
Committee Meeting

of

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

"Testimony from representatives of the Office of the State Comptroller, the Office of the State Commission of Investigation, the Office of the Inspector General, and the Office of the Medicaid Inspector General regarding the Governor's proposal to consolidate the functions of the aforementioned offices; and testimony regarding a proposal to create an elected comptroller position"

LOCATION: Committee Room 4
State House Annex
Trenton, New Jersey

DATE: June 2, 2010
10:30 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Barbara Buono, Chair
Senator M. Teresa Ruiz, Vice Chair
Senator Sandra B. Cunningham
Senator Thomas H. Kean Jr.
Senator Joseph M. Kyrillos Jr.



ALSO PRESENT:

Thomas Koenig
Matthew T. Szudajski
Luke E. Wolff
*Office of Legislative Services
Committee Aides*

Jason Redd
*Senate Majority
Committee Aide*

Frank Dominguez
*Senate Republican
Committee Aide*

***Meeting Recorded and Transcribed by
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Hearing Unit, State House Annex, PO 068, Trenton, New Jersey***

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SENATOR BARBARA BUONO (Chair): Good morning.

If everyone would take their seats, the Senate Legislative Oversight Committee is about to convene. And I would ask at this time if everyone would either turn off their electronic devices or put them on mute so it doesn't distract Committee members.

I know we have some-- The two Democratic Committee members are here. I know I saw Senate Minority Leader Tom Kean here. I think we're waiting for some other members. But I thought, in the interest of time-- I know all of you are very busy, and I appreciate all of the people for coming to testify.

And as you know, we will be hearing from a wide range of speakers today to discuss, in detail, the wisdom of the Governor's proposal to abolish, in essence, the SCI, the Legislature's independent watchdog, and to consolidate the Office of the Inspector General and Office of the Medicaid Inspector General into the Office of the Comptroller. We will also hear precisely what the budgetary savings are estimated to be from this proposed consolidation, and how they're achieved. And in addition, toward the end of the hearing we will hear from a prominent think tank, the Hall Institute, and our former New Jersey State Auditor Rick Fair -- our original State Auditor, who was the New Jersey State Auditor for nearly 20 years -- to share their views with the Committee on the issue of an elected versus appointed comptroller.

So without further ado, I would like to begin the hearing by calling our current State Comptroller, Matt Boxer, up to testify. And Mr. Boxer has indicated he's going to bring at least one staffer with him.

If you could just have her introduce herself, or introduce her and tell us what her role is in your office.

Thank you.

STATE COMPTROLLER A. MATTHEW BOXER:

Thank you, and good morning to the members of the Committee and the Chair.

Thank you for inviting me to speak here today on behalf of the Office of the State Comptroller. With me is the Office's Chief of Staff, Melissa Liebermann.

SENATOR BUONO: Good morning.

MELISSA LIEBERMANN: Good morning.

STATE COMPTROLLER BOXER: Members of the Committee, as you may know, our Office is charged by statute with auditing government finances and operations, reviewing the performance of government programs, and examining government contracts. Our jurisdiction extends both to State agencies and local government entities.

Our Office is independent in that we alone select what audits and other projects to undertake based on a risk analysis conducted by our Audit Division. Among the audits we have undertaken are matters referred to us from State agencies, legislators, and from members of the public. The State Comptroller is appointed by the Governor, with the advice and consent of the Senate, for a six-year term designed so that it does not run concurrent with that of the appointing Governor. By statute, the Comptroller can be removed from office only for cause.

In a state with more than 1,900 different units of government, our Office has been very busy. I'll give some examples of our work from

just the last 18 months to give a flavor of the kinds of work and kinds of projects we've taken on.

Our audit of the Division of Developmental Disabilities uncovered a wide range of problems that had led to higher costs and reduced services, and the audit identified millions of dollars in potential savings that will now be achieved.

At the Department of Children and Families, we discovered that taxpayers had been left to cover a series of avoidable expenses because of the agency's failure to properly manage the assignment and usage of its fleet of 2,900 vehicles.

At the Department of Labor and Workforce Development, we found that State officials, operating contrary to Federal guidance, had steered Federal stimulus dollars for summer youth programs toward public and nonprofit jobs, and away from private-sector jobs that might have offered a wider range of work experiences and greater potential for continued employment.

In another audit we found that the State agency in charge of dispensing \$10 million annually in drug and alcoholism prevention grants had been doing so without engaging in a proper review of how the money was spent or whether the funds distributed were producing positive outcomes.

Our audit of water services in the City of Camden revealed the City wasted millions of taxpayer dollars by failing to properly manage its contract with a private vendor for these services. As a result of the findings in the audit, the City is now seeking to recover \$18.8 million from the vendor.

In Washington Borough, in Warren County, we uncovered a wide range of contracting problems that led, for example, to a construction project increasing fivefold in cost while yielding minimal construction progress for a decade.

In our audit of Atlantic City, we detailed fiscal mismanagement in numerous areas, including payroll and personnel, grants management, information technology, mercantile licensing, and the police department. And we provided a detailed blueprint for bringing greater fiscal responsibility for the City's government going forward that will save millions.

In another matter, fact-finding by our investigators led to a ruling from the Civil Service Commission that makes clear that public employees may use sick time only if they are sick.

Our audit of Irvington Township found a municipal government in a state of financial disarray with a general ledger out of balance by \$59.7 million. The Township is now implementing a corrective action plan that incorporates our 21 recommendations for improving its fiscal operations.

We also reviewed the expenditure of public funds to lobby State government and found that government entities that hire outside lobbying firms are not held to the same disclosure and transparency requirements as private companies. A recent proposal from New Jersey ELEC now seeks to eliminate that disparity, as does pending legislation. Along the way we also had removed from the State pension system a lobbyist who was not entitled to participate in the system, as we had found.

In Parsippany-Troy Hills, we found that the Township Council had overstepped its power in order to award an insurance contract to a preferred vendor that was not the low bidder. And we gave guidance as to the correct procedures for towns to use in procuring insurance.

We expanded that guidance a few months later when we sent more than a thousand government entities a set of detailed procedures and best practices to follow in procuring services from vendors. We've since seen several legislative proposals to make these best practices law, which would make it tougher for unscrupulous public officials and contractors to unlawfully profit from government contracts.

Along the way we have also completed follow-up audits designed to ensure that our initial recommendations are, in fact, carried out. And aside from these public reports, our Procurement Division has reviewed hundreds of contracts for compliance with State law, many of which have been modified based on our review and subsequent direction. (interference in PA microphone)

SENATOR BUONO: If you have a phone near that, maybe--

STATE COMPTROLLER BOXER: I think I've taken care of that.

SENATOR BUONO: Okay.

STATE COMPTROLLER BOXER: The public's return on its investment in the Office of the State Comptroller has been strong, as we have had individual audits that will result in millions of dollars in savings beyond the cost of our Office's existence for the entire year. Our work also has enhanced the transparency of New Jersey government and, as reported

by many public entities themselves, led to a greater understanding of how to operate more efficiently.

The Governor has now proposed consolidating the efforts of four of the five State oversight agencies that have similar missions. Specifically, the plan would move to our Office the operations of three of those other agencies. If, following legislative review, that plan is ultimately adopted, my commitment to the public is that our Office will carry out any additional responsibilities aggressively and appropriately.

Thank you.

SENATOR BUONO: Well, thank you.

I have a number of questions. And I would like to begin by discussing your Office as it is operating currently.

As you know, Mr. Boxer, I had issues with the creation of your Office because I felt-- In fact, my name was on the original piece of legislation, and I withdrew my name and voted against the legislation because I felt that the bill had been -- well, I wouldn't say -- I wouldn't go so far as to say *gutted* -- but seriously weakened. Right now, your Office has the authority to preapprove contracts only up to \$2 million. Between \$2 million and \$10 million you can review them, but you have no power to alter them or to deny them from going forward. Do you have a position on whether or not that makes good public policy sense? Do you think that legislation should be proposed that would enhance your oversight authority over contracts?

STATE COMPTROLLER BOXER: Well, certainly from an ideal point of view, more review, more oversight, and more scrutiny of public contracting would be better. The issue that the Legislature should

consider in weighing those issues is that if our Office is to be charged with preapproving or prescreening additional contracts, that will require human capital to perform that work. If -- and I'm well aware, as I know every member of this Committee is, of the budget situation that the State currently finds itself in. If the resources to perform that additional work were available, I do think it would be consistent with good public policy to have review of contracts and dollar amounts above and beyond those which we are currently reviewing.

SENATOR BUONO: Do you have an opinion as to whether or not there should be a dollar amount? I know, like the state of New York -- obviously they have an elected comptroller. Their budget is vastly greater than yours. I think they have 2,500 employees. And they have preapproval for all state and local entities' contracts. In a perfect world, would you support expanding your authority to that degree?

STATE COMPTROLLER BOXER: Yes, again, in a perfect world. Although, as you mentioned, the resources of the New York comptroller are very different than the staffing of our Office currently. For example, on auditors -- the New York comptroller has nearly 500 auditors. We have approximately 40. So it would require additional resources. But I think to provide additional scrutiny would be for the good.

What we've attempted to do in the meantime, and in the absence of that review, is to give up-front guidance to contracting units throughout the state to educate, and inform, and give guidance to the extent possible to promote best practices and encourage the following of those practices that we've proposed -- in some instances, be memorialized into law as well. And then we follow up with audits of those matters.

SENATOR BUONO: Let's say that there was a problem or an irregularity in the procurement process itself. You wouldn't have the authority to look into that and investigate that unless it were under \$2 million -- the contract. Isn't that accurate?

STATE COMPTROLLER BOXER: Let me give a little background to explain the full range of what we do. With regard to preclearing contracts -- just speaking of prescreening and preclearing specifically -- we do that for contracts of \$10 million or more. So if any government entity in this state wants to award a contract that has a projected value in excess of \$10 million, they are required, by law, to come to our Office and receive preapproval as to the vendor selection process that they propose to use.

SENATOR BUONO: But it's between the \$2 million and \$10 million that you don't.

STATE COMPTROLLER BOXER: With regard to \$2 million and \$10 million, we review those contracts after the fact. They're required to provide notice of that within 30 days.

SENATOR BUONO: How does that help at all? I mean, if you have no authority to rectify any irregularities, what's the point of having the review at all?

STATE COMPTROLLER BOXER: Well, it still remains that the already existing audit function would still apply. So the notion behind--

SENATOR BUONO: So you're talking about audits now, as opposed to contract review then.

STATE COMPTROLLER BOXER: Yes, but they're connected. Because the notion behind the provision of the 30 days notice after the fact

is that if there is something irregular that appears -- that we see, we are empowered to do a full audit of the contracting process and impose recommendations that the government entity in question is required, by law, to follow. So the notice -- the 30-day notice is something that facilitates our audit work.

SENATOR BUONO: But aren't there a certain class of contracts that, regardless of the amount, you are not involved in contract review or audit in any way?

STATE COMPTROLLER BOXER: Well, as to preclearing, yes; but not as to audit.

SENATOR BUONO: What about contracts for land use and development?

STATE COMPTROLLER BOXER: Those contracts do not come to us for prescreening. They are subject to our audit jurisdiction, and all the other audit work and contract monitoring work that we do. So those contracts-- If an entity wants to do a land deal, they do not need to present that kind of contract to our Office for preclearance. We do have the authority to review that type of contract in an audit or other investigatory context.

SENATOR BUONO: Well, when would you do that? What would motivate you to review one of those contracts after the fact? And, in fact, you would just be auditing that -- that which is just a very surface review of whether or not internal controls were utilized, if it adhered to certain accounting or reporting procedures, correct? If my recollection serves me, the legislation stated that if there were no red flags, if there was nothing that grabbed your attention, that there was nothing wrong with the

audit -- the financial audit -- in terms of how it was conducted, that that's where your investigation would end, correct?

STATE COMPTROLLER BOXER: Well, there's a couple separate things that you're referring to there.

To answer the first point that you raised, we engage in a multi-factor test for all of our audits, or investigations, or other inquiries that we do. There are a series of factors that we look to, to determine whether to engage in an audit. And those same--

SENATOR BUONO: Can you just-- I apologize for interrupting. I just wanted to make sure I'm following you. Let's not mix up the auditing versus the-- What kind of-- What part of your Office is currently dedicated to conducting investigations?

STATE COMPTROLLER BOXER: We have an Audit Division and a Procurement Division. Our Audit Division would engage in audits or other reviews of -- to use the example you were using before -- land deals or any other inquiries. Those matters are judged independently on their merits to determine whether a review is warranted.

SENATOR BUONO: I guess what I'm getting at -- if you could explain -- what would merit-- Give me an example of what would concern you, what would raise your concerns to the level of a full-blown review?

STATE COMPTROLLER BOXER: It could be the indications of fraud or misconduct.

SENATOR BUONO: And how would you know that from doing an audit?

STATE COMPTROLLER BOXER: Well, you might know that from tips we get from-- We get calls from members of the public, we get

calls from legislators, we get calls from agency heads indicating that they believe there's been something inappropriate. We would then conduct a preliminary inquiry with our staff to conduct a review to determine whether a full audit is appropriate. There are a series of -- I think it's about 15 factors, many of which are memorialized in statute -- that we look to, to determine whether to take on a particular project: management turnover, the size of the budget of the entity, past audits of the entity as well.

SENATOR BUONO: Is your audit -- whether or not you conduct an audit -- is it based on a risk analysis?

STATE COMPTROLLER BOXER: Yes.

SENATOR BUONO: Okay. I apologize. I think I cut you off. You were beginning to explain -- you were talking about the audit process and the investigative process. Did you lose your train of thought? I apologize.

STATE COMPTROLLER BOXER: If I did, I lost it. But I was only trying to respond to your point. So if I've answered the issue you were raising, then I'm--

SENATOR BUONO: So it's an ad hoc sort of procedure.

STATE COMPTROLLER BOXER: To determine what projects we take on?

SENATOR BUONO: Right.

STATE COMPTROLLER BOXER: I think that's a fair term. We have a committee of folks -- career professionals -- who determine -- make recommendations to me in terms of what projects to take on. And we have a group of folks who do what we call *preliminary inquiries*. They're essentially investigators who do preliminary inquiries, who do fact-finding

to help inform that determination. I guess the point I was trying to make before was just that, on the preclearance point, I agree with what I think the Chair is suggesting: that the scope of that preclearance function should be greater. But I wouldn't want the public to be--

SENATOR BUONO: Now we're talking about -- you're talking about contracts as opposed to -- contract review as opposed to auditing. They're two separate issues, right?

STATE COMPTROLLER BOXER: They are, but they're connected. And I guess what I'm trying to get to is that I wouldn't want the public to have the impression that because we're not doing the contract preclearing function that that means that we cannot engage in a review after the fact.

I think it's probably also worth noting -- so that members of the Committee have a feel for this -- the preclearance review that we do, by statute, is limited to determining whether the government entity in question is complying with the law -- with State law -- concerning vendor selection.

SENATOR BUONO: Right. The bidding process, the procurement process. And we know there's a lot of mischief that goes on there.

STATE COMPTROLLER BOXER: Exactly. And in some of the reports we've done, we've made suggestions to tighten up that process. We don't make determinations as to whether we think it's a good deal or a bad deal.

SENATOR BUONO: That's not in your -- that's not within your purview. But within your purview is to determine whether or not the

procurement process is being followed to the letter of the law, and I think that's significant. That is what your role is. And I'm concerned that it doesn't involve preapproval of enough contracts. It seems to me, if you can break down by percentages-- What percentage of public contracts do you have preapproval of given the limits -- the financial limits?

STATE COMPTROLLER BOXER: The vast majority of public contracts are below \$10 million.

SENATOR BUONO: It just doesn't seem to make good public policy sense to me to eliminate those contracts when it represents the vast majority of them. And I know you didn't write the law. You're just a-- You're in that position now, so you have to answer to whether or not you think it's a good direction and it enables you to fulfill the mission that I think your Office was originally intended to do.

What about-- Let's talk a little bit, before we move on to the budget issues, per special education, the audit. You talked about auditing versus contract preapproval. How many auditors do you have in your Office right now -- currently?

STATE COMPTROLLER BOXER: Approximately 40.

SENATOR BUONO: Forty. Have you ever considered consolidating? All of the different departments and agencies in the State of New Jersey have their own, individual, internal auditors. Have you considered beefing up your auditing staff by -- and I don't know if you've discussed this with the Governor or not -- by consolidating those -- moving those auditors from the separate departments and agencies into your Office?

STATE COMPTROLLER BOXER: We do coordinate with the internal audit function that you're referring to at State agencies. We currently do that. The notion of picking up those auditors and moving them out of the agencies and into our Office would have some advantages, but also some distinct disadvantages, in my opinion.

SENATOR BUONO: What are the disadvantages? I know what the advantages are. Tell me the disadvantages.

STATE COMPTROLLER BOXER: There's a public interest in an agency learning and being able to police itself. We perform what I believe to be a valuable function in providing independent, external oversight of Executive Branch operations. And I'm a big advocate of having a strong office with significant resources do to that. But if what's being contemplated is achieving that by pulling the internal audit function out of those agencies, my concern would be that those agencies would operate, on their own, less efficiently.

SENATOR BUONO: But that's why we created you. We know that there are problems in those agencies. You actually touched on some of them in your statement. What I have a problem-- I think there's an inherent conflict in having an agency have their own auditors who-- I think that they have their salaries, and their office spaces, etc., determined by the agency head. And I would think that they would be more reluctant to make waves and more, considering it might -- it could conceivably jeopardize their personal well-being.

It just seems to me that by-- It makes all the sense in the world to move these trained auditors who already have expertise in those particular agencies-- And if you're talking about consolidation and

centralizing, that's an area that I think is ripe for discussion. And I certainly would be-- In fact, I think when the former State Auditor comes and testifies, he may speak to that issue. It's something that we discussed over the years when I drafted the legislation to create an elected comptroller.

So I would hope that the Governor and you, Mr. Boxer, might reconsider your position on that. Because I really think it's a win-win for everyone to take that person-- It solves the personnel issue. We don't have to hire new people. We just take those auditors who are well-trained, have an expertise, and put them in your Office to empower you, to enable you to be a better watchdog of those agencies. And I think history's proven, for better or for worse, they need oversight.

Just moving on here, let's talk a little bit about your -- the legislation. I think probably members of the Committee have the draft legislation that the Comptroller gave to my office earlier this week.

You note that there is a savings. Can you talk a little bit about that? You say there's a savings of \$3.5 million. But it doesn't state where that savings comes from. Is it personnel, is it office leases? If it's personnel, where is the personnel located? Who will be asked to leave? Those sorts of questions--

STATE COMPTROLLER BOXER: As reflected in the Governor's proposed budget, the total post-consolidation budget for the Office of the State Comptroller would be about \$12.8 million. And as compared to OMB's preconsolidation projections, that consolidation would, as you noted, result in the savings of \$3.5 million.

SENATOR BUONO: Right.

STATE COMPTROLLER BOXER: The reductions would stem from reductions of overlapping personnel, associated overhead, administrative costs, those kinds of areas. The specific personnel have not been identified.

SENATOR BUONO: How can that be? How do you know that they're overlapping if you haven't identified the personnel? How can you reach that determination that they're functions overlap if you haven't been able to identify the personnel?

STATE COMPTROLLER BOXER: Well, what I'm giving you are the numbers that are in the proposed budget and comparing those numbers from the preconsolidation proposal to the post-consolidation proposal. The reductions would come from the efficiency to be gained by combining what is currently five different oversight offices, not including the Attorney General, that have similar oversight missions -- combining them under one roof.

SENATOR BUONO: With all due respect, I would hope that you came before this Committee to be direct in answering the questions -- legitimate budgetary questions that we have in order to evaluate and to weigh the pros and cons of the Governor's consolidation proposal. We need specifics, and now is the time. I mean, we're in June already. We have-- The Governor's proposing about -- anywhere from -- estimates are up to 30 different pieces of legislation that he wants us to pass just to pass this budget. We're discussing today one of those pieces of legislation. And we need to know what staff would be eliminated in order to evaluate the proposal.

STATE COMPTROLLER BOXER: Let me lay that out for you then.

SENATOR BUONO: Okay.

STATE COMPTROLLER BOXER: The post-consolidation structure would consist of four divisions. It would consist of two divisions that currently exist in the Office of the State Comptroller. That's an Audit Division and a Procurement Division. And it would add two new divisions. The first division to be added would be the Medicaid Division, which would consist of largely the operations of what is currently the Office of the Medicaid Inspector General. And the fourth division in what is being proposed is the Investigations Division. In terms of the specific personnel numbers that I think the Chair is seeking, I would expect at this point that the Audit Division would have 45 to 47 employees. The Procurement Division would maintain its current structure of having eight employees.

SENATOR BUONO: Eight?

STATE COMPTROLLER BOXER: Eight. The Investigations Division would have between 27 and 30 employees, and the Medicaid Division would have approximately 50.

SENATOR BUONO: So in your-- Let's talk about the new Investigations Division. That would consolidate the prior -- this is in your chart -- this would consolidate the functions of the State Inspector General and the State Commission of Investigation so that, out of necessity, given the amount of employees in the SCI, that would amount to a significant reduction of the employees of the SCI, correct?

STATE COMPTROLLER BOXER: Yes.

SENATOR BUONO: How many of the employees from the SCI would be eliminated?

STATE COMPTROLLER BOXER: Well, the SCI, in my understanding, currently has about 53 employees.

SENATOR BUONO: Okay.

STATE COMPTROLLER BOXER: The Office of the Inspector General has, I believe, approximately 16 employees. So if you're -- if what's being contemplated is a unit of 30 people-- That's the difference that is being--

SENATOR BUONO: So my understanding is that out of the layoffs that you're contemplating by this proposal-- My information is that 43 of the 53 employees of the SCI would be laid off, 80 percent. Is that accurate?

STATE COMPTROLLER BOXER: That's possible.

SENATOR BUONO: That's possible? All right.

Let's look at the legislation a little more closely. Right now you do not have the power to subpoena witnesses and to grant immunity. Is that correct?

STATE COMPTROLLER BOXER: Yes.

SENATOR BUONO: Currently.

STATE COMPTROLLER BOXER: We don't have the power to subpoena. By statute, government -- public entities in this state are required to provide any information or documents that we request.

SENATOR BUONO: But you don't have the subpoena power right now.

STATE COMPTROLLER BOXER: Correct.

SENATOR BUONO: Okay. The IG does -- the Inspector General currently does have the subpoena power.

STATE COMPTROLLER BOXER: Yes.

SENATOR BUONO: The SCI, State Commission of Investigation, currently has the subpoena power.

STATE COMPTROLLER BOXER: Yes.

SENATOR BUONO: Is it part of your proposal to concentrate and consolidate all of the subpoena power of those entities into the Office of the Comptroller under the legislation?

STATE COMPTROLLER BOXER: What the legislation, as proposed by the Governor, would accomplish is consolidating those offices into one office that would have the subpoena power.

SENATOR BUONO: So the answer is yes.

STATE COMPTROLLER BOXER: Yes.

SENATOR BUONO: That's chutzpah. I mean, to me that would seriously undermine the separation of powers to have subpoena power that was in an independent, legislative watchdog eliminated, abolished, and sited in the Executive Branch. To have all of those investigatory functions, including subpoena power in one branch of government, I think, should raise some serious concerns from a good government, public policy perspective.

STATE COMPTROLLER BOXER: What's being proposed is to take the five oversight offices that currently exist and consolidate them into two; one that reports to the Legislature and one that is the Office of the State Comptroller, which is -- we are in the Executive Branch, but we

are an independent office in that we don't take direction from the Governor in terms of what projects to undertake.

SENATOR BUONO: You don't take-- Do you consult with the Governor about what investigations you'll be undertaking?

STATE COMPTROLLER BOXER: No.

SENATOR BUONO: You don't report directly to the Governor?

STATE COMPTROLLER BOXER: From an administrative perspective, the reporting line is to the Governor, but not on substantive issues such as what projects we undertake.

SENATOR BUONO: Okay.

STATE COMPTROLLER BOXER: So the notion that's being proposed here is to end up with a post-consolidation structure with two oversight entities, one being the legislative auditor, one being the Executive Branch with, again, the underlying notion being the current roster of five is overlapping.

SENATOR BUONO: There may be some logic to consolidating. We'll hear-- I think we'll be able to reach conclusions from a more informed perspective after today's hearing. But it might be logical to consolidate, perhaps, the IG and the Inspector General (*sic*) within your Office. But, quite honestly, I think the SCI's functions are unique and they should not even be considered in the consolidation debate.

I've been involved in-- I've been a big supporter of the SCI since the '90s, when I was first elected. And at that time, they weren't a permanent entity. I don't know if you remember. You weren't around then.

STATE COMPTROLLER BOXER: I'm aware.

SENATOR BUONO: But every five years they would come up for reauthorization. And one year Governor Whitman did not, essentially-- I think it's fair to say she was generally hostile to the SCI and did not have -- did not schedule the reauthorization, and they almost went out of existence. And it was that time -- shortly afterwards -- that the Legislature -- and I was a sponsor; I know it was a bipartisan effort -- to make the SCI permanent. I think that it's crucial for the two branches of government-- I mean, the SCI you can't compare with the State Auditor. He's simply an auditor. He doesn't have the power to subpoena, power to grant immunity, doesn't have the panoply of resources at its disposal to act as an effective watchdog to ensure that the laws of the State of New Jersey are being faithfully executed. And I think that it should raise serious concerns if there is any discussion to abolish that.

That said, I'm going to pass it along to any questions from members of the Committee of Mr. Boxer at this point in time.

Senator Kyrillos.

SENATOR KYRILLOS: Madam Chair, we're going to hear from other people as well, I'm told?

SENATOR BUONO: Yes.

SENATOR KYRILLOS: Mr. Edwards and others.

SENATOR BUONO: Yes, we have -- you should have a list: the Inspector General, the Medicaid Inspector General, a number of other people, as well, on the issue.

SENATOR BUONO: But Mr. Boxer -- I would think that others would have questions given that he is going to be administering this consolidation as proposed.

SENATOR KYRILLOS: It would be good if he could stay for the remainder of the meeting, if that's possible.

SENATOR BUONO: I think that's a good suggestion.

Mr. Boxer, do you have a problem sticking around for a while?

STATE COMPTROLLER BOXER: No, I do not.

SENATOR BUONO: Okay, good.

Senator Kean.

SENATOR KEAN: Thank you, Madam Chair.

Through you, sir. It's good to have you here before us answering these questions. Because I think-- I mean, part of the conversation that was had in these halls just a couple short years ago, when the Office was created, was: Was it a duplicative office to begin with? And it seems now that, after a short couple of years, the conversation has changed to where you were to -- the Office itself would become the one entity from the Executive Branch perspective that would have these oversight responsibilities.

And I have to overwhelmingly agree with the Chair on the expansion of your oversight abilities. To me, the exclusion of \$2 million to \$10 million, for contract purposes and other preapproval purposes, makes absolutely no sense; and is one of the issues that was debated at the time, and why there was bipartisan opposition, I think, to that exclusion at the time.

SENATOR BUONO: I think it was all of you and me.
(laughter)

SENATOR KEAN: By definition that's bipartisan, Madam Chair. (laughter)

We had a great deal of concern. And my hope is that we can take this-- If this conversation is going forward, and we're looking at ways to truly structure an entity that, in conjunction with some of the internal auditors, that you say, within the agency to this more broader perspective-- This seems to me to be the ideal opportunity to truly expand your purview. And so if I may, just from a statement perspective, add that there would be strong bipartisan support for that expansion of responsibilities within your purview.

The question I want to get to -- and maybe it's outside your responsibility -- but one of the areas that the Chair did talk about in great -- a little bit -- was the subpoena power. And, right now, are you aware whether the Auditor actually has subpoena power, the ability to call witnesses?

STATE COMPTROLLER BOXER: The State Auditor?

SENATOR KEAN: Yes.

STATE COMPTROLLER BOXER: I don't believe that the State Auditor has that power.

SENATOR BUONO: No, he doesn't.

SENATOR KEAN: Yes, that's why I asked the question, for the record. Because I think part of the ways that we could improve some of these proposals is giving the legislative arm that type of oversight ability,

going forward, to have that type of ability. I think it would be a way to improve this type of oversight proposal.

STATE COMPTROLLER BOXER: I think it's-- Discussing the notion of strengthening the legislative -- specifically legislative oversight function, is a matter worth considering.

SENATOR KEAN: And getting back to the issue of duplication, you said you have 40 auditors, the Medicaid Inspector General and others have a modest -- more modest staff. Is your sense that you're just -- right now, the current structure -- whether it be with or without the SCI -- that there are just inefficiencies because you have too many smaller entities pursuing -- sometimes overlapping responsibilities?

STATE COMPTROLLER BOXER: You know, it's interesting. The way that the oversight structure has been set up in New Jersey, to some extent, mirrors the way that local governments have been set up in New Jersey in that it's a bit balkanized. What we have here in our state is, as I noted before, the five different oversight agencies separate from the Attorney General, which we'll put aside for purposes of this conversation. You have five different oversight agencies all with fairly modest staffing. That is unique, relative to other states, in terms of both the -- in terms of-- Well, in what it presents -- challenges -- is creating that coordinated approach.

SENATOR KEAN: Can you-- You mentioned that we were balkanizing -- and maybe it's a little bit broader perspective -- but can you give us an idea. I mean, we talked about New York where they have not only an elected comptroller, but they seem to have 200 auditors. I think that was the number that was used.

What are other states doing? Have other states combined their oversight entities? Are we an outlier in that regard, from a state perspective? But also if you can look from a Federal perspective. What types of models were you looking to? Sometimes consolidation is good. It creates efficiencies. Sometimes things get missed when you consolidate. And that's the debate we have: home rule versus non-home rule on the local levels. But can you -- what states you would use as models? What are the ones who have really good oversight responsibilities? Where is the Federal government as a model? Is that the right way to go with the legislative arm as well as the executive branch arm? I mean, is there a model that you're looking at as ideal?

STATE COMPTROLLER BOXER: It's difficult, because every state is very different in how they set up this function. Different not only in functions but also in titles. We are -- to use the word you used, Senator -- we are an *outlier* in how we have this large number of oversight offices that have somewhat overlapping jurisdiction, and each have relatively small size from a staffing perspective.

What is more typical in other states is a more centralized, robust oversight function in one office. We've been talking about the New York comptroller. We'll stick with that example for the moment. The New York comptroller has nearly 500 auditors. They also have an investigative unit in the same office. Let's take our neighbor to the West -- the other direction -- Pennsylvania. The Pennsylvania auditor general has over 700 auditors coordinating the oversight in a way that differs from the entities that -- the five different entities of general jurisdiction, so to speak, that we have in New Jersey.

On the Federal level, there's legislative oversight from the Government Accountability Office. The Federal comptroller -- I guess this dovetails into another issue I know the Chair wanted to talk about in terms of elected versus appointed comptroller. The Federal comptroller is appointed for an extended term and has an audit and investigatory function within the GAO. Federal agencies have -- in each agency -- what they call an *inspector general internal audit* -- more of an internal audit-type function.

So there are 50 different sets of examples out there, each one different.

SENATOR KEAN: It just seems to me that if we're looking at some models-- I mean, we've been trying for years to try to get -- some of us have, I guess -- for essentially a GAO equivalent, where you would have that type of a -- enhancing the power of the State Auditor either simultaneously within one office, where you would have everything from performance audits (indiscernible) so that you have that creative tension, that creative check.

So if you could see what-- If you could look at that from -- going forward -- whether a GAO-type model works -- would work for the State of New Jersey, as part of this conversation -- through you, Madam Chair -- I'd appreciate that.

Thank you.

STATE COMPTROLLER BOXER: And the GAO model, in many respects, is one that we've followed in our Office in terms of their audit approach, conducting largely performance-based auditing, using a variety of skill sets to tackle a particular audit project, both from an audit perspective, a social science perspective, a legal perspective. In many ways,

the way that we, from an internal perspective, organized our Office is very similar to what the GAO has tried to accomplish.

SENATOR BUONO: Thank you.

Before I turn it over to Senator Cunningham, I just wanted to comment on some issues that were raised.

Senator Kean had mentioned that we have the need for a creative tension, a check and balance. Well, we have that now; we have that with the SCI, which is-- Let's not lose that in the debate. They're funded separately by the legislative budget. They were created by the Legislature to have a check and balance on the extraordinary powers delegated to the Executive. And I think both political parties would agree that over its 41 years, there has never been a suggestion of partisan bias ever. And I think that it's earned the public's confidence in delivering a quality work product. And, quite frankly, I wonder whether or not you even have the authority to investigate racketeering and organized crime, which is in addition to the broad mandate that the SCI does have.

STATE COMPTROLLER BOXER: Do you mean currently or under what's been proposed by the Governor.

SENATOR BUONO: Well, currently I know you don't.

STATE COMPTROLLER BOXER: Correct. Under what's been proposed, yes, that would be subsumed within the jurisdiction of the consolidated entity. The functions -- again, as has been proposed by the Governor's Office -- the functions of the other offices would still be performed.

SENATOR BUONO: Except not independently of the Executive, and that concerns me.

And also, I remember at the time we passed your legislation, there was a concern that was expressed -- I think Senator Kean eluded to it -- that there might be overlap, that it might be difficult coordinating the different investigations and audits that the IG conducted, your Office conducted, the auditor -- the State Auditor, and others. And therefore, in response to that concern, the legislation required that there would be routine meetings between your Office and those entities. And yet, my understanding is that there's only been one meeting in the entire time this legislation has been in effect, which has been years.

STATE COMPTROLLER BOXER: No, that's not accurate. I have regular conversations with each of the entities in question over-- No, that's not accurate.

SENATOR BUONO: Well, this legislation specifically states that it requires periodic meetings at least four times annually including the AG, the Treasurer, the IG, and any other public official or employee deemed necessary who would provide audits or performance reviews. And I would think rather than a phone call, given the vast number and vast areas in which these entities operate -- including the AG in criminal investigations -- it would seem that quarterly meetings are a bare minimum in order -- that would be needed in order to coordinate these efforts and not have overlap.

STATE COMPTROLLER BOXER: I meet regularly with the individuals that you mentioned. I have regular conversations, whether they be on the phone or in person. I'm in contact with the Attorney General's Office on an ongoing basis. Those meetings happen, as a matter of course, far more than quarterly.

SENATOR BUONO: Do you think that it's in the best interest of the public to consolidate the entire watchdog function in a single branch of government? I guess that's really the bottom line, as far as I'm concerned.

STATE COMPTROLLER BOXER: Ultimately, that's a policy decision for the Legislature and for the Governor.

SENATOR BUONO: Fair enough.

STATE COMPTROLLER BOXER: What I can provide is information from my perspective on what I've seen. And what I can provide on this issue is that we have the five different oversight offices that have similar missions. And while there are some distinctions in those missions, there is also some overlap. The notion is: combining these agencies under one roof would make for a more productive or efficient oversight function. But as I say, that's a policy decision. And the specifics, particularly, are a policy decision in terms of how the Legislature and the Governor ultimately decide to handle this, from a legislative perspective.

SENATOR BUONO: I appreciate that.

STATE COMPTROLLER BOXER: Really, what I'm here to say, first and foremost, is that if we are entrusted to carry on these efforts, in whole or in part, we would do it aggressively and appropriately. And we're confident we can do this.

SENATOR BUONO: But the fact remains that you are -- and I don't mean to beat a dead horse -- but you are appointed by the Governor. You are not independent, as far as I can tell. It just seems to defy common sense to even contemplate taking away the Legislature's eyes and ears over not just the Executive Branch-- But it just makes sense to have a check and

balance. And I think that we just can't allow the public's watchdog to be abolished. And I understand that it's a public policy decision.

And I appreciate all the work you do, Mr. Boxer. I know you've done some very helpful reports over the couple of years that you've been in your position. And I wanted to thank you for that.

Senator Cunningham.

SENATOR CUNNINGHAM: Thank you, Madam Chair.

Good afternoon -- no, it's still morning.

I just wanted to ask a question, because Senator Buono eluded to this idea of an elected comptroller. And I don't know how I feel about that. I'm just concerned with how or if it would make a difference, and how things that you look into would be decided if you were elected or not elected. So I just wanted your opinion on what you think about an elected comptroller, and if you think that would have any affect on how things are being done.

STATE COMPTROLLER BOXER: Thank you, and good morning, Senator.

That issue is, again, very much a policy decision for the Legislature and the Governor. There are advantages and disadvantages to each method: appointment versus elected. And states have had success with each. Most states appoint their comptroller. The Federal government appoints the Federal comptroller. Our Office is set up to be independent. And I think the advantage to electing the comptroller is that in some respects -- I think from the public's perspective -- electing a comptroller might promote the perception of that independence.

At the same time, if the comptroller is to be elected, he or she would be subject to all of the elements of the electoral process. You are all much more familiar with those elements than I am -- fundraising, campaigning, attaining the support of relevant groups and individuals. Those would become issues that the State Comptroller would have to concern himself or herself with. In a way, there's an analogy to the way that the State selects judges. For these kinds of reasons, we, as a State, have decided not to elect judges but, rather, have them appointed. And the question is: Is that calculus different for your auditor? And that's a policy decision, ultimately.

SENATOR CUNNINGHAM: New York has an elected comptroller. I would think that we would be adding another politician to the mix. Do you think that-- How do you think the office -- would it have any affect on the way that you run your office now because you will have to do fundraising and deal with more political issues?

STATE COMPTROLLER BOXER: I think, ultimately, it's much more important who the person is as opposed to appointed versus elected. I think you could have appointed comptrollers who turn out to not run the Office in an effective way. And I think the same with elected. As I said, the consideration on the elected side is subjecting that person to all of the pressures of the political process and, as I say, obtaining support from groups and individuals. Whereas, in the current situation -- I'm referring to my own instance, by way of example. I have a six-year term. I was appointed by the previous Governor for that six-year term. And I cannot be removed from the Office except for cause. So, from my perspective, that provides comfort to look into any issues that we feel need to be looked at,

no matter who we happen to be upsetting by doing that. And so those, I think, are the issues to consider.

SENATOR CUNNINGHAM: Thank you.

STATE COMPTROLLER BOXER: Thank you.

SENATOR BUONO: Thank you, Senator Cunningham.

Anyone else at this time? (no response)

Thank you, Mr. Boxer. I ask if you could just hang out for a little while.

We're going to move on to hear from the Chairman of the SCI, the esteemed Cary Edwards. I know he has Lee Seglem and Judge Alan Rockoff along with him. However you want to do this is fine with me.

W. CARY EDWARDS: Thank you, Madam Chair.

It's very good to be in this arena again. I spent 40 years coming in and out, and the last 10 or 12 years did not have me in this arena very often. But it is a pleasure to be here. And I thank you very much for the opportunity.

SENATOR BUONO: It's only because you've been away so long that it's a pleasure. (laughter)

MR. EDWARDS: Madam Chair, I will proceed by going over my statement, and then I will be happy to answer any questions that you or any members of the Committee have. And I appreciate your patience in allowing me to do that.

I am usually much better extemporaneously than I am in -- but I want to make sure that this statement gets in the record and gets in the record accurately.

Good morning, Madam Chairwoman and members of this distinguished Committee. I'm Cary Edwards. I'm Chairman of the New Jersey State Commission on Investigation. On behalf of the full Commission and our staff, I thank you for this unique and important opportunity.

To be perfectly blunt, if the current State budget proposal were enacted, as is, the SCI would cease to exist. The agency's \$4.5 million appropriation, plus carry-forwards, would be slashed by more than 75 percent. And all but a handful of special agents, forensic accountants, and investigative attorneys would be eliminated. The result of that would ultimately, in my opinion -- and I'm only one of the four Commissioners -- would result in the closure of the SCI. We would wrap up our affairs in two or three months and literally it would go out of existence. That would happen regardless of any plan to merge. And what would be left when the SCI -- the SCI ultimately moving into the Comptroller's Office.

The bottom line in this approach is that New Jersey would no longer have an effective, independent watchdog in the Legislative Branch of government to root out and report upon -- against waste, corruption, and organized crime. That would be wrong, and I'm here to tell you why.

The SCI has demonstrated its value to the taxpayers of New Jersey time and time again over the course of more than 40 years. It has earned its place as the State's premier independent government watchdog. It has revealed widespread waste, fraud, and abuse in many areas critical to the interests of the citizens of this state. It has kept you, the Legislature, and the law enforcement community, and the public at large informed about the scourge of organized crime, a vital oversight function performed

by no other watchdog agency. Furthermore, the SCI's findings and recommendations have led to the savings of tens of millions of dollars and paved the way for the existence and enactment of extensive statutory and regulatory reforms on a systematic scale.

That's because we do fact-finding investigations that identify systemic problems and ways to fix them. We don't target individuals. The SCI is not an agency that plays a *gotcha* form of investigation. Certainly, on occasions, we use examples, but only to a limited extent and only when necessary to bring full transparency, disclosure, and explanation to the difficult systematic issues.

But our primary goal, our fundamental objective, is to develop and recommend sensible, practical remedies so the problems we identify can be fixed and don't happen again. In this regard, the record speaks for itself. Over the past five to seven years alone, 80 percent of the SCI's recommendations have been adopted by the Legislature and the Governor.

All of this, and more, accomplished on a small budget, by a small agency that knows how to get the best bang for the buck in the service of the taxpayers. And by the way, the SCI also knows all about tough financial times and the need for shared sacrifice. Over the past 20 months alone, our available budgetary resources have been cut by over \$2 million, which is approximately 25 percent of our operating revenues.

So this is important. You need to know that we are part of the solution, not the problem, and a truly unique part of the solution at that. What the SCI is, what it does, and what it has done, what it can do for taxpayers of this state is not replicated anywhere else in the structure of our government. First of all, as I've indicated, we're in the business of saving

taxpayer dollars. In other words, we pay our own way, and that's something that you don't hear every day from government.

A report the SCI issued just last December on excessive local government employee benefits identified nearly \$40 million in wasteful spending, and that was only looking at 75 entities out of the hundreds -- over a thousand entities exist -- some of which is now being recouped due to reforms spurred into law by the SCI's findings. Another SCI investigation led to the savings of more than \$20 million a year, every year, in tax revenue ripped off by organized crime's manipulation of the motor-fuel industry. Another SCI product laid the groundwork for saving more than \$6 million in padded pensions and excessive perks for public superintendents and school administrators.

This is real money we're talking about here -- documented opportunities for saving taxpayer dollars in amounts that make the SCI a very worthwhile investment, indeed, especially when you consider that the per capita cost of the agency's annual budget is a whopping \$0.52 a year, or one penny per New Jerseyan. That's the definition of a bargain, if I've ever heard of one.

One key reason for the SCI's success as a tested leader among the few sentinels of government is its independence. This has been the case since the day it was first conceived in the late 1960s amid a storm of political corruption and organized crime intrusion into institutions of our society.

The SCI's architecture, its very structure, was carefully and meticulously designed to guarantee a thoughtful, nonpartisan, impartial, and objective approach to a core watchdog agency. No single individual

runs this agency. The SCI is governed by four Commissioners who operate in a nonpartisan fashion. They have staggered, four-year terms; are appointed by three separate appointing authorities and two branches of government -- the President of the Senate, the Speaker of the Assembly, and the Governor. Under certain rare circumstances, even the Judiciary can weigh in on our process. For example, in the event a regular Commission appointment is delayed beyond a certain period of time, the law allows the vacancy to be filled by the Chief Justice of the Supreme Court.

The strong and unique structure provides the SCI with the integrity and independent structure necessary to perform its job in a credible fashion. Simply put, we go where the facts lead us, because that's the way we're built. And the very fact that the SCI's fact-finding process has withstood every legal challenge ever brought against it is a testimony to the soundness of that operating structure, and the internal judgements and decisions that have made -- that were made pursuant to the agency's mission.

Further bolstering the Commission as an independent watchdog for the entire system is the fact that aside from the State Auditor, whose mission is entirely different, the SCI is the only investigative, fact-finding agency in the Legislative Branch of New Jersey State government. This is critical, and I'm sure you can appreciate why.

Although the Executive participates in the Commission's appointment process, the SCI is located in the Legislature and is funded through the legislative budget. As such, the SCI not only serves as a valuable resource for lawmakers in fact-finding and in providing substantive raw material for sensible statutory reform; more importantly, the SCI is also

an essential and irreplaceable part of the machinery of checks and balances that is so important between the various branches of government. Make no mistake, the price of the SCI's demise and its outright removal from the Legislative Branch would be a reduction, diminution, and breach in that constitutional separation of powers.

The SCI is also unique because it's the only State watchdog agency tasked with the statutory duty of investigating, evaluating, and reporting upon organized crime -- not as a cop to make arrests, not as a prosecutor to obtain convictions, but as a fact-finder and intelligence-gatherer, and as a repository for investigative information and expertise for our partners in law enforcement. Assistance rendered by the SCI, and referrals of information and evidence by our agency over the years to the State Attorney General and others, including the Office of the U.S. Attorney, have resulted in criminal indictments and convictions.

Since its inception in 1968, the SCI has conducted cutting-edge investigations into every major aspect of organized crime in New Jersey, highlighting its intrusion into the solid waste, garment, and gambling industries; and other legitimate elements of commercial, private enterprise. Most recently, the SCI completed the first stage of a comprehensive, ongoing investigation into the growth, proliferation, and increasing sophistication of the most serious and common criminal threat to the public in New Jersey today: organized criminal street gangs. Our initial focus was the deleterious impact of these violent criminal entities on the State prison system. And rest assured, we have much more to report about the impact of gangs and their organized criminal activities in the communities of our

state. This is just one of a significant number of active investigations now under way in our office.

Madam Chairwoman, members of the Committee, eight years ago the Legislature and the Governor, acting in a bipartisan fashion, invested their trust and confidence in the future of the SCI by enacting legislation making the agency a permanent part of State government. Since then, the value and intent of that permanency has been vindicated repeatedly, and that trust has been fulfilled time and time again.

Besides ranging far and wide with the hard work of investigative fact-finding, we are result-oriented. Beyond actually saving dollars for taxpayers -- as I've already described -- we develop sensible, practical recommendations to fix a broad array of systematic problems that we regularly identify through our investigations. And you, the Legislature, along with succeeding governors, have responded repeatedly to those recommendations in ways that serve the public very well.

To review just a portion of these: In 2003, the legislation recommended by the SCI was enacted, revising New Jersey's computer laws for the first time in two decades. In 2004, the Commission's investigation of the flawed E-ZPass electronic toll system set the stage for enactment of legislation overhauling the State's contract procurement process. In 2005, the Governor signed an executive order implementing recommendations from the SCI's probe of new-home construction and inspection abuses. In 2006, the SCI revealed that unregulated lethal handgun ammunition was readily available, purchased by known criminals, including gang members -- led to the enactment of legislation tightening ammo sales. In 2007, legislation was signed implementing new budget accountability measures for

public schools as an outgrowth of the SCI's investigation of questionable and hidden compensation for public school superintendents and administrators. Also in 2007, the findings of the SCI's investigation into abuse of New Jersey's hospital Charity Care program resulted in the enactment of new fraud-detection laws. In 2009, landmark legislation was signed into law incorporating key recommendations made by the SCI to restore accountability, transparency, and oversight of the Governor in public higher education in New Jersey.

As you can easily see from all of these, the SCI has become more productive over the years, not less. And given the range of active investigations now under way in every area of our statutory purview -- organized crime, taxpayer waste, and corruption -- we are bound to become even more productive going forward, if we have the chance.

And that brings me to the critical point: the presumed wisdom of consolidating the State's watchdog agencies into a single agency under the control of the Executive Branch. On the surface, considering the State's dire fiscal condition, this may sound like a sensible option. The problem is that it's grounded in false and misleading assumptions.

First of all, by definition, consolidation assumes New Jersey has too many watchdogs looking out for the taxpayers, and that's just plain silly. Why? Because today, in this state, there's more public money vulnerable to waste and abuse than ever before in our history. New Jersey taxpayers spend a combined sum of more than \$80 billion a year -- that's billion with a *B* -- to fund State, county, local governments, and independent authorities. And that's a conservative estimate. Throw in Federal money and it's well over \$100 billion. In stark contrast, less than

\$20 million is devoted to the vital watchdog role, an amount shared by just four entities: the SCI, the Auditor, the Comptroller, and the Inspector General. Less than \$20 million is nothing to sniff at either. But compared to the big picture, it is ridiculously minute -- not even a speck in the entire scheme of things, about one one-hundredth of a percent of the overall expenditure. That's way out of balance, and it's unfair to the taxpayers. I've been -- I spent 40 years in and around government, and it's taken up all of my adult life. And if there's one thing I've learned, it's that you can never have enough expert eyes and ears to hold government accountable to look out for the public's interest.

It has also been suggested that the few watchdog agencies that do exist trip over each other in a dance of redundancy and duplication. In reality, that's simply not true. In fact, just over a year ago or so, I appeared before the Senate Community and Urban Affairs Committee, along with the Comptroller, Inspector General, and State Auditor, and we all addressed that issue. And it quickly became clear that it's a non-issue, a myth, and it remains a myth today.

We talk to each other, assist each other, coordinate, and communicate. Indeed, as the old kid on the watchdog block, it was the SCI that helped the new kids -- the Comptroller and the Inspector General -- get up and running. That's not a boast. I tell you that because it's emblematic of the cooperative spirit that gives us the ability to maximize public resources to serve the public across a wide spectrum of oversight responsibilities.

Trust me, in the watchdog world, there is more than enough work to go around. We don't have redundancies, duplications. The stuff

you hear about duplications is a complete red herring. Nothing even-- Especially even given the fact that there are things that we do at the SCI -- on the criminal and law enforcement side for example -- that are clearly exclusive to our core mission.

In closing, I would urge you to tread carefully here -- very carefully. The SCI is an independent agency in the Legislature. It has a stellar track record of saving taxpayer money. It does important work to support law enforcement in this state. If the ultimate goal is genuine public service -- and certainly it should be -- then simply shredding an already-diminished budget of a proven watchdog for no good reason and moving what's left to somewhere else won't get the job done.

Thank you.

I'd be happy to address any questions.

I have two more quick analogies to make. One is a personal one.

There is a group of letters that I think you've all received, one from former Attorney General John Farmer that I would commend you to read -- and I'm not going to bore you with reading it. The other one is from the FBI's Michael Ward, the SAC in charge of the Newark office. And the other six or seven are all from law enforcement indicating how we work, and how we work cooperatively; and why we're a critical part of the law enforcement community in the State of New Jersey, and the results that come from that work. And I think if you read those letters, you would be very impressed.

I did not ask-- There have been 39 total commissioners on the SCI over the last four years, all of whom would have been perfectly willing

to testify and/or send letters. We have not asked them to come here for reasons of time and other controls. They are prominent people who have done a great service, and many of them are still giving a great service to the people of the State of New Jersey.

Lastly, I heard asked about structure and about the unique structure that the SCI has. I've been around State government for 40 years. I've reformed 15 or 20 agencies or operations of State government, some of them two and three times -- Motor Vehicles being one of them two or three times, ultimately coming up with the recommendation of the Commission form. And I could talk for hours about how that fiasco happened. But we're constantly reinventing things we have done. And I've noticed that in our 40 years that we've been here.

The SCI's very unique structure of appointments -- two members appointed by the Governor, one by the Speaker of the Assembly, and one by the President of the Senate -- and it's independent statute of operation and the ability to attract the quality people we've been able to attract -- and there are some resources to them that's part of that -- has been the most successful structure in government in any state in this nation that I've seen over the last 40 years. I don't say that lightly; I don't say that casually. The one-person structure, versus this four-person structure, guarantees a quality of product -- not only a quality of ethics, but a quality of product. It does; and the members of the Commission -- the four members -- are keenly aware of where they were appointed from, and they're keenly aware of their need to represent that branch of government and those leaders of government. They work together to do things in a bipartisan and nonpartisan way. And I've served for 12 years on the SCI.

It's been a unique pleasure to have done that, and it's odd -- these terms have been designed to end, and mine, ironically, comes to an end in about a year-and-a-half.

But watching that system function on a decision-by-decision basis, in the quality of the product, the lack of influence -- prevention of influence from any side, whether it's partisanly political or personal influence by anyone trying to get into that organization -- has never happened, never. The SCI doesn't mechanically run the day-to-day -- the Commission doesn't run the day-to-day operations. It sets the procedures and standards. We work anywhere from one to three days a week, depending on the weeks; and we do hold hearings; and we are deeply involved in those processes. But collectively it takes three votes. And I don't need to inform you, ladies and gentlemen, about how to count votes in that system. Two must be Republican, two must be Democrat on the system; one by the Speaker, one by the President of the Senate; and two by the Governor. That system of balance is irreplaceable. Why we don't use that system more often, and why we don't use that system as an overall system for this watchdog is beyond me. Because it has succeeded for 40 years. I can think of no mechanical system in State government -- our State government -- that's functioned that well, with that reputation, with no challenges to its ethical or practical performance, or the success of its actual delivery.

And to eliminate that system alone is a disaster, much less to eliminate the check and balance that happens because it is independent in the Legislative Branch of government as a watchdog -- would be an incredible mistake by the policymakers of the State of New Jersey.

Thank you very much.

SENATOR BUONO: Thank you so much. I'm so thrilled that you came, Mr. Chairman, to testify and offer your invaluable, historical perspective on this matter. And I thank you also because by you being here, you're helping to bring the public's awareness of this issue and the importance-- It's something that we're doing right in State government, and something that the political parties can agree upon, and we have worked collaboratively for 40 years to make it work the way it should. Why would we dismantle it? It just defies common sense.

Efforts to curtail the SCI are not new, but I think that over the 40 years you have proven that you more than pay your way for the taxpayers in terms of taxpayer savings. And I think that the price of eliminating the SCI would result in an unhealthy concentration of power in one branch of government. And I don't care if it's the Executive or the Legislative. You shouldn't have all that power without a check and balance. And that's what our system of government is all about: three co-equal branches of government with checks and balances. If you eliminate the SCI, you will destroy that check and balance. And you know what they say, absolute power corrupts absolutely.

Thank you.

Senator Kyrillos.

SENATOR KYRILLOS: Thank you, Madam Chairwoman.

Let me just say that it is always good to spend a little time with former Attorney General Cary Edwards, whether it's off-stage or on-stage, in a Committee hearing, in a private session. We all leave feeling a little bit better and learning a little bit more. As most of the members know, and

most of the people listening, this gentleman has had a very distinguished career in both the public and private sector, but notably the public sector when he served in the General Assembly, and was Chief Counsel to the Governor, Attorney General, and now of course as Chairman of the SCI.

There's no question, to hear Cary Edwards speak about this organization is inspiring and assuring. Nonetheless, I'm certain that there are other entities that can do this kind of work. Other states organize things differently, as we've heard. That's not to say that there isn't a future role for the SCI in this state.

But as I listen to you, General, I hear some of the great success stories of the SCI regarding local government employee benefits, \$40 million; \$20 million from the manipulation of the motor-fuel industry; \$6 million in pension padding and perks, etc.

And then I see Mr. Boxer's testimony -- much of which I missed because I was a bit late -- but I read here, and I suspect he went through this. He has similar accomplishments at the Division of Developmental Disabilities, Department of Children and Families, Department of Labor, City of Camden. He has a whole list.

So this hearing, Madam Chairwoman, I think, is valuable. And we need to figure out exactly the right combination of entities and efforts to oversee the public treasury at all levels of government. And I know we have a couple other people to testify. I'm not exactly sure of the right equation.

I know your work has been extremely valuable and well-done. And I'm also confident that a strong auditor, comptroller, whatever you want to call it -- because we've seen it duplicated in other localities, states

around America -- here in New Jersey can do much of the work that you've done.

And so one part, Cary, I just wanted you to elaborate on-- You said that the State Auditor -- State Comptroller's function is a very different function. I think you used those words or words to that effect. So why is it so different? Perhaps if you feel you've said it, just repeat it for me. They have a much bigger budget, obviously, than yours. (laughter) I forgot what their budget is, but I'm trying to find that out.

MR. EDWARDS: I'm a very big supporter of the State Comptroller. I served on Governor Corzine's transition committee on an elected State Comptroller. We spent -- I spent maybe 100 hours putting together the recommendations, I think, that came out of that transition office.

The SCI should not be doing -- the SCI as being the only agency prior to that, was taking on, with a very little budget -- and being asked to take on all of those things. And I don't believe that's the role the SCI should assume. The Office of the Comptroller and the Comptroller operations should be functioned on operations of agencies. We pass a law in the Legislature -- I say *we* -- I say that for me, historically; for you, presently. But we pass laws, and we repass laws, and repass laws. And we scratch our heads and say, "Why didn't that work?" I mean, I'm still going crazy over half-a-dozen things, trying to figure out why they didn't work. They were right. I know they were right. Because nobody is checking on the operational side of government.

The State Comptroller should not just be looking at the money, but they should be looking at the operation. The SCI can only do, based on

its size -- and should only do -- periodic oversight reviews and things that either they can't -- they have a conflict with-- Even though it exists as a power we have, it's not a power we need to exercise, except on systematic issues that, perhaps, involve the private sector. Our subpoena powers-- You don't want to give-- We also have the right to grant immunity on subpoenas. We should be looking at those areas where those particular powers are unique, and the Comptroller should be looking at exactly what he's doing. And he's off to a great start with no manpower.

You can't judge. You legislators are not -- can't be in a position to judge which system works best when none of them are funded -- I'm not even talking about funded close to being what they should be. The amount of watchdog work on a \$100 billion operation, and the internal auditing and external auditing that needs to be done in that particular world by a comptroller, and an operational audit being done to see if those systems work is a monumental job. And that's why the comptroller's operations in Pennsylvania and New York are as large as they are. They need to be. But that doesn't mean that the SCI doesn't exist.

If I had my druthers, I would have a comptroller either elected or set up with that four-man structure, because I believe the structure is good. But I'm not picking on the SCI (*sic*) as not being -- the Comptroller as not being necessary. The opposite: If somebody doesn't do regular, systemic operational audits of government and what they do, and do they do it right, we'll never end the abuses. And those marshal of abuses that have happened over the last 30 or 40 years we're living with today and trying to figure out the answers to, because they become vested rights in people -- whether it's the pension program, whether it's benefits, or whether

it's needed or unneeded services, duplication, abuse of services, lack of services. A statute has 10 things you're supposed to do in it. Somebody should be asking the question: Are they doing the 10 things that statute says? The SCI can't do that. A Comptroller should do that.

SENATOR KYRILLOS: So, General, just boil it down for me then on the essential differences. The Comptroller looks at the operations of State government in all the ways you just pointed out -- to this big, hundred-billion-dollar enterprise that's out there.

MR. EDWARDS: Yes.

SENATOR KYRILLOS: And the SCI does exactly what, in contrast to that?

MR. EDWARDS: Systematic reviews of the agencies outside of State government, outside of local government, and criminal justice issues. That would be what I would have the SCI do.

SENATOR KYRILLOS: Agencies outside of State government and outside of local government.

MR. EDWARDS: Correct.

SENATOR KYRILLOS: Such as?

MR. EDWARDS: Corporations. We did the new housing construction because of rip-offs by the large production builders on homeowners who were buying brand-new houses, and the inability of the government system to deal with those rip-offs. And we had the ability to reach into -- because of our subpoena powers, and we should have those subpoena powers as an independent agency -- into that private enterprise. We did the same thing on housing and roofing.

Our ability to reach into private corporations-- There was a company doing business with the Department of the Treasury that had gotten their contract renewed 10 or 12 times. And we found certain gratuities were being put forward by that corporation guaranteeing their reappointment or rehiring of that contract.

SENATOR BUONO: What about the Parsons' contract.

MR. EDWARDS: The Parsons' contract is another one. We have the power to reach outside of government, into the private sector, and we are structured in such a way--

SENATOR KYRILLOS: But you do look-- I'm sorry to interrupt you, but you do look at government as well.

MR. EDWARDS: We look at government as well.

SENATOR KYRILLOS: I mean, two of your successes -- local government employee benefits and pension padding by public school administrators. So you're not just looking at extra-government activity.

MR. EDWARDS: No, but we've been moving away. As the Comptroller gets more involved in more issues, and gets more competent, and more experienced, and expands his capacity we move out of those areas. And then we're there to take referrals from them.

For instance, the Comptroller was asked to participate in the oversight of the Stimulus funds. Now, if there was a problem in the Stimulus funds, could the Comptroller, who is supposed to be looking at the Stimulus funds and manage it, look at itself? No. We volunteered to play the other role. We said if-- And we talked at great length about becoming part of-- We said, "No, somebody needs to sit on the outside and

be available to take referrals if there are improper uses of the Stimulus dollars.”

There are dozens and dozens of circumstances, Senator, in which the -- our investigative skills, which are unique -- they're different from a prosecutor's investigative skills. We've been lecturing in the office-- We changed the office seven or eight years ago. If you look at the prosecutor's office -- they have a crime. The crime has five elements to it. An investigator comes in, looks at the crime. The assistant prosecutor comes in or a deputy attorney general looks at it, and they're out to prove those five elements. When we go into a problem, we only have a blank problem. It's like a blank screen. Somebody did something wrong. There are no elements of a crime to prove to prosecute that person. So we can't operate the way a prosecutor's office works. We don't operate the way an auditor's office works. We have to be very creative in our investigative plan to ascertain: What's the cause-- “We have a problem in front of us. People are getting ripped off in housing. How do we get to that problem?” We have to invent an investigative plan. It's a very unique set of skills that we put together in the SCI, particularly over recent years -- and train people.

We have some of the finest investigators -- criminal investigators. They're in their second and third careers. They're former FBI agents, former-- And we've had to retrain them as to how they look at a case. So we're the check and balance, almost, in that system.

We're also the check and balance in looking at the entire criminal justice system, which we haven't been doing -- and how is it functioning. What are the problems that exist? Why has the Division of

Criminal Justice not done as well as it should? I want to know that question, as the former Attorney General.

We now have, and can have, the resources -- if we're all properly funded -- the ability to do that. A comptroller shouldn't do that. They should look at their money, their audit, they should look at their mechanical function, but not look at problems as in depth as that. We look at systematic problems. We're looking to give you the answers: how to fix New Jersey and make it better.

We don't ask for publicity, but we believe that the difference between us and the Comptroller's Office is unique; is significantly different in its function; but, more importantly, it's significantly different in its organizational structure and where it's located. That check and balance is so important in the system. I can't emphasize it more.

SENATOR KYRILLOS: Do you have an opinion of, General -- and I'll close out, and let the Chairman hear from others -- do you have an opinion on the Inspector General's Office or Medicaid Inspector General that you want to discuss, or no?

MR. EDWARDS: I don't have a lot of knowledge-- I help the Inspector-- The Inspector General is so small in their operation right now, and the work that they do, I see that as a-- I know it's already part of the Comptroller's Office. How that's organized, I'll leave to the Executive Branch of government as to how they think that should be done, and how it's done best. The people there are terrific people, they work very hard with little resources, and have to, I think, cut short even on investigations because they have no dollars to proceed. Some people ask us why we do only three or four reports a year -- we've got another dozen -- because we

don't have the resources. This Legislature and this Governor need to really look at what they want as a watchdog and how much money they want to spend to it, based on the amount of oversight that they think they need. But I believe an independent agency, as a watchdog, should be maintained, and this structure is a great one. I would, again -- I would replicate that in the Comptroller's Office and other places if you're not going to elect one, because that's the check and balance on a comptroller being a good one or a bad one.

SENATOR KYRILLOS: Well, you don't want to replicate it too closely, because you don't want to have two, right? That's really what we're trying to get to.

MR. EDWARDS: No, I find this structure would work fine in the Executive Branch. Even if you appoint people from the Legislature-- Remember, the Governor appoints to this one. That's not a bad check and balance, if you want to look at an option to elected. Elected has the electorate as its check and balance, as opposed to the system having its own internal.

SENATOR KYRILLOS: Well, thank you, General. There's no question you've been doing really important work that, if you weren't doing it in your group, we would want somebody to do it -- there's no question about that. You've done it so very well, and your leadership so ably. But you mentioned resources a few times. This group doesn't have the resources, that group doesn't have the resources, and that's why, with some degree, we've got to look at efficiencies and economies of scale, whatever the final formula and structure may be. Because there aren't enough resources to do the jobs that we described, just as there are not a lot of

resources, a have too many for us to afford throughout society, throughout the public sector.

So thank you.

SENATOR BUONO: Thank you, Senator. Thank you, Senator Kyrillos.

Senator Kean, did you have something?

SENATOR KEAN: Thank you, Madam Chair.

General, it's good to see you.

MR. EDWARDS: Good to see you.

SENATOR KEAN: And thank you so much for your -- both your passion and your dedication to the people of the state. People have been well served by your service; so thank you, sir, for your years of passion and dedication.

MR. EDWARDS: Thank you; I appreciate it.

SENATOR KEAN: If I may-- I want to follow up a little bit on the structure. And you talked a great deal, and we understand-- I think there are many on both sides of the aisle -- various iterations -- have talked about oversight responsibilities: the importance of the Legislative having oversight -- effective oversight -- over Executive, Executive over Legislative. Various tiers of government having that cross effect. And I want to get a sense from you, because we understand the importance of the subpoena power and the unique role that you're talking about in your background. I asked earlier -- the Comptroller -- about the GAO model, where they have -- at Federal level -- where they have some of the same types of powers and responsibilities that you do, that you currently have, and basically the question is: Are the statutes, the affordability, the guidelines of both

legislative and executive branch actually being fulfilled for the people of the country -- is what they have in GAO function a little bit, and they report directly to the legislative branch, much like you officially do. So we're looking at creating efficiencies: How do you overlap, or not overlap, with the Auditor function that we have on the legislative--

MR. EDWARDS: How do we, as the SCI?

SENATOR KEAN: Yes, overlap, not overlap-- What are the efficiencies that could exist between some of those two entities that report to the legislature?

MR. EDWARDS: They do -- the Auditor, over the years, has done audits of various agencies. We take their audits. We have a regular review of their audits, and they refer to us questions or problems they have or things they see in their audit that may arise to a level that they think may have some merit for investigation. We take those in and we evaluate them, as we do all complaints that come into us. And, frankly, we have to make choices sometimes on what we investigate and what we don't, based on resources and how much money we have to be able to do that. I'm sorry to say that, but there are many, many issues -- many issues, and I know Matt would say exactly the same thing -- that we're not looking at, that we know somebody should.

I hope that we -- our economy and you people follow and deal with our budget issues in a way that doesn't -- that it's done with a scalpel, not with an ax. We produce dollars for you, we don't take away dollars. And that you produce revenues in the future that will build a real watchdog operation. Remember always: Every state is different, and every state is different for a reason, because every state is structured differently, and

operates differently. It functions differently. You've got to get to the nuances of how each state functions.

The GAO is a prime example of the need for that kind of operation by the Legislative Branch in the Executive Branch. We in New Jersey have never gotten to that level. We've had a semblance of it between an auditor -- and a weak auditor, I might add, in the process -- who needs strengthening if he's going to stay as an auditor; and you're not going to elect a comptroller; and the SCI, who's been weakened by its budget and its economics.

Every time we make an enemy of the Governor or someone, our budget gets cut. We tend to be -- or people want to do away with us. We make enemies in the process, and we know that. We're trying not to deal with individuals, but to deal with systemic problems, and not do as much of that as we have in the past. But we think the GAO is a model that New Jersey should look at, but to then formulate a structure that fits this State. And I'm really-- As a government junkie, I'm really impressed -- and I served with about five commissions now, different combinations -- by how well that group functions and delivers. This is a very unique structure.

SENATOR KEAN: It comes down, in the end, to the individuals who are appointed, to these various commissions.

MR. EDWARDS: Yes, it does.

SENATOR KEAN: And the various entities.

MR. EDWARDS: Right.

SENATOR KEAN: I mean, we have seen entities over the years -- at least as it's been reported in the press -- where commissions that are split 50-50 are dysfunctional. Someone complained over the year about the

(indiscernible) Election Commission in that regard, where they simply can't come to a conclusion in any way. And there are other national, as well as on more State-based, where they've been split down and you've come to real solutions. What is it that you feel-- What are the unique qualifications between the individuals who have been appointed to, in addition to the structure? Sometimes structure impedes investigation.

MR. EDWARDS: Yes, it does.

SENATOR KEAN: In some instances.

MR. EDWARDS: I've never seen that in our agency, that's what I'm talking about.

SENATOR KEAN: Right.

MR. EDWARDS: And I've seen a wide variety of individuals appointed: women, minorities, Legislatures. Right now we have myself; Bill Castner, former Counsel; we have Senator Martin, a member of the Legislature and Dean of a law school. We all have a level of credibility. I think it's important, the quality of the person who's appointed. I think that matters, if that helps. To get quality people to serve in government today is a very hard thing. We get a \$35,000-- We were originally pegged to be paid as much as a legislator because we put in about the same amount of time. I don't believe that that stipend is insignificant to people as they move on in life. And I know there is a bill pending somewhere around to take all part-time commissions and take all their funds away. Again, don't do that with an ax; do it with a scalpel. It will materially affect that quality issue. And there are commissions, I would advise you -- and Elect is one of them -- to be very careful with. Local government services, local finance boards have been very valuable entities.

Do we appoint good people? What's ironically happened in the SCI, because of its unique independence, is that the presidents of the Senate, speakers, and governors have not appointed bad commissioners. They've appointed good ones. The people who took the job took it seriously. The lawyers -- and I served with maybe 10 or 12 of them, and I know the others -- they've taken the job very seriously. They give up something to take it. They're all lawyers. We have extremely significant restrictions: We can't work for any other government agency, we can't be municipal lawyers, or any of that can we do.

A lot of checks and balances in that system would maybe help it along. And the devil is always in the details. We take the details for granted and say, "Ah, we can change that; we can change that." But you can't always change it. That's part of the structure that makes these things work. And I can only tell you that in 40 years, I've never seen a structure that has been as resilient. And it's been attacked by everybody -- had to get reauthorized every five years. I had the last Commission that looked at it, in the mid-90s. The Speaker of the Assembly appointed me; I got elected Chairman. We've looked at whether the SCI should exist, and we came, as a group -- a very good group of people came to that conclusion -- outsiders. Its independence was vitally important to that process. And I can't tell you how important all those details are that we have in our structure that help make it work. If you take one or two of them out, it changes the dynamic of the structure. I'll give you an example: If you were to put senatorial courtesy in the middle of it, you would change the structure. It doesn't exist because legislators are making their own appointments. But it would change the structure dramatically. So you have to be careful.

But I'm saying this one really works. And you got a gem here, and you're talking about merging it into a very new, very good operation, and one the State desperately needs. And it needs it at 10 times its present size. And it will save you money, and it'll help your budgets, as the SCI will.

SENATOR KEAN: Thank you.

SENATOR BUONO: Thank you, Senator Kean.

I just wanted to mention: As Senator Kean was talking, it called to mind some of your very successful, in-depth investigations that resulted in legislation. I actually sponsored the Family Care legislation that came out of your organization; and then the Parsons deal, obviously; and then, most recently, you did an investigation into how prison inmates were abusing the system in such a way that I don't think-- That's not something that traditional law enforcement would get involved in, I don't think.

MR. EDWARDS: No, not at all.

SENATOR BUONO: In terms of-- So it's very beneficial.

MR. EDWARDS: They have a bad structure, Internal Affairs. They have Internal Affairs and Internal Investigations in the same group. They can't do it.

SENATOR BUONO: I know; I read your report.

MR. EDWARDS: That's terrible; it's terrible -- mixing that one.

SENATOR BUONO: Thank you so much.

Is there anyone else that you wanted to testify--

MR. EDWARDS: No.

SENATOR BUONO: Okay, all right.

Well, thank you gentlemen; I really do appreciate you coming.

MR. EDWARDS: Very good seeing you; very good seeing you.

Thank you very much.

SENATOR BUONO: Very, very helpful, very helpful to the debate.

MR. EDWARDS: If we can be of further assistance, if you want more information, please feel free to contact myself, or Judge Rockoff, or Lee Seglem, or any of the members of our staff.

SENATOR BUONO: Well, we won't hesitate to do so. And congratulations: I understand you're receiving an award this evening -- from New Jersey Future, is it?

MR. EDWARDS: Yes, I am. (laughter)

Years ago, with one of your members' fathers -- we got involved in creating State planning. And I then joined New Jersey Futures and we created Smart Growth, and so it's-- I'm a multi-passion person in government.

SENATOR BUONO: Have you written a book yet? (laughter)

MR. EDWARDS: Not yet; I don't write books.

SENATOR BUONO: You should. Oh, you have to. You can't-- (laughter)

MR. EDWARDS: I'm one of the old government junkies you can't quite kick out of the system, no matter how hard you try.

SENATOR BUONO: Thank goodness, thank goodness.

MR. EDWARDS: Thank you very much, and thank you for noting that.

SENATOR BUONO: Thank you both; thank you all.

Okay, we're going to move on now to-- We're going to call up, as a panel, Mary Jane Cooper, our current Inspector General; and we have the pleasure of having, with the IG, Melinda Miguel -- she is the Chief Inspector General for the State of Florida. And you also have a role in the National Organization of Inspector Generals, correct? Which one of you wanted to go first? Either one.

INSPECTOR GENERAL MARY JANE COOPER:
Senator, I know Ms. Miguel has to catch an airplane.

SENATOR BUONO: Oh, okay. Well, thank you so much for giving your time, and, in your case, quite a bit of travel time and expense to come here and add to the debate. Thank you so much.

INSPECTOR GENERAL MELINDA M. MIGUEL:
Thank you. I really appreciate the opportunity to be here, Madam Chair and esteemed members of the Committee.

It is really a great opportunity to sit here and talk with you about some of the finer points of this recommendation and proposal of consolidation of certain oversight activities.

I'd like to discuss some of the points that may not be so readily apparent, if I may. And I think the General just said that the devil is in the details, and always read the fine print. He also said, earlier, to do it with a scalpel, and not an ax. I think these are very important points.

From private sector experiences such as Enron, WorldCom, Arthur Anderson, we learned that internal and external oversight could not be performed in the best interest of the stakeholders if done by the same entity. We also learned, again, of the importance of true independence of

that oversight function, and the value of placing reasonable checks and balances on all levels of government.

These concepts are true in government as well, especially in these difficult economic times and when trust in government is at an all-time low.

I am honored to serve in the position of public trust as the Chief Inspector General for the state of Florida. I possess statutory independence to do my job, and report directly to the chief executive officer in my state -- the governor. In Florida, we also have different types of investigations being conducted by different jurisdictions.

Before coming to the governor's office, I had the privilege of serving as the inspector general in three state agencies. In each of these positions I reported to the highest-ranking official, and had full and complete access to staff and records with very clearly delineated jurisdiction outlined in law. I'm also honored -- as Madam Chair mentioned -- to serve as the First Vice President of the national Association of Inspectors General, an association that I have been involved with for 13 years, and that is growing as the IG concept spreads across the nation and as the need for public trust is rising.

In my role as the Chief Inspector General, and with the Association, I interact daily with inspectors general across the country that are of all sizes, budgets, and staffing levels. Consistent across all offices, all Federal agencies, states, and other jurisdictions is the paramount importance of the independence of the inspector general to do the job. Throughout the country, IGs rely on statutory independence in order to effectively seek out fraud, waste, abuse, mismanagement in government; to

ensure accountability and integrity of government in their jurisdiction; and to perform investigations making certain that programs financed by government are in compliance with law.

In 1999, the Association formed a committee to write professional standards. Those standards became known as the Green Book, and it actually specifies that the inspector general be formed as a legal entity into law; the mission, mandate, authority, and power also be specified in law; and the law provides for confidentiality of active cases and specify the IG qualifications; and finally, protect whistleblowers.

Your act, here in New Jersey, for the Inspector General, does those very things. The Inspector General for New Jersey is currently in a statutorily independent role from the administration and management in day-to-day operations -- including accounting of the New Jersey government -- and is the watchdog of the Executive Branch.

The New Jersey act does contain those recommendations of the National Association's Green Book. In fact, the independence from the New Jersey Inspector General is currently derived in several sources in law. The New Jersey law requires the IG to submit a separate, independent budget request for resources; has a five-year term; can only be removed for cause; is confirmed by the Senate; and reports to the highest Executive Officer in the State.

Independence is about ensuring that the opinions, findings, and conclusions of the IG will be impartial and viewed as impartial by third parties, so that they can rely on us.

Initially I thought that the proposed consolidation that brought me here today to talk with you would actually eliminate these sources of

independence from the Inspector General. But the proposed language that I read just last evening appears to entirely remove the Inspector General altogether.

I can discuss how removing the independence of an IG will, in certain cases, jeopardize the future and continued employment of the IG. I can tell you that not having the independence opens the door for political influence in the hiring of the IG or staff. I can also point out that removing independence creates a chilling effect for the IG to speak truth to those in power, and subjectively dilutes any message you or others may receive directly from the Inspector General.

I could point out if one is not independent, it will cause them to limit scope, limit disclosure, or weaken or slant findings based upon political pressure. I could also say an IG functioning without independence is like taking a watchdog and turning that watchdog into a lap dog.

But rather I will shift my focus. I know that the proposal you have before you today substantially expands the powers of one office, and consolidates certain oversight functions into one. This in and of itself sounds like streamlining government and saving costs. But allow me to point out some of the not-so-obvious points of this proposal: This proposal also removes the very office that would serve as a check and balance on this newly created arm of government to ensure the independent, undiluted, objective, and fair evaluation of this office, like other offices in the Executive Branch. If adopted, the wolf may or may not be guarding the hen house. But how will you know? Because there will be no one who will independently have the courage to call "foul" within the Executive Branch if there were to be one.

It's been said, to *inspect* what you *expect*. Keeping the Inspector General who independently reports to the highest executive in the jurisdiction, affording the Inspector General the jurisdiction over the full Executive Branch in law, protecting the IG with a term of office, and removal only for cause is a great asset to you, the Governor, and the public. It is the best way to ensure you and the public continue to receive the undiluted facts without fear of censure. This also serves as an incentive for the Comptroller's Office to create a culture of compliance and use their power wisely. Trust, but verify.

As you know, the New Jersey Inspector General has rescued approximately \$50 million in five years, which is 25 times their annual budget. They've been responsible for removing very high-ranking State officials who were mismanaging their offices. This is the kind of response that can only be accomplished by a statutorily independent Inspector General who is unencumbered by a fear of outside influences, and who has the jurisdiction to conduct detailed investigations of the IG's direction without political influence.

In the event that the Comptroller becomes a separately elected office, I believe that this would create a separation-of-powers issue for any oversight by the Executive Branch. It would be a great loss to New Jersey, particularly in these financial times, to inoculate or diminish the Office of Inspector General, to limit its jurisdiction, or to abolish its very important oversight of the Executive Branch, especially when you simultaneously create a new arm of government with such expansive powers.

I am confident you are carefully reviewing cost-saving measures and the expanded powers of the Comptroller, but keep the eyes and ears on

the fiscal and operational integrity of this State, its officials and contractors in the Executive Branch, through a statutorily created, independent Inspector General. Count on this office to help you keep checks and balances on all of the Executive Branch.

Madam Chair and members of the Committee, I respectfully submit my comments to you, as stewards of your State, for your careful consideration. I sincerely appreciate this opportunity to appear, and I respectfully offer to cover or answer any questions that you may have.

SENATOR BUONO: Thank you so much.

Did you say that you have written testimony? Could you hand it-- Could you give it--

INSPECTOR GENERAL MIGUEL: I can, sure. I have written all over it. If you wouldn't mind, I'd like to maybe--

SENATOR BUONO: Well, that's okay. I just thought it would be helpful to--

INSPECTOR GENERAL MIGUEL: May I e-mail it to you? Can I take it home? I'll clean it up.

SENATOR BUONO: Okay. Yes, because I'll distribute it to all the members of the Committee then; not everyone is here, and that would be helpful.

INSPECTOR GENERAL MIGUEL: All right. I'd be happy to do that. Thank you very much. That way I can get you a clean copy, and you won't see how horrific my handwriting is. (laughter)

SENATOR BUONO: Okay. Thank you very much.

Any questions at this point? Senator Ruiz.

SENATOR RUIZ: Thank you for coming this afternoon and giving us testimony.

In Florida, do you have the same respective organizations that you have seen this morning, here in the State of New Jersey, as far as the different branches: the Medicaid Inspector General, your office, SCI?

INSPECTOR GENERAL MIGUEL: Thank you for your question. In fact, that's a very good question.

We're uniquely organized, to an extent. But the inspector general function is consistent -- fairly consistent throughout the nation. In Florida, we have inspectors general in each of the state agencies that have a small staff to do audits and investigations internal to that agency. We then have the chief inspector general, who reports to the governor; and I have some influence in the hiring and/or removal of an inspector general, and consult with the agency heads about their inspector general activities. I liaison for those activities across state government, from an enterprise perspective, and I believe provide added independence for the inspectors general to do their job.

In Florida, if an inspector general receives a complaint, and their agency head is the one which is being complained upon, that inspector general recuses themselves from that case and refers it up to the chief inspector general. And we have broad authority from an administrative perspective mostly, in the sense that we do have the ability to conduct investigations, to determine if a criminal law has been violated, and then, once we have reasonable belief -- not probably cause -- we collaborate with law enforcement in the state of Florida, and we can either use a local jurisdiction or the Florida Department of Law Enforcement.

With regards to your question about a Medicaid piece: In Florida we do not have a Medicaid inspector general. In fact, we have the Medicaid Program Integrity office, which is a part of the inspector general's office at the Agency for Health Care. And that Agency for Health Care is the designated state agency for the Medicaid program. The prosecutorial arm and investigative arm for Medicaid is, actually, housed in the attorney general's office, where I also have served as the inspector general -- I did their internal affairs cases of their sworn law enforcement officials in that agency. And I believe, maybe as far as the comptroller piece: We do not have a comptroller in the state of Florida, at the state level. We have what's called a chief financial officer. The chief financial officer performs broad and sundry added steps that go beyond a little bit what your model has, in that they really are the chief fiscal officer of the state -- the chief accountant -- and provide and pay all the bills, and collect all the revenues. They also oversee the treasury. Something unique about this is that the state auditor -- excuse me, the legislative auditor -- we also have. And that legislative auditor does peer reviews of the inspector general offices every three years to make sure we're following standards. And that legislative auditor -- between my statute and his statute, we have a provision in law that says that we avoid duplication. They can rely upon the work of the inspector general in the state agency or in the governor's office because we are independent, but they are the external auditor and they go about verifying the material financial statements and making sure that those statements are true, accurate, and correct.

I hope that answers your question.

SENATOR RUIZ: Thank you. And, I'm not sure if you had an opportunity to really review the proposals that (indiscernible). Just in listening to this morning, in your opinion, do you think that it makes sense to consolidate some of these services?

INSPECTOR GENERAL MIGUEL: I do, to some extent. I believe wholeheartedly in having the legislative arm continue to keep its oversight role. I also believe in the inspector general being the eyes and the ears from the supreme chief executive officer within the governor. And I guess if I were picking and choosing, I would go through the missions of the remaining offices to see where they more appropriately lie. And I have an opinion on that, but I don't know that that's why I'm here.

SENATOR RUIZ: Thank you very much.

SENATOR BUONO: Thank you, Senator Ruiz. Senator Cunningham.

SENATOR CUNNINGHAM: I just wanted to clarify something: Did you say that you had an inspector general for every department?

INSPECTOR GENERAL MIGUEL: That is correct.

SENATOR CUNNINGHAM: How many inspector generals would that be?

INSPECTOR GENERAL MIGUEL: We have 33 inspectors general. That includes the inspector general that we have for the Supreme Court, as well as the Public Service Commission and the Board of Education.

SENATOR CUNNINGHAM: And who do they all report to?

INSPECTOR GENERAL MIGUEL: The agencies under the governor report to the agency heads, but they also have a dual reporting relationship to me. Our cabinet structure means that there are 18 of those that have peer reporting relationship to me and the agency heads. They're appointed and selected by the agency heads in consultation with myself. The other remaining of the 33 have either a direct reporting relationship to a separately elected constitutional official, or a blend of that. For instance, the Florida Department of Law Enforcement is an example of one those; Highway Safety, Motor Vehicles is as well, where they report to the governor, the chief financial officer, the agriculture commissioner, and the attorney general of the state of Florida. So we kind of have a blend; but they-- I'm the chief who coordinates and serves as the liaison for the entire state.

SENATOR CUNNINGHAM: Okay, thank you.

SENATOR BUONO: Thank you, Senator Cunningham.

Do you have subpoena power? I was out of the room; you may have said that in one way or another.

INSPECTOR GENERAL MIGUEL: That's an excellent question. In 2006, then-Governor Bush formed what was called a state agency Council on Inspectors General. I was one of the five members selected to serve on that committee, and we were asked to evaluate any changes that needed to occur in the Inspector General Act. We deliberated over 80 different meetings, in public hearings with public comment, and we deliberated over the independence, the structure, the function. One of the recommendations that came out of that report -- and that report we were required by law to submit to the speaker of the house, the senate president,

and the governor by a date certain -- one of those recommendations included subpoena power. And we did not officially gain the subpoena power, so we sought a compromise where instead of each of the agency IGs having subpoena power, the chief inspector general would. We are still working on that expansion.

SENATOR BUONO: Thank you. I just-- And I'll wait to hear from our Inspector General, Mary Jane Cooper, to ask any further questions. But I was just looking at some of the information that you provided us with, and it states that you have, within your office, two distinct functions: auditing and investigations. How-- It sounds like you're a rose by another name, in essence. You're a comptroller, you'd be the comptroller in New Jersey, but in essence you're providing the same services. I mean, am I wrong there? I'm trying to compare.

INSPECTOR GENERAL MIGUEL: I think that your observation is accurate. In the Federal government, which is how the state of Florida is designed -- or we parallel the Federal government structure where there are 69 inspectors general at the Federal level, and they both have auditing and investigative jurisdiction. And the audit function we follow in Florida -- the Red Book function by the Institute of Internal Auditors, and the Yellow Book function as issued by the comptroller general of the United States. And then we have investigations as well under the inspector general. We do not have an equivalent of a comptroller that has the exact duties that are under the comptroller's purview like you do in New Jersey.

SENATOR BUONO: Okay, thank you.

Now if you could just shut off your microphone, because they won't work, probably.

INSPECTOR GENERAL MIGUEL: Certainly, certainly.

You know, back to your point about subpoena power, Madam Chair--

SENATOR BUONO: Yes.

INSPECTOR GENERAL MIGUEL: You know, in Florida, we are very proud of our very open government and our transparency. And, generally speaking, all of our contracts do compel even our contractors to participate, as well as our labor union agreements with regards to state employees and each of the policies. So we've not found it significantly a problem to not have that power because of our open records laws, and our strong relationship and regular daily liaison relationship with the Florida Department of Law Enforcement.

SENATOR BUONO: I'm not sure I understand what you just said. You're saying that you don't have oversight of, or preapproval of, contracts, and you don't feel like you need it?

INSPECTOR GENERAL MIGUEL: Oh no. No, I was referring back to your question about the subpoena power. Because our records law is so open and we're able to obtain the records, generally, that we need, and then we rely upon the Florida Department of Law Enforcement if we need to actually subpoena--

SENATOR BUONO: If you need to compel an individual.

INSPECTOR GENERAL MIGUEL: We have the ability to compel an individual for testimony, but the subpoena power for records-- If they're still an employee, I can compel them. If they're no longer an

employee, and outside government, then I have to work with the Department of Law Enforcement.

SENATOR BUONO: Okay, thank you.

INSPECTOR GENERAL MIGUEL: Thank you.

SENATOR BUONO: Inspector General Cooper, welcome.

INSPECTOR GENERAL COOPER: Thank you, Senator.

Good morning, and--

SENATOR BUONO: Excuse me, one second. If you need to leave to catch a plane--

INSPECTOR GENERAL MIGUEL: I appreciate it, again.

SENATOR BUONO: Oh, well thank you.

INSPECTOR GENERAL MIGUEL: Thank you so very much for the opportunity to be here.

SENATOR BUONO: Thank you so much.

INSPECTOR GENERAL MIGUEL: I really, really appreciate it.

SENATOR BUONO: Okay, thank you for all you do.

Okay, Inspector General Cooper; please.

INSPECTOR GENERAL COOPER: Thank you, Chairwoman Buono, and Vice Chair Ruiz, and distinguished members of this Committee, for the opportunity to discuss the Office of the Inspector General and the proposal for consolidation of the oversight functions.

Before I begin, if you don't mind, I would like to make a personal statement.

As you may recall, it was a little over five years ago that I was appointed by Governor Codey as New Jersey's first statewide Inspector

General after the office was created by executive order. And on July 1, 2005, the Office of Inspector General was created by this Legislature; and I was appointed to the position again by Governor Codey, with the advice of the Senate. It was a great honor and privilege to create the functional office and to serve the people of New Jersey, and now the third governor.

My term of five years under the Legislature will end on June 30, 2010. Not only has it been an honor and a privilege to create the office and hold the office for five-and-one-half years, but I have enjoyed it immensely and I personally will miss the work. I say this somewhat with a lump in my throat, because I want you to know that what I say here today is about preserving the independent office of Inspector General, not about preserving my job.

I have said from the moment that I was appointed to the position that I realized when my term was over a new governor would have the right and privilege to appoint a new Inspector General, with the advice of the Senate. I respect and honor his right to do that, and his privilege to do that.

That having been said, I would like to begin by providing you a brief summary of the Office of Inspector General operations, areas of oversight, and accomplishments since I was appointed Inspector General over five years ago. I say this not because it is about my particular term as Inspector General, but because it demonstrates what can be accomplished by an independent Inspector General's Office that cannot be accomplished by an investigative office merged within the Comptroller's office.

Created in 2004 by executive order, and by statute in 2005, the Office of Inspector General has served as the Governor's investigatory arm

to seek out waste, abuse, and mismanagement wherever State funds are spent; with a goal of providing increased accountability, integrity, and oversight of all recipients of State funds. This authority extends to, but is not limited to, State departments and agencies, independent authorities, county and municipal governments, and boards of education. Where there is an inspector general's office within a department or government agency, that departmental or agency inspector general can only investigate allegations or review programs specific to the department or agency.

In creating this statewide Office of Inspector General, the Legislature understood that an independent office with statewide jurisdiction was needed to ensure accountability and integrity at all levels of government.

During my tenure, the Office of Inspector General conducted numerous investigations resulting in detailed reports -- public reports -- of finding. Those reports are on our Web site, and I provided you with copies of all of those reports. The Office of Inspector General has rescued more than \$50 million of State funds and provided the basis of justified removal of a Deputy Commissioner, an Assistant Commissioner, an Executive Director of a State authority, and several other State officials who were mismanaging their offices or engaging in improper activities, costing the State incalculable loss of dollars, and employee and public loss of confidence.

By the way, that \$50 million does not include any of the money saved by the Office of Inspector General's efforts resulting in the reorganization of the \$8.6 billion Schools Construction Corporation. That \$50 million is precise savings of money, which we can calculate precisely

because they were grants that were -- money that was not released by agencies or money that is being retrieved. It's not an approximation of millions that are saved; these are precise dollars. So beyond the precise \$50 million that we've rescued, there are other millions of dollars that this office can claim back to the State.

And when the then-president of the Schools Construction Corporation was asked by a committee of this legislative body to estimate the amount of waste that occurred before our review exposed a complete lack of control and oversight, which caused a halt to the new construction, he estimated it to be one-half billion dollars -- an incredible amount of money wasted. We called a halt to the ongoing construction; and to the extent that it wasn't wasteful, required internal controls to be put in place. The Governor installed a new board and new management in place and, hopefully, the resulting -- what occurred there--

I just spoke to the press yesterday. What was the takeaway from the report that we issued yesterday? There is an entirely new culture at the Schools Development Authority that has occurred. We did other management studies for the organization, and we have a memorandum of understanding with the Schools Development Authority. They are paying the cost of two assistant inspector generals who can go any place within that organization, look at any documents that are there, interview anybody they want, and there have been countless other investigations that have been done. We do not even estimate how much money we have saved the Schools Development Authority.

Our reviews stopped the hemorrhaging, but we do not put a dollar figure on how many more millions would have been lost if we had not caused the internal controls and new oversight to be put in place.

OIG's investigation and the resultant public reports translate into meaningful consequences and benefits to the State, including financial recoveries, individual accountability, and improved government functions. When we use the word accountability, we mean accountability: individuals are named who are responsible for corrupting the financial controls within an organization, and commissioners have removed people who are responsible for that. In the Department of Corrections investigations, there was a Deputy Commissioner who had lied to both of his commissioners about the need for enforcement.

With a modest budget of just now over \$500,000 and a staff of 16, including myself -- and I am always heavily involved in every case the office handles -- and the two assistant inspector generals who are devoted to the Schools Development Authorities, and two administrative staff, the appropriation expended on the Office of Inspector General is a mere fraction of the amount of money the State spends on us. In fact, our calculation is that for every \$1 the State spends on us, we return \$7 into the State coffers.

The Office of the Inspector General is often the only Executive Branch entity -- it is the only Executive Branch entity with jurisdiction to conduct investigation into matters that do not involved allegations of wrongdoing that are not criminal. I think that is a little-known fact: While OIG does have subpoena power, it is also important to note that the Office

does not have criminal investigative authority, and does not have police power.

Additionally, with the creation of the Comptroller a few years ago, our Office no longer has auditing power. When OIG had auditing power, we did the audits in a very efficient way, without costing the agency where we were looking an additional penny. We worked with auditing entities that were out there -- as you remember, Senator Buono, we did have the power to hire outside agencies, but we did not. We saved the State the money of hiring outside auditors to do the audits.

We produced a line item audit of grant funds from the Division of Addiction Services to one provider, and with that audit we were able to determine exactly how every penny of that grant was spent and determined the exact amount of money that should be returned to the agency.

It is also important to state that the Office is not bound by allegation-based investigations. Perhaps one of OIG's greatest features is that we can initiate investigations proactively rather than strictly reactively. We are a very flexible agency. Often such investigations that are absent any allegation of wrongdoing provide a means for OIG to identify weaknesses or concerns within an entity, and provide recommendations for corrective actions before the loss of State dollars is realized, or, at least, is minimized.

OIG's investigations are comprehensive and multi-dimensional. We not only investigate allegations of wrongdoing, we investigate the root cause of failures in a system, determining if such failures are the result of mismanagement, weak or non-existent internal controls, improper conduct, or, perhaps, at its worst, personal enrichment at State expense. Our investigations include witness interviews, document review -- often

thousands of pages are reviewed in each of our cases, such as the large-scale investigations like the Encap Meadowlands investigation. Through these interviews and document review, OIG performs a thorough analysis and structuring of the evidence to accurately determine what happened.

The Office of Inspector General's investigations work with responsible management at the affected agencies -- be it the Governor's Office, General Counsel, the Commissioner, Governor's Authority Unit -- so that the corrective actions begin while our investigations are ongoing. At the appropriate level of government, why wait for reform until the report is issued?

OIG can identify the cancer within the organization and provide the appropriate authority with the cure, whether it be removal or treatment. Often by the time OIG's reports are issued, the corrective actions have been taken, or, at least, many of them have been, and OIG can remain in the oversight capacity to ensure that the rest are taken. The offending management person is usually removed long before our reports are issued. During the course of an investigation, continuing through and after the issuance of our reports, OIG remains in communication with the entity at issue to address those areas of concern OIG detected.

It has been my practice over the last five years -- and I believe it to be a good practice -- to advise management of weaknesses and concerns as OIG identifies them, as opposed to waiting until the conclusion of OIG's investigation, or to review so management can take immediate corrective action and to prevent harm to the entity.

The success of OIG's practice is that we have received requests from the same agency to come back, time after time. For instance:

Treasury. We have received numerous requests from Treasury to assist them in finding what the problem is, if there is a problem, and they take action while we're still there.

Since my appointment in 2005, I have worked to structure a robust office of staff of investigators, both attorneys and CPAs, who possess balanced judgment and keen attention to details, and conduct investigations and reviews that have provided the greatest fiscal and operational benefit to the State. I am proud of the office's collection of work, and the success in meeting its mandate. I hope a new Inspector General, with a dedicated, talented staff, will continue to perform the independent Inspector General's mission. It is not an intuitive mission, because the Inspector General does not perform an advocacy mission for anything but the truth. We are not looking to prove a point; we are looking to perform a corrective action on behalf of the State, yet it must be done in a fair and balanced way.

The last thing the Inspector General would want to do is to find that we have made a mistake after our report is issued. We give the affected agency's staff and people every opportunity to address the evidence that we have found. I tell the people at the beginning of our process that when we record our statements, we will give you the record. You're welcome to have an attorney present. Sometimes I say you can have your mother if it makes you comfortable. You can have anyone present, other than another fact witness. After the interview, if you think of things that you -- even if it's a sworn statement -- if you think of things that you've said that were incorrect, please come back and correct the record without any negative implications, because I do not want to find, after we've issued a

report, that you left something out and our report is incorrect. We give affected parties copies of our draft report to read and make statements to correct the record. Everyone is treated fairly, and the most important reason that we do that is so that we can report to the public accurate, truthful information about what was wrong in the entity.

The idea of consolidation has been promoted as a reason for overlap. I'm not quite sure what is meant by overlap. I presume it to mean that more than one oversight body is in the same agency at the same time. From my perspective, in the five-plus years that I have been in this office, overlap has not been the issue. And I believe that every one of us would say that.

A concern for this as an issue seemed to heighten when Governor Corzine desired to create the Comptroller's Office -- so much so that it was written into the Comptroller's statute that the Comptroller meet with several auditing and investigative authorities quarterly to assure that there was no overlap. I did not see it as an issue, and I have not seen it since. And as Chairman Edwards said, it was discussed at great length in Senator Rice's Commission meeting. And at the end of that meeting, I think it was decided that it was not an issue.

By the way, at the end of that meeting, Senator Rice -- Chairman Rice -- introduced legislation to create within several departments independent inspectors general, which would report to the Inspector General's Office. I don't know if anything ever became of that legislation. I think it's still outstanding, however.

First of all, it is not an issue -- overlap is not an issue -- because the Comptroller's Office and the Inspector General's Office do not perform

the same functions. The Comptroller performs audits, performance reviews, and contract reviews. The Office of the Inspector General conducts investigations. Secondly, it is not an issue because if we happen to be looking at the same entity at the same time, we would coordinate our efforts -- as I have suggested to the Comptroller that we do, on occasion. I consider it the efficient use of our staffs, and suspect that if there were within one of our offices auditors and investigators, that we could work together.

It is not an issue because, if the allegation comes to my entity, and to attention in an entity, I learned that the Comptroller is there or the SCI is there. What we do is, we communicate to each other and we decide what the best solution to the problem is. And generally, it is to wait until the entity has finished their work, and that is what we do.

As the Inspector General, I have maintained in regular communication and coordination with other State and Federal investigatory agencies, as appropriate in furtherance of our work. Primarily this communication is to ensure no duplication of work or effort; but also, in the course of OIG's investigations, we have identified issues outside of our jurisdiction and more appropriately addressed by other government entities, such as the State Ethics Commission, the Comptroller, or the Division of Criminal Justice. Once OIG has referred a matter to another government entity, I remain available to assist in any subsequent investigation that may be required. I think the record is clear that we have referred matters to all of these entities.

The critical point I would like to convey to you today, and I think it is one that Chief Inspector General Miguel did point out to you, is

that its most important feature -- of the New Jersey Inspector General's Office -- and essential to its functioning, is its independence. The Inspector General reports directly to the Governor, the highest officer in the State, and is appointed for a five-year term and can only be removed for cause. The Inspector General is free from external filters or chains of command that could improperly influence the direction, selection, or outcome of the work of the Office.

Having the Inspector General report to another office will diminish the Inspector General's powers. The Inspector General will no longer be free to go to a commissioner and interview a commissioner about issues. If the Inspector General is now removed from that independence, essentially there will be no Inspector General. If the Inspector General's investigators are now reporting to the Comptroller, there will be no Inspector General. Indeed, the plan that I just reviewed abolishes the Inspector General. Not to cast any aspersions on any comptroller, but one of the things that you must consider is that some day there might be a comptroller who would be mismanaging his office or her office. Who will investigate that comptroller?

As I said, right now the Inspector General is the only State officer in the Executive Branch who can investigate non-criminal wrongdoing. If the Comptroller were to engage in criminal activity, perhaps the Attorney General would become aware of that and investigate that. But nonfeasance in a non-criminal nature -- who will investigate that conduct? That is something that you, as the legislators, must think about.

Senator Bateman is not here now, but he did ask the question of what are other jurisdictions doing, and asked about the other

jurisdictions that have auditors. For instance, Pennsylvania was mentioned. Pennsylvania has a huge inspector general department. I think it is staffed by approximately 360 individuals. The New York comptroller is elected, and does have an investigation staff. I happen to know, and have met with, the comptroller of New York, and knew then the individual who created the investigative staff. One of the reasons that staff was created was that New York does not have the robust Division of Criminal Justice that New Jersey has.

SENATOR BUONO: Excuse me, I apologize for interrupting, Inspector General. But I know that Senator Kyrillos has to leave, and you have your peers behind you. We have a number of witnesses that I know have been here since 10:00 a.m., and I was just hoping you could just sum it up.

INSPECTOR GENERAL COOPER: Sure.

SENATOR BUONO: Thank you very much.

INSPECTOR GENERAL COOPER: I would just say that it would be wrong to think that the states that do have inspector generals do not have auditors, and they're completely different functions.

I think one of the things that-- If you would adopt this sweeping legislation as part of the budget, one of the things that you should consider is that when you created the Inspector General Office, you had senatorial review of that office and the office that you gave the subpoena power to. You reviewed it very carefully. You would not have that opportunity now. You had opportunity to question me about investigations. Actually, you had the opportunity to review what I had done for the past six months.

I would say that there would not-- I think you should consider that the efficiencies of budget will not come from putting my office within the Comptroller's Office. There will be no savings of budget from that. The Comptroller would have my entire budget. The savings of budget would come from the SCI, not from my office. And the staff of the SCI would be the-- There was some mention of the fact that my office is small. There will be no greater staff within the Comptroller's Office. The staff to be added would be from the SCI staff. I think Chairman Edwards was incorrect in saying that my small staff is too small to accomplish anything. The record of the Inspector General speaks for itself, and what we've been able to accomplish. I think he's speaking of the delay in issuing reports, and that actually comes from other reasons, not from the smallness of the staff. And if you're interested in that, I can provide that to you.

SENATOR BUONO: Thank you very much, and I really appreciate your extremely comprehensive testimony, Inspector General. And I want to thank you for your service to the State of New Jersey. You have performed in an exemplary fashion. I'm not surprised; I know what a great law student you were when we attended law school together at Rutgers-Camden. So I thank you for your service to the State of New Jersey and to the people of New Jersey.

Thank you for coming.

INSPECTOR GENERAL COOPER: Thank you.

SENATOR BUONO: Next we're going to hear from the Medicaid Inspector General, Mark Anderson. I know you've been here since the very beginning as well, and I urge you to be cognizant of your other colleagues who are waiting in the wings to testify. Thank you.

Welcome.

I N S P E C T O R G E N E R A L M A R K A N D E R S O N :

Good afternoon, Chairwoman Buono and distinguished members of this Committee. I am Mark Anderson, Medicaid Inspector General. With me today is First Assistant Inspector General Mark Moskovitz, and my Chief of Staff Niki Trunk.

Thank you very much for the opportunity to appear before you today to discuss the Governor's proposed consolidation plan. Let me say at the outset that, ultimately, the decision to consolidate our office under the Office of the State Comptroller is a policy decision to be made by the Governor and the Legislature. Additionally, I do not have information available to me regarding the potential cost savings that the consolidation may achieve. Accordingly, I view as my job today to simply provide information to the Committee about the Office of Medicaid Inspector General.

Our office is charged with oversight of New Jersey's \$10 billion Medicaid program, approximately \$4 billion to \$5 billion of which is contributed by the State, and the remainder by the Federal government. Specifically, our office is the only statewide civil agency that is statutorily authorized to prevent, detect, and investigate Medicaid fraud, waste, and abuse; and recover monies owed back to the State as a result. As such, there is little to no overlap with other State oversight agencies with respect to our investigations, audits, and recoveries. Our work last year, our first year in operation, yielded recoveries and cost savings of \$269 million, approximately half of which is returned to the Federal government.

Perhaps the only State agency which also investigates Medicaid providers is the Medicaid Fraud Control Unit within the Attorney General's office. That Unit is tasked with pursuing provider Medicaid fraud criminally. We have daily and weekly interaction with the Medicaid Fraud Control Unit on pending cases, as well as discussing potential new fraud schemes. In fact, our offices often work side-by-side in seeking both civil and criminal remedies against an unscrupulous provider.

Both our office and the Medicaid Fraud Control Unit are partially funded by the Federal government. The Federal government funds the salaries of the majority of our employees at 50 percent to 75 percent. I believe they fund 75 percent of the Medicaid Fraud Control Unit staff. As a result of this funding structure, the Federal government would not fund our employees working on assignments that do not achieve or enhance Medicaid program integrity.

Given the enormity of the dollars at stake, as well as the one million vulnerable New Jersey residents who are Medicaid recipients, our investigations, our audits, and our data-mining efforts all require specific working knowledge of Medicaid rules and regulations. We meet periodically with senior personnel at departments that receive Medicaid money for their programs, including Health and Senior Services, Human Services, and Children and Families. We have received investigative referrals from each one of these departments. These referrals have resulted in joint investigations with these departments.

As a result of our meetings with the Commissioner of Human Services and the Director of the Medicaid Division, we have identified certain specific Medicaid program integrity functions, previously handled by

the Department of Human Services, that are better suited for our office. For example, Section 6032 of the Federal Deficit Reduction Act of 2005 requires entities that make or receive annual Medicaid payments of \$5 million or more to certify annually that they have written policies regarding the Federal False Claims Act and its availability for use by employees, contractors, and agents of the entities. The entities must also certify that they have written policies regarding the civil and criminal penalties pertaining to making false claims and statements, and policies on whistleblower protection. Entities that receive over \$10 million annually in payments have to provide additional documentation to support the certification. Because this is a compliance function, we thought the monitoring of this statutory requirement should be in our hands.

Additionally, we now make the initial decisions on whether certain categories of providers will be permitted to enter the Medicaid program based on our background checks, and whether providers will be excluded from the program based on fraudulent behavior. Previously, the initial decisions on these actions rested within the Medicaid Division. As the independent oversight agency of the Medicaid program, we felt it best, and the Medicaid Division agreed, that the initial decisions on these types of actions should be made by our office.

We also serve as the watchdog over the Charity Care program. We work with an outside vendor to proactively and retroactively address Charity Care third-party liability issues. This new program became active in 2010, and through April of this year there have been over \$700,000 in additional recoveries.

Other areas that require our expertise include our data mining and third-party liability staff. In addition to running federally mandated reports, our data miners run reports to identify outliers in the Medicaid program. For example, in reaction to a Federal report on false ultrasound reporting, our data mining medical review analysts ran reports specific to New Jersey and identified new potential areas of fraud and abuse. Specifically, they identified suspect billing practices by providers, such as a provider billing for more than four ultrasounds for the same patient on the same day. Obviously we are pursuing these providers and, in fact, based on our investigation, hope to issue a report soon on our findings and total amount of recovery. Our Third Party Liability Unit initiated an investigation of pharmacies that were using an override edit to bill Medicaid first, instead of billing the contractually responsible third party. Working with the State's Medicaid fiscal intermediary, our Third Party Liability Unit is in the process of identifying recovery amounts for these pharmacies.

As a new office, we felt it important to expend significant efforts to raise our visibility. I believe our efforts have resulted in unquantifiable deterrence for potential fraudsters, as well as increased referrals from numerous sources throughout the State for follow-up investigation or audit.

We are also in the process of finalizing our first OMIG work plan. The work plan will provide a guide for Medicaid stakeholders throughout the state of what we will focus on, from an auditing and investigative perspective, for Fiscal Year 2011. Simply put, it is our first Medicaid risk assessment for the State.

We have also implemented a self-disclosure policy which allows for providers to report their own errors. We have received three self-disclosure reports to date, one for \$1 million. While we investigate these self-disclosures to confirm the amount owed, this policy encourages compliance with hospitals and providers throughout the state because, under such circumstances, we may waive penalties and fees when the disclosure proves accurate. Additionally, we work with these providers to improve their billing procedures to prevent these errors from occurring again.

Finally, we are working with the Medicaid fiscal intermediary to conduct provider training to correct abusive and wasteful billing practices.

Our 2009 recoveries and cost savings amount of \$269 million represented a 34 percent increase over the previous year. I believe that this increase is attributed, in part, to the independent nature of our office and the specific focus that it has with respect to the Medicaid program. Our enabling statute, in many ways, mirrors New York OMIG's enabling statute. The independent nature of that office and its reporting structure has enabled that office to bring hundreds of millions of dollars back to New York state. Accordingly, I believe maintaining staff dedicated to the specific mission of the Medicaid program is crucial to our continued success.

With that, I welcome any questions the Committee may have.

SENATOR RUIZ: Thank you, Mr. Anderson, for your testimony.

In light of what we've been hearing today about the consolidation of the respective divisions, in your opinion do you think that

it makes prudent sense to consolidate your office, and, in doing so, do you believe that the capabilities of what you do currently -- right now, overseeing the \$10 billion in the Medicaid program -- will be followed through in the way that you have done thus far?

INSPECTOR GENERAL ANDERSON: Thank you, Senator. I think any answer I give with respect to consolidation in the future would be speculative. What I can tell you is that looking over the past 13 or 15 months, we've been very successful in the current reporting structure that we have. We've built an office, essentially, from the ground up. We received transferred employees, and we created an independent culture. Decision making that we've had has been with respect to the Medicaid program, specifically. And frankly, those decisions and how that's been structured in our investigations, the buck has stopped with me. I believe because of the specificity of the Medicaid program, the layer of complications of the program-- We have staff dedicated to the mission of the Medicaid program integrity, data mining function, recovery, audit. Whether our efficiency, whether our productivity remains at the same level, frankly, is hard to say. And whether the consolidation enhances our capability or hinders our capability is also hard to say. All I have is the New York OMIG office as an example, and their success and independence. And I have what we've done in the past year, and our success and independence.

SENATOR RUIZ: I guess it was unfair to really just pose a question so broad. I guess the more specific question was: In your opinion, do you think that there's any redundancies in your office as it relates to the other departments and divisions that have been discussed today?

INSPECTOR GENERAL ANDERSON: No; there is no redundancy. We don't have the same targets. The Comptroller's Office, SCI, the Inspector General's Office -- they don't have Medicaid as their targets. We go out to Medicaid providers and recipients. That's not their purview, frankly. So, as I said in my testimony, there is little to no overlap, and we don't have interactions with the other offices other than seeing them in the same building, frankly. So in that regard, no, there is no overlap with any other State agency.

SENATOR RUIZ: Can you tell me -- and Madam Chair has returned; if you'll just indulge me in this last question and then I'll turn my mike off. I guess -- you have talked about the value in the capacity of the money -- the dollar figure. How many cases in one year do you potentially review?

INSPECTOR GENERAL ANDERSON: I believe, right now, we have currently close to 200 cases that we have, and that includes both Medicaid recipient cases and Medicaid provider cases. And by recipients, I really mean the people who receive the Medicaid dollars, and by providers I mean the people who service and who contract with the various departments in the State. We have close to 200 cases currently active right now.

SENATOR RUIZ: Thank you, Mark.

SENATOR BUONO: Thank you so much. You certainly do have a very unique and complex function, and we certainly want you to stay intact. And I think that that is what's envisioned, and so we look forward to working with you. I understand you have some new initiatives that you

testified to when I was out of the room, and I look forward to working with you and assisting you wherever I can. Thank you for being so patient.

INSPECTOR GENERAL ANDERSON: Thank you, Madam Chair.

SENATOR BUONO: I'm sorry-- Senator Cunningham.

SENATOR CUNNINGHAM: Thank you, and good afternoon.

INSPECTOR GENERAL ANDERSON: Good afternoon, Senator.

SENATOR CUNNINGHAM: I just wanted to ask one question. The Federal government requires that for the State to get any Medicaid dollars that there is a Medicaid Fraud Unit, and that operates out of the Attorney General's Office. Is there any overlap between what they do, as opposed to what you do?

INSPECTOR GENERAL ANDERSON: No. The Federal government-- No, Senator. The Federal government also requires the functions that are in my office as well. The Federal government pays 75 percent of the Medicaid Fraud Control Unit budget in the Attorney General's Office. The Federal government pays 50 to 75 percent of about 90 to 95 percent of the employees in my office. So we work side-by-side. The Medicaid Fraud Control Unit works on criminal matters, we work on civil matters. So we actually refer cases to them; at times they refer cases back to us that they can't prove criminally. So instead of overlap we actually work side-by-side, together.

SENATOR CUNNINGHAM: Okay, just one other question. How many people-- What is your staff? How many people are involved with you?

INSPECTOR GENERAL ANDERSON: We currently have, right now, approximately 45 to 46 people, and that's to cover a \$10 billion program and one million residents who are on Medicaid.

SENATOR CUNNINGHAM: Thank you.

INSPECTOR GENERAL ANDERSON: Thank you, Senator.

SENATOR BUONO: Thank you, Senator Cunningham. Thank you, Inspector General; we appreciate you taking the time.

Next we're going to have Rick Fair come forward and help us transition into the issue of the elected versus unelected comptroller. As I said, Rick Fair was our original State Auditor for the State of New Jersey -- nearly 20 years he served. We worked very well together, using your budgets for legislation that we would draft to put into effect some of your very thoughtful recommendations. So I wanted to thank you for all your years of work for the State.

Now you are with Rutgers University Governmental Accounting. You're the Director, is that correct? I thought you retired.
(laughter)

R I C H A R D F A I R: So did I. I thought I retired. I somehow ended up with this other job.

SENATOR BUONO: Okay.

MR. FAIR: But thank you very much for asking me to be here today.

SENATOR BUONO: Thank you for coming and waiting since 10:00 in the morning. Thank you.

MR. FAIR: I actually had no prepared remarks. What I thought I would--

SENATOR BUONO: Well, you always do better without.
(laughter)

MR. FAIR: What I thought I would do was to sort of give the other members who don't know my background a little history, not only about my background, but the background of the State Auditor's Office.

First of all, I served more than 30 years in State government here in New Jersey, the last 20 being with the Office of the State Auditor. But I also look at this from a different perspective -- not just New Jersey's perspective. I'm a former past president -- national past president of the State Auditors Association and the past national president of the Association of Government Accountants. So I'm also aware of what other states do regarding these types of operations -- audit and investigation.

I've got to put my auditor hat back on for just a second. Based upon what I heard today in the testimony, it seems to me that the proposed consolidation brings it down to really one issue: Does the Legislature want to keep the SCI? Because all the other functions seem to be moving, in tact, to the Comptroller's Office. And I can tell you, from my past experience as being the Auditor for 20 years, is that the SCI performs a very valuable function for the citizens and also for the Legislature. And their independence is important.

The other thing I wanted to do, since you're going to be talking about the elected State auditor or State comptroller, is to let you know that the reason the State Auditor-- The State Auditor came into existence-- By the way, I'm not the first. I'm the third.

SENATOR BUONO: Oh, I thought you were. Really?

MR. FAIR: No, the State Auditor came into existence in 1946. I've been around for a long time, but not 1946.

SENATOR BUONO: But not forever. (laughter)

MR. FAIR: And the reason the State Auditor was created in that Constitutional Convention in 1946 is because the Legislature turned a lot of power over to the Executive Branch of government. As a matter of fact, you know our Governor is the most powerful Governor in the nation. And there's only-- At the time they gave that authority to the Executive Branch, even the Governor, back then, testified and said it's important for the Legislature to have a watchdog that they appoint to oversee the operations of the Executive and Judicial branches of government. So they had recommended -- the Convention had -- delegates recommended the creation of -- in a constitutional position of the State Auditor. And it's the only constitutional position that's appointed by the Legislature. Every other constitutional officer is appointed by the Governor.

So that's sort of the background. I will stop and answer any questions you might have.

SENATOR BUONO: Did you have-- And I know -- jumping to the elected versus unelected comptroller/whatever you want to call it, depending upon what functions it has-- I really envision it as being more of an auditor. But I know that we had discussions a couple of years ago over whether and what the comptroller should be -- what functions they should have, whether or not they should be elected.

You see, my feeling is that -- to your point that we have the most powerful Governor in the nation. Even the President of the United States doesn't have the line-item veto power. And so the thought was-- I

mean, other states have elected attorney generals who are very powerful, elected comptrollers. We do have an elected Lieutenant Governor here, but it's defined -- it's undefined in statute, and it really is left up to the Governor to determine what that office actually does.

So my thought was that it would be a check and balance to the current system in that, if the person were elected and not appointed by the Governor, they would be self-motivated, they would be answerable to the people and not to the Governor -- his or her boss. So I don't know how you feel. I know there are issues -- and we can discuss that when Mr. Riccards comes up -- as to concerns regarding campaign finance, how you would fund a campaign, whether or not that person would be allowed to run for office, etc.

Do you have any feelings on that subject?

MR. FAIR: I guess my feeling-- If you look across the nation, it's pretty much split 50-50. When they said there's only a few state elected comptrollers, that's true. But what we call a *comptroller* here in New Jersey is really an auditor. It's an auditor by another name. Most of what Matt's group does is auditing, so let's deal with it from that perspective -- an appointed auditor versus an elected auditor.

And it's pretty well split 50-50 amongst the states. About half of them are elected, and half-- What I found over the years is just like you said on anything else. What really matters is the person that's in charge of the office, not so much how they got there. I mean, I've met some very good elected state auditors, and I've met some very bad elected state auditors, and the same thing with appointed state auditors.

All I can suggest to you is that auditing is a profession. And just like in any other profession, the person in charge should at least have a pretty good understanding of what they're supposed to do, what the standards are of that profession. And clearly the way it's established now under the State Auditor is not only the constitutional authority of the State Auditor, but also the statutory requirements of the State Auditor. That person has to be -- have the technical knowledge to actually do the job. And, historically, that's the way it's worked in New Jersey. So my only concern is not how they get there but who you have there.

SENATOR BUONO: So you think that the State Comptroller, since it really is an auditor, should be an auditor? Because he isn't?

MR. FAIR: Well, I mean, when the legislation was first posed-- I sat down with the Governor's Office back then and told him that, "You should probably--" I mean, it's really not a comptroller's function. A true comptroller's function is one that does what we consider -- what I call a *pre-audit operation*. They're responsible for establishing the processes and the procedures when spending money. Typically, that's what happens in the Comptroller's Office. They establish the internal controls, they establish the policies and procedures that people have to follow, and have the ultimate approval authority on whether or not a dollar should be spent.

SENATOR BUONO: Does that include, in your mind, the preapproval of contracts?

MR. FAIR: Oh, certainly they do. Absolutely. I mean, the procurement process is part of that whole process.

And actually, the State already has a comptroller. Now that person is called the *Director of OMB*. But historically, prior to that, what

Charlene does -- would have done 15 or 20 years ago -- would be to have a staff who would do all those types of things.

SENATOR BUONO: And now there's really a very thin staff, so they're incapable of doing that?

MR. FAIR: They're not capable of doing that now because they don't have the staff to do that.

So when they first decided they were going to establish this new elected comptroller, I told them, "It's really not a comptroller function. You should probably call it something else." And I'm not sure why they decided to do that. So when I gave my remarks, I'm really looking at mass operations from an auditor perspective and not so much as a true comptrollership.

When you look at what's going on in New York, New York has the traditional comptrollership function. As a matter of fact, they have a huge pre-audit operation, which means that every document has to be approved by the Comptroller's Office prior to spending the dollar. And they also have the post-audit operation. So what they've really done is, they've consolidated everything into one huge group.

SENATOR BUONO: Don't they administer-- Do they invest the pension system also?

MR. FAIR: He has to -- he invests in the pension system. The New York state comptroller is actually the most powerful comptroller in the nation as well. The powers that that comptroller has you usually don't see in most other states.

SENATOR BUONO: But New York also has an elected attorney general. Don't they have an elected--

MR. FAIR: Most states that have-- I'm sorry, Madam Chair. Most states that have the elected state auditor also have a whole number of elected officials: governor, lieutenant governor, secretary of agriculture, secretary of education, attorney general. I mean, it's a whole group of people who are part of the electoral process. If you see an elected state auditor, check it out. You're going to find out a whole bunch of other elected officials in those states.

SENATOR BUONO: So it's more of a cultural bias toward having -- or against--

MR. FAIR: How you run government.

SENATOR BUONO: A couple of years back when we were discussing the whole issue of creating a comptroller, we discussed how a comptroller, or an auditor in this case, would determine which contracts or -- which contracts, I guess, to audit. And you had talked to me about -- that it really shouldn't be dependent upon the dollar amount of the contract; that it really should be dependent upon other factors that indicated whether there was a risk that there might be something amiss.

Can you-- Do you remember that? Would you care to go into that at all?

MR. FAIR: Absolutely. It's always a mistake if you think you should set guidelines on what to review and not to review based upon a dollar amount. I'll give you an example. The largest expenditure the State of New Jersey makes is State aid to schools. That's a no-brainer. You review a couple of transactions, and what's the chances of something bad happening there? A school district doesn't get the money they need, they're

going to complain. If they get too much, somebody is going to find out.
(laughter)

SENATOR BUONO: Right. So it would be based-- Could you give us an example of factors that you would weigh in determining whether or not you think there's a high risk -- that something should be audited?

MR. FAIR: Well, the first thing--

SENATOR BUONO: A new program for example, maybe?

MR. FAIR: The criteria that I used to use in my Office -- and I'm pretty sure they still use it in that Office today -- is a whole host of things. It's how new the program is, where the money ultimately ends up. If the money ends up in a very -- at a place in government that's very high in nature, chances are nobody is going to take it. But if the money ends up in an individual's or vendor's hands, there's a better possibility for wrongdoing, if you will. So it's where the money ultimately ends up.

The process it goes through, the controls that are in place to oversee the spending of the money-- All of these things come into play when you're actually looking at whether or not you should perform an audit or further investigation of that transaction.

SENATOR BUONO: I had asked the Comptroller, Mr. Boxer, a question about the possibility of taking -- reorganizing the auditors -- the individual department and agency auditors -- into his office so that, in a sense, he wouldn't have to hire anyone new; and yet he would be performing a much more intensive, informed auditing of those he's supposed to be auditing, because he's taking those people who are trained in that specific area and putting them -- their knowledge and expertise -- to good use. Do you have an opinion on that?

MR. FAIR: Actually, I've talked about this in the past. I appreciate what Matt's saying. I mean, if you follow all the other testimony that's gone on here today -- especially the person from Florida -- when you have a tendency to follow the Washington, D.C. model of enforcement, you place a lot of these operations in the individual departments of state agencies -- or in this case, Federal agencies. So every Federal agency has their own IG, which has their investigation and audit function.

What's happened in New Jersey over the years is, as operations came into existence, the individual departments set up their own internal audit units. And internal audit units is a misnomer to a certain extent because-- For example, in the Department of Human Services, they call it an *internal audit unit*, but they're really auditing third-party providers. They're not auditing themselves, if you will.

SENATOR BUONO: Do they? I don't think they do audit themselves. If they do, that would be shocking.

MR. FAIR: They used to audit themselves.

SENATOR BUONO: When was this? How long ago?

MR. FAIR: Well, my first job with the State of New Jersey was the Director of Auditing for the Department of Human Services, and that was back in 1979.

SENATOR BUONO: The right question.

And so what happened? Okay, first: How well did it work? And I guess you are kind--

MR. FAIR: In all honesty, it's like everything else in New Jersey in the past 30 years.

SENATOR BUONO: It depends on the person.

MR. FAIR: When you have a reduction of funding in certain areas, the first thing you're going to give away is the non-program operations, the back-room operations. And if you take-- At that time, when I was the Director, I had 120 folks who worked in the Department of Human Services under me. And we did a little bit of auditing internally, but most of the work we did was the third-party providers -- specifically some of the Medicaid stuff that's being done now.

Over the years, that number has crumbled to a point where if Matt was to consolidate other offices -- based upon what I remember two years ago when I left the State -- he would probably end up with another 30 or 40 people. Quite frankly, most of those folks are ready to retire because they've been in those same jobs for the last 30 years.

So what do I think about it? It's not a bad idea. But I just don't know what resources are out there, what their capabilities are right now.

SENATOR BUONO: I mean, there's really so much more that can be done than I think is proposed by this legislation, for example -- that would really make sense, that would consolidate, that would make government work better, and that would probably save money. For example -- and I was wondering if you have an opinion on this -- in the DCA, we spend a lot of money -- well, in the past (laughter) -- we gave a lot of money back to towns and cities by way of municipal aid, and we still do give a considerable amount of money back to the towns and cities. Does it not make sense to take the local finance -- the local government unit and put it into-- I mean, really, it's oversight, and program review, and performance review; none of which I don't think is -- I don't think any of

that is done. Wouldn't it make sense to take that out of the DCA and put that into a comptroller's office?

SENATOR CUNNINGHAM: The local finance boards?

SENATOR BUONO: Local finance boards, yes.

MR. FAIR: It would. But really all they're doing now -- local governments-- Once again, all this is based upon my experience two years ago. I've left State government. It hadn't changed much in 30 years, so I don't think it changed much in two years.

SENATOR BUONO: It hasn't changed in a long time.

MR. FAIR: But making that assumption -- given that assumption -- right now, all Mark's group is doing over there is keeping its head above water in terms of trying to do what they're mandated to do by statute, in terms of approving budgets and reviewing some of the budgetary aspects of it. And it's still a manual system. I mean, they haven't automated any of that. So I'm not sure if you moved it someplace else whether they would be able to accomplish anything new. Once again, it's one of those areas where we spend a lot of money.

SENATOR BUONO: But it sounds duplicative. Does it not sound like they're overlapping if, in fact, the Comptroller-- One of the Comptroller's roles is to oversee the spending of State dollars. Wouldn't that-- In a sense, they're duplicating one another's efforts.

MR. FAIR: Except for one is post and the other is pre. It's comptroller versus auditor operation again. What they're doing over in local government services now is done prior to the actual implementation of the budget. And what the Comptroller's Office does is post, after the money is spent.

SENATOR BUONO: Well, that's because of the way it was created. That's not necessarily the way it should work or the way it works in New York, for that matter. Right?

MR. FAIR: It doesn't work that way in New York. That's correct.

SENATOR BUONO: Thank you.

Does anyone--

Senator Cunningham?

SENATOR CUNNINGHAM: Yes, just one.

SENATOR BUONO: Yes, Senator Cunningham.

SENATOR CUNNINGHAM: Thank you.

I think the local finance board, which is over at DCA, is different than the local governmental. So I think what we're talking about, perhaps, is the local finance board coming--

MR. FAIR: Okay, I misunderstood.

SENATOR CUNNINGHAM: Right, coming under -- not local governmental services.

MR. FAIR: Okay, I misunderstood then. I'm sorry.

SENATOR CUNNINGHAM: And I just have one last-- Just from your own observation-- I know you said that in terms of an elected auditor or comptroller, it really depends upon the person who is in that position. But since it would be a cultural difference for the residents of New Jersey to actually vote for this position, what would you say are the advantages that we would tell people if this were to happen?

MR. FAIR: What do I believe are the advantages?

SENATOR CUNNINGHAM: The advantages of having an elected comptroller or auditor.

MR. FAIR: Well, the obvious advantage is there is no doubt about the independence -- at least the perceived independence. The public is the one who chose that person to do that job.

SENATOR CUNNINGHAM: And are there any disadvantages?

MR. FAIR: Independence. (laughter) I mean, quite frankly, the perceived independence is that the public chose them for the job. The reality is, to get that job, there's an awful lot that has to occur that might, somehow, impede that person's independence.

Let me put it this way. New Jersey has had a State Auditor since 1946, and not once has a State Auditor ever been indicted in the State of New Jersey. That cannot be said in the states that have elected state auditors.

SENATOR CUNNINGHAM: That's good. Okay. Good point.

SENATOR BUONO: Well, thank you so much, Rick. As always, you continue to be a resource to me and to everyone in State government. And your testimony is, as always, invaluable. Good luck to you.

MR. FAIR: Thank you, Senator.

Thank you.

SENATOR BUONO: And last, to sum it all up, we have, from an esteemed think tank in New Jersey, the Hall Institute, its Executive Director.

We're honored to have you.

Again, Michael Riccards to testify regarding the wisdom of having an elected comptroller.

MICHAEL P. RICCARDS: Thank you very much.

I appreciate the members of the Committee who have continued on.

My name is Michael Riccards, and I'm the Executive Director of the Hall Institute of Public Policy here in Trenton. I am grateful for the opportunity to meet with the members of the Committee and to discuss what I believe to be one of the most important structural changes being considered by the State Legislature.

For the past several years, I've advocated an independent comptroller and was pleased when Governor Corzine appointed -- named an appointed comptroller. But this bill's focus is broader and more correct. It is time to establish an elected comptroller with greater responsibilities.

In 1947, the State Constitutional Convention created a unified executive in which only the Governor was elected by the people of New Jersey. On paper at least, the New Jersey governorship went from being a comparatively weak office to the strongest governorship in the nation. But in two generations, the job of governing has become much more complex, and the oversight responsibilities in areas of finance have multiplied beyond our imagination. In this state, and at this time, the basic issues we face are financial, and stronger accountability is needed.

First, the elected comptroller, under this proposed amendment, will assume the responsibilities of the Office of the State Auditor, as outlined in the Constitution and State statutes. That Office embraces the

responsibility to “conduct post-audits of all transactions and accounts kept by or for departments, offices, and agencies of the State government and to report to the Legislature or any Committee thereof, and to the Governor.”

The State Auditor can personally, by his assistants, or by contract with independent public accounting firms, examine and post-audit all accounts, reports, and statements; and make independent verification of all assets, liabilities, revenues, and expenditures of the State, its departments, its institutions, its boards, commissions, officers, and any and all other State agencies now in existence or later created.

The scope of an elected comptroller would include not just investigating public contracts, but the office would have the authority to investigate the uses and expenditures of public funds at any level, without dollar levels being set, even for so-called *independent authorities and boards*. There are new standards of accounting and corporate responsibility in public companies, mandated by Sarbanes-Oxley. Can we expect any less of public appropriations, expenditures, and resources?

Obviously, we are proposing a constitutionally separate officer in order to strengthen its independence from the other branches of government; to avoid any hindrances to its investigations; to seal it off, as best we can, from political leaders, parties, and interest groups; and to increase the transparency of all public transactions so as to promote honest government. Also, by relating to other state comptrollers, the New Jersey Comptroller will promote the types of business and accounting oversight that represents best practices in the profession.

Second, I agree with the New York state model that the elected comptroller should have authority over the state pension funds. That

oversight will not guarantee that high investment returns are the outcome. That has not been the case in the last two years in New York. But those huge resources of this state and its dedicated employees demand structured, informed, and persistent oversight.

Third, there may be some concern about the partisan aspects of electing a new official. I would propose that the candidates for the comptroller position, nominated by petition, be at least listed on a ballot without any preference to party labels. And surely this election should be totally publicly funded with a cap on expenditures for campaigns.

Madam Chairlady, the Senate should be commended in seeking to make an important structural change in our government. It is time to recognize the difficult and sophisticated tasks before us in terms of fiscal public policy and transparency.

Thank you for your time.

SENATOR BUONO: Thank you.

Now, have you actually done research on this? How did you come to your conclusions, I guess?

MR. RICCARDS: We've looked at other comptroller positions. And much of what has been said is absolutely correct. The country is pretty much divided between those who are elected and those who aren't elected. The difficult part is always: How do the names come to the ballot? Do they come through the parties and conventions? Do they come through petition? Do they come through a mix? And I think that's difficult. And to run a campaign, as you all know, is terribly expensive in a state like this.

But I think that having listened -- if I may say, Madam Chair -- to these really dedicated State employees here -- they are leading a

collection of feeble agencies. They really are not leading agencies -- and once in a while they hit pay dirt. And they come back and report they saved \$50 million, \$100 million. My God, if they saved all they said, we wouldn't have the budget problems we have. But they are really a collection of feeble agencies that are not able to do -- not because they don't want to -- they're not able to do the incredibly complex types of responsibilities that are ahead of us. We are the first or second highest per capita income state in the union. We are, in terms of population, among the top 15 or so. We are a state that has enormous financial problems. There wasn't much discussion this morning -- I wish there were -- of the pension system and the responsibilities of the pension system. And the people I worked with, in trying to examine the pension system, are very dedicated people. But, once again, most of them go home before the Asian markets open. How do they know how to invest your money, my money, employees' money?

So I think we really need a comptroller who is extremely powerful. And if so, we ought to look more, I think, to the model of New York than the model that we currently have.

SENATOR BUONO: And obviously I think New York is a model that we should try and emulate. But I would note a caveat. As you may recall, in New York state there has been an ongoing issue about the misappropriation or misinvestment -- something with respect to their pension fund. Can you-- Was it Hevesi?

MR. RICCARDS: Yes.

SENATOR BUONO: It was Hevesi.

MR. RICCARDS: And I think that, in fact, the Attorney General has been looking into the activities of the previous comptroller -- who was elected -- and his assistants. And I believe that investigation is still ongoing. But it seems to me that you're right when you quoted Lord Acton in the beginning of the hearing -- power does corrupt, and absolute power corrupts absolutely. And so I think there have to be ways in which you do deal with the questions of accountability. And elections are still the best way we can find of making a system accountable.

SENATOR BUONO: I couldn't agree with you more.

I do-- One of the issues that is brought up to me time and time again -- actually two issues -- with respect to an elected comptroller is the concerns regarding fundraising. And you present an alternative that it would be publicly funded. But, obviously, the public would have to agree to expend funds. And so I don't know how reasonable it is to expect that they would, at this point in time. But that would be a solution.

And also the criticism -- and I don't know if it's a criticism, but it's certainly a concern that I've heard -- is that someone might use the position as a stepping stone to run for governor or something else. I assume it would be governor or maybe U.S. Senator. And I certainly wouldn't have a problem putting that restriction in the legislation that they couldn't run for -- I don't know -- it would probably have to be a certain period of time in order for it to be constitutional, I would imagine.

But have you heard that concern as well?

MR. RICCARDS: I haven't heard that concern. I've heard the first concern, obviously. But I haven't heard the second concern. And I think there are very few examples. I know in New York where a person has

moved out of being a comptroller -- there are a couple though -- into higher office. That is frequently the path of attorney generals.

SENATOR BUONO: Right, Mario Cuomo.

MR. RICCARDS: It's really, I think, a serious matter that -- the politicalization of justice in those states where attorney generals are elected. It goes back to Tom Dewey in New York.

SENATOR BUONO: Any questions, Senator Cunningham?

SENATOR CUNNINGHAM: No.

SENATOR BUONO: The lone member who stuck it out for how many hours we've been here. (laughter)

Well, I thank--

MR. RICCARDS: Thank you for your patience.

SENATOR BUONO: Thank you for your patience. And I look forward to working with you on this and other issues.

Thank you for your--

MR. RICCARDS: Thank you, Madam Chair.

SENATOR BUONO: You've been a real resource to me on the pension issue.

This hearing, and your testimony, and all of the participants' testimony will certainly aid the Legislature in the coming -- less than one month now -- as we deliberate the budget and approximately 30 separate pieces of legislation that we will be considering in order to pass the budget as is.

So I want to thank everyone for participating. This meeting is in recess -- not recess, adjourned.

(MEETING CONCLUDED)