since that time.

And I'll just give you one example. Again, this comes out of state legislative activity. A number of years ago, a friend of mine -- a state legislator in Massachusetts, named Byron Rushing, was very concerned about the slave labor practices and the genocide against tribal groups in Burma. And there wasn't a lot of attention being given to the Burma situation at that time. Aung San Suu Kyi, the head of the democratic opposition -- later won the Nobel Prize, and so forth-- But Byron, who had worked in the antiapartheid movement, decided some attention needed to be drawn to Burma, so he took the old South Africa Sanctions Law that they had, and he scratched -- wherever it said South Africa -- he had that scratched out and had Burma inserted. And the Commonwealth of Massachusetts passed their Burma law. And immediately it got attention. This is exactly the same kind of law that effectively forced the hands of the big lending institutions and forced the apartheid regime to sue for peace.

And what happened was, immediately the European Union and the Japanese brought cases before the WTO. And this was a no-brainer. This was a-- I think it was a 10 or 15 percent preference for government purchasing firms that did not do business with Burma, or a 10 or 15 percent penalty for firms that did. And it was immediately apparent that Japan and the European Union were going to win this case before the WTO. It then proceeded to go to U.S. Federal court -- not directly, but indirectly -- because the National Foreign Trade Council, which represents a lot of the multinational corporations, then went to Federal district court and argued that because the Massachusetts sanctions were more comprehensive than U.S. sanctions against Burma, and because the United States and the Federal government had signed these agreements placing restrictions on government procurement, the Federal government's plenary power over foreign policy had been invaded by the state action.

And the National Foreign Trade Council won in district court, won in -- I think it's the first circuit up in New England, isn't it? I forget. And then, ultimately, the Massachusetts-Burma law was found to be preempted by the U.S. Supreme Court, in a vague and somewhat evasive decision. But what you see there is the bootstrapping of international law onto U.S. constitutional law. And you saw an excellent example of why, if you do get to the point where you want to regulate -- you want to establish criteria for New Jersey's government procurement, based on whether they're outsourcing or off-shoring -- I would ask that you get in touch with us at the Harrison Institute, or others who study these cases, so that it's drafted in a way that is not going to result in the kind of challenge that knocked out the Massachusetts-Burma law. And there are ways you can draft around some of these problems.

And in the meantime, though, a lot of these various state commissions, and others -- state and local government groups -- are engaging very actively with their congressional delegations. And that's what these commissions are doing in places like Maine, and Vermont, and California -- is they're bringing in their senators and their representatives to talk about the federalism issues in trade investment agreements. One of the primary concerns they've had are these World Trade Organization and other procurement agreements which could limit your policy-making authority.

And they do something else that's rather odd too, because while most of these agreements apply to state laws across the board -- and there are certain opportunities to create a so-called *negative list* to exempt a few state laws from coverage under the international agreements-- The way the procurement agreement works -- it's a so-called "positive" list approach, where the states actually get asked about whether they want to be covered by the procurement agreement. The problem is, the only person that the USTR asks is the governor. And all you have to do is have one governor, at one time, write a letter, and you'll find thereafter your state will be bound by these agreements, which severely limit, again, your authority to use social or other criteria in your government purchasing decisions.

Right now, a lot of the other commissions are looking at this procurement issue. And they're looking at the opportunity, when we have the new President, and when we are undoubtedly going to have a new trade promotion authority bill moving through the Congress -- hopefully a completely redesigned TPA bill -- that will set negotiating objectives and define the appropriate consultation between the executive branch, USTR, and Congress, and with state and local governments -- that there would be a chance to move on this procurement bill -- procurement issue, as well as some other important federalism issues.

And one of the things that people are talking about is to be very explicit in our negotiating objectives and in our reinterpretation of existing agreements -- that state legislatures, as they're making procurement policy, can use social and environmental criteria, human rights issues, affirmative action issues, economic development criteria in making these decisions; that government procurement is not just about price and quality. Government procurement is about jump-starting the local economy, it's about giving people a chance to bid on business who might not be able to break into business otherwise, it's about setting an example in terms of green purchasing. And it's about applying moral criteria to your purchasing decisions. It just seems outrageous to me that today, as a matter of international law, the state legislative South African Sanctions Movement -- which was so successful -- would be illegal internationally. And I think that's something that's going to change.

The other thing that could be put in the TPA bill is a requirement that when they're doing -- when they're committing states to these international procurement agreements, that there is consultation and approval of the legislature, as well as the governor.

So, again, this is maybe a little bit at a tangent from your major focus on the practical impacts of off-shoring and outsourcing here in New Jersey. But if you get beyond the data collection phase and decide that you want to regulate in this area, be very aware of the possibility of international litigation. And please be in touch with us at Georgetown, or be in touch with other sympathetic people who study these agreements and this litigation so they can get around any drafting problems you might have.

And make sure that you're not doing something that will be a set up for an immediate lawsuit from the National Foreign Trade Council.

ASSEMBLYMAN VAN DREW: Well, we don't want to do that. And we thank you for your information. It was very good and very helpful.

Any questions?

Mr. Marketti.

MR. MARKETTI: Exactly who -- that is, the President and which Congress -- was around when we ceded our sovereignty to the WTO?

MR. WARREN: Bill Clinton. Well, it was actually George H.W. Bush, and it was effective -- that deal was cut, and then Bill Clinton was a big fan of the first President Bush's policy.

ASSEMBLYMAN VAN DREW: It was a combination. Do you see that? Republicans and Democrats working together. (laughter)

MR. MARKETTI: And how do we take back our sovereignty, short of a revolution?

MR. WARREN: Well, international agreements are a little bit like contracts, they're made to be renegotiated.

MR. MARKETTI: So it does expire?

MR. WARREN: No, it doesn't expire, but there are ongoing-- There's an equivalent -- almost like an administrative agency rule-making process that goes on. And Geneva is -- they fill in a lot of the detail to explain what these vague agreements mean. So there are opportunities there to reinterpret.

In the case of NAFTA--

ASSEMBLYMAN VAN DREW: There's been some pretty significant congressional push for that, hasn't there?

MR. WARREN: Yes. But the thing is that the Finance Committee, and House Ways and Means Committee members sometimes take a different view from -- at least in the Democratic party -- the majority of the caucus. So it's a divisive issue, with a majority of the Democrats on Ways and Means, and Finance being of the Bill Clinton frame of mind, with respect to these agreements, even though -- especially in the House. At least in the House, a majority of the caucus is very concerned. I think a lot of the new freshmen Democrats in the House of Representatives ran, not on a protectionist platform, but one which raised questions about: did we really know how deeply we were getting into it with these new agreements? And they've formed a group called the Trade Working Group. It's chaired by Congressman Mike Michaud, of Maine, and so forth. And there's been a lot of head butting.

ASSEMBLYMAN VAN DREW: Okay.

I'm sorry, Mr. Marketti, did you--

Continue.

MR. MARKETTI: No, that's fine. He answered the question.

ASSEMBLYMAN VAN DREW: Mr. Leonard.

MR. LEONARD: No, sir.

ASSEMBLYMAN VAN DREW: Thank you very much for being here.

MR. WARREN: Okay. Thank you.

ASSEMBLYMAN VAN DREW: Thank you.

Next, we have Noel Christmas, from the Utilities Workers Union of America.

And, Mr. Flores, would you like to speak at the same time?

F E L I X   F L O R E S: (speaking from audience) He'll speak first, and then I'll speak.

ASSEMBLYMAN VAN DREW: Okay. All right.

I have to love your name.

N O E L   J.   C H R I S T M A S: Yes, it's unique, right? (laughter)

ASSEMBLYMAN VAN DREW: It's a good thing.

MR. FLORES: What about my name? (laughter)

He's happy (indiscernible), believe it or not.

MR. CHRISTMAS: I'd be rich if they paid me for all the jokes I heard with this name. (laughter)

ASSEMBLYMAN VAN DREW: It's some combination. You can't go wrong with Christmas, you know.

MR. CHRISTMAS: Not at all.

ASSEMBLYMAN VAN DREW: Yes.

MR. CHRISTMAS: Well, first, I'd like to congratulate you on your recent election to the Senate.

ASSEMBLYMAN VAN DREW: Thank you.

MR. CHRISTMAS: My testimony has good morning, but it is the afternoon.

As you know, my name is Noel Christmas, and I am pleased to be speaking on behalf of the New Jersey State Council of the Utility Workers Union of America. We represent approximately 2,400 dedicated and highly capable members from all members of the New Jersey utility industry, including Public Service Electric and Gas, United Water, New Jersey American Water, and Elizabethtown Gas.

Thank you for conducting this hearing addressing the growing concerns about outsourcing and off-shoring. This topic is of great concern to the workers in the utility industry. We have and will continue to experience job loss, and have witnessed service quality erosion resulting from such activity. We are also increasingly concerned about the safety and security risks that outsourcing and off-shoring create for our citizens and workers.

NUI, formerly Elizabethtown Gas, outsourced its call center to Florida. And when the State allowed NUI to be purchased by Atlanta Gas and Light, the call center was off-shored to India. Imagine this center sitting across the globe handling New Jersey citizens' private information from Social Security numbers, to bank account numbers, to payment information. The off-shored service was so inadequate that NUI apologized for its poor customer service in a full-page advertisement, which you have attached to the back of my testimony.

Now, imagine operators outside the service area handling electric, gas, and water emergency calls, such as gas leaks, gas line mark outs, water main breaks, storm emergencies, and downed power lines. The potential results could be catastrophic.

In the early 1990s, Public Service Electric and Gas piloted an outsourced call center. The pilot was short-lived. PSE&G realized that the best customer service they could provide had to be staffed by a workforce residing in the very same communities as their customers. Today, PSE&G maintains two call centers, two billing departments, one collection center, 16 walk-in customer service centers, one payment center, and an in-house field collection and meter reading, all staffed by an in-house union workforce, working in PSE&G's New Jersey territory. As we all know, PSE&G is a profitable utility that is highly respected by the community.

Over time, the Utility Workers Union of America has worked with PSE&G to address business, economic, and technological conditions that have changed the utility industry and workforce in customer services as stated above.

Without legislation in the utility industry that prevents the outsourcing and off-shoring of utility customer services, the service quality and value that a local workforce can offer will be lost, and our concerns about increased security risks and major catastrophes will be realized. The Utility Workers Union of America strongly urges that the Legislature pass a bill to prevent outsourcing and off-shoring, and have these regulations enforced at the Board of Public Utilities.

On behalf of the Utility Workers Union of America, I would like to thank the committee for giving me this opportunity to bring our concerns before you today.

ASSEMBLYMAN VAN DREW: Thank you, Mr. Christmas.

Any questions?

MR. LEONARD: Mr. Chairman, through you.

ASSEMBLYMAN VAN DREW: Sure.

MR. LEONARD: Not so much a question, but just an observation.

I note in your testimony, Mr. Christmas, that you say that you are proud of the work you have done with Public Service, to address the business, economic, and technical conditions. That wasn't done with legislation, though, correct? You did it on your own as a union that is interested in working together to grow both the company and your union. Is that correct?

MR. CHRISTMAS: We do have a decent relationship with the company. And that is correct in some instances, but not in all instances. If you remember, recently Exelon was purchasing PSE&G. And we were completely on opposite sides of the table when that came about. There's also the technological change that can come about, that we're on opposite sides of the table also -- is in the Governor's Energy master plan -- which all the utilities and other organizations are putting forth proposals in order to achieve that plan. And in that proposal -- one of the proposals that PSE&G has is AMI, which is automated metering infrastructure. And we're totally against any kind of automation of meter reading because of the job losses and the security risks that it can pose. So in some instances, yes, we have achieved it with working with the company -- in achieving those things, and coming to a common-ground solution. In some instances, we haven't -- it's come through the Legislature.

MR. LEONARD: So you've been successful in some instances. But you believe that in order to be fully successful, legislation needs to be passed to prevent outsourcing and off-shoring.

MR. CHRISTMAS: Yes.

MR. LEONARD: Okay. Thank you.

ASSEMBLYMAN VAN DREW: Thank you, Mr. Leonard.

Mr. Marketti.

MR. MARKETTI: Some years ago, the New Jersey Department of Transportation outsourced its accident records to a group that was using prisoners at the Avenel center for sexual deviates. They were processing the information. We used to, not so seriously, joke that they were letting the inmates get to pick their next victims. They had all of the private information for people who were involved in accidents in New Jersey, including gender, height, weight, so on, and so forth. And it seems to me--

I happened, that year, to sit on Governor Whitman's transition committee for the Department of Transportation, and brought that to their attention. And even someone so committed to outsourcing and privatization as Governor Whitman saw the lack of wisdom of that kind of approach, where you had sensitive data going to people who had no business having that and could not be held accountable. And she brought that to an end.

I have to say that this incident that you bring to our attention -- private information about Social Security numbers, bank accounts, payment information of local people going across the globe -- raises the potential for a great deal of mischief. And if you can't get Elizabethtown, or whoever, to stop it, we ought to ask the Legislature to consider legislation.

MR. CHRISTMAS: Yes. Thank you.

MR. LEONARD: Mr. Chairman, just one comment on that.

I absolutely agree, handling sensitive information is very important. Let's just not forget that whether the information is in India, or South Jersey, or in Indiana, sensitive information can be used in the wrong way. And so let's not think for a moment that any legislation that might come out would prohibit or end that practice. Unfortunately, it happens from time to time.

ASSEMBLYMAN VAN DREW: In actuality, we've been trying to address, through legislation, some of those issues with particularly sensitive information -- access to Social Security numbers and other such vital statistics. So I understand what you're saying.

Mr. Flores.

MR. FLORES: I also want to congratulate you on your election to the Senate.

ASSEMBLYMAN VAN DREW: Thank you.

MR. FLORES: I know you're going to do a great job with that.

In reference to my testimony, I just want to add afternoon, because I was in the same situation, too. I thought I was going to testify in the morning. Also, I want to add, I'm not just the Chairman of the Labor Committee, I'm also the Director of the Middlesex County Chapter of the Latino Leadership Alliance of New Jersey.

Good afternoon.

I am Felix Flores, Chairman of the Labor Committee of the Latino Leadership Alliance of New Jersey. In short, we call it LLANJ. LLANJ is a statewide Latino advocacy organization that was founded in 1999. Since then, we have grown to include hundreds of members and dozens of statewide, regional, and local organizations. The principal goals of LLANJ are to mobilize and empower Latino communities across New Jersey to obtain political, economic, and social equality.

I also want to thank you for conducting this hearing addressing the growing concerns about outsourcing and off-shoring. This topic is of great concern to LLANJ, because many Latinos are workers that have and will continue to experience the job loss that is occurring in New Jersey as a result of outsourcing and off-shoring. The Latino community has also experienced service quality erosion resulting from outsourcing and off-shoring activities. We concur with the testimony provided by Noel Christmas, President of the Utility Workers Union of America, Local 601, and are also increasingly concerned about the safety and security risks that outsourcing and off-shoring creates for our citizens and workers.

According to "Perspective on Off-shoring and New Jersey," an article written by Susan J. Bottino in August of 2004, and published by New Jersey Policy Perspective, "The full impact of job loss on an economy goes deeper than simply subtracting the salaries of workers laid off or figuring out how much less they might be making at their new jobs. Beyond the immediate negative impact on the unemployed and their families, dislocations can cause a significant ripple effect. This effect decreases sales and makes vulnerable many kinds of businesses; weakens the local, county, and State tax base, as the sales and income produce less revenue; fray's social infrastructure; and contributes to higher crime rates."

This article estimates that if the targets for jobs vulnerable to off-shoring were reached, the total gross wage loss in New Jersey would be approximately $23.3 billion. This estimate is almost 12 percent of New Jersey's 2002 taxable income. I am not an economist, but common horse sense says and tells me that these revenue losses can have an extremely negative effect on State revenues, and can further exacerbate the budget deficit that the Governor and the State legislators are presently trying to resolve.

In addition to our concerns of the negative impact that off-shoring can have on our State budget and economy, LLANJ supports the position of the Utility Workers Union of America. We want to reiterate that without legislation in the utility industry that prevents the outsourcing and the off-shoring of utility customer services, the service quality and value that a local workforce can offer will be lost, and our concerns about increased security risks, and major catastrophes, and future budget deficits will be realized.

LLANJ strongly urges that the Legislature pass a bill to prevent outsourcing and off-shoring, and have these regulations enforced at the Board of Public Utilities.

Thank you.

ASSEMBLYMAN VAN DREW: Thank you for your testimony.

One very quick question, because I know we do have to wrap it up. Any numbers, at all, how much cheaper it is for the utility?

MR. FLORES: We're currently looking into that right now. I'm not the guy that's basically crunching the numbers, to be honest with you. But we're very concerned about the job loss, in reference to the--

ASSEMBLYMAN VAN DREW: Which you should be. And I know that's part of the issue, as well. There's no question about it, that it's serious. I'm just curious, on my own, how much of a savings they achieve. So if you ever have those numbers, we'd be interested in them.

MR. FLORES: We can get that to you if you want.

ASSEMBLYMAN VAN DREW: Thank you very much.

MR. FLORES: You're welcome.

ASSEMBLYMAN VAN DREW: Thank you for being here.

Any other comments from the committee? (no response)

Otherwise, we are adjourned for today. And we look forward to our next meeting. The testimony was excellent.

Thank you for being here.

Meeting is adjourned.

(HEARING CONCLUDED)