

WORKPLACE TRAGEDIES: EXAMINING PROBLEMS AND SOLUTIONS

FIELD HEARING

BEFORE THE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
COMMITTEE ON
EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED TENTH CONGRESS
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WORKPLACE TRAGEDIES: EXAMINING PROBLEMS AND SOLUTIONS

**Monday, January 14, 2008
U.S. House of Representatives
Subcommittee on Workforce Protections
Committee on Education and Labor
Washington, DC**

The subcommittee met, pursuant to call, at 2:00 p.m., in the third floor courtroom, Linden City Hall, 301 North Wood Avenue, Linden, New Jersey, Hon. Lynn C. Woolsey [chairwoman of the subcommittee] presiding.

Present: Representatives Woolsey, Payne, and Wilson.

Also Present: Representatives Andrews and Holt.

Staff Present: Jordan Barab, Health/Safety Professional; Lynn Dondis, Senior Policy Advisor, Subcommittee on Workforce Protection; Sara Lonardo, Staff Assistant, Labor; and Richard Hoar, Minority Professional Staff Member.

Chairwoman WOOLSEY. A quorum is present. The hearing of the Workforce Protection Subcommittee on Workforce Tragedies: Examining Protections and Problems and Solutions will come to order.

Pursuant to Committee Rule 12A any Member may submit an opening statement in writing which will be made part of the permanent record.

I now recognize myself, followed by Ranking Member Joe Wilson and Congressman Payne for opening statements.

I want to say good afternoon to all of you. Thank you for being here. Thank you, Mayor Gerbounka and staff for making us so comfortable and for hosting us today. My staff tells me his staff has been a joy to work with. So thank you very much.

It is a pleasure to be in Linden today and I want to welcome our witnesses. Thank you for being here with us. Thank you attendees for being in the audience and caring about what we care about.

I want to particularly thank Congressman Donald Payne for not only suggesting, but pushing and encouraging this hearing for us today and thank him for all of his great work on behalf of working people. Thank you, Congressman Payne.

I am delighted that Representative Wilson, Ranking Member of the subcommittee is present to be with us today. And I also want to welcome Representatives Rob Andrews and Rush Holt who are Members of the Full Education and Labor Committee for being with us.

While it's very nice to visit the Garden State of New Jersey, I wish this hearing was not necessary, especially when these workplace deaths could have been avoided. On December 1, Victor Diaz and Carlos Diaz, employees of North East Linen Company were killed as they were power washing a 20,000 gallon dilution tank in an industrial laundry facility located right here in Linden. They were working in a confined space, but they were working without the protective gear and precautions required by OSHA's confined space standard. There was no attendant present to ensure their safety and no harnesses to haul them to safety when they got into trouble. And so Victor and Carlos Diaz suffocated from exposure to toxic chemicals.

Like many workers in this country, Victor and Carlos worked in the industrial laundry industry where employees have been largely forgotten and the hazards of that industry go unnoticed. Yet, these workers who clean the linens and the uniforms for hospitals and other institutions face serious hazards, deadly chemicals, machinery that can kill and maim, carelessly discarded contaminated needles and painful back injuries.

Unfortunately, what happened to Victor and Carlos was not an isolated incident in the laundry industry. For example, in March of last year, Eleazar Torres-Gomez, an employee at Cintas Corporation's industrial laundry facility in Tulsa, Oklahoma, died after being caught in machinery and dragged into a dryer where he was killed. In December, Victor and Carlos Diaz were also working in a confined space and they were right here in New Jersey where deaths and injuries in these conditions are all too common.

In fact, this was the third multi-worker confined spaces fatality in the United States in the last four months. Here is another statistic: more than 5700 workers died in the workplace last year in the United States of America. This is the 21st century. These numbers are not acceptable. Sixteen deaths every day in the United States. But this number doesn't even come close to accurately counting deaths resulting from work-related illnesses. In fact, the National Institute for Occupational Safety and Health estimates that between 50,000 and 60,000 workers die every year as a result of workplace illnesses. The sad fact is that most of these deaths and illnesses could have been prevented had OSHA standards and other well-recognized safe working procedures been followed.

The Members of this subcommittee and the full Education and Labor Committee chaired by Representative George Miller from California, have made worker health and safety one of our top priorities this year. And this hearing will supplement our on-going investigation into why American workers in the 21st century in the wealthiest nation in the world are not protected.

Unfortunately, what we have established thus far is that the current Administration has failed to keep America's promise to send workers home at the end of each day alive and in good health. Instead, OSHA has bowed to the request of employers and has relied on companies' voluntary compliance rather than enforcing existing laws and issuing new protective standards to address new and existing standards. This Congress has been forced to move forward to compel OSHA and other agencies at the Department of Labor to live up to the responsibility given them under the law.

So Congressman Andrews and I have legislation pending to expand OSHA protections to the 8.6 million public employees who are currently without OSHA coverage. This legislation also raises civil penalties on employers and makes felony charges available against employers who commit willful violations. The House has also just about—I think it's going to happen next week. We're about to take up crucial mine legislation to force the Mine Safety and Health Administration to keep miners safe.

Last fall, the House passed the bill that I had introduced, the Popcorn Lung Workers Disease Prevention Act that will require OSHA to develop standards to protect workers exposed to diacetyl. You may have never even heard of diacetyl. This legislation was necessary because popcorn and flavoring workers who work around the chemical are contracting popcorn lung, an irreversible life-threatening respiratory disease, at an alarming rate. And OSHA has simply failed on a timely basis to protect these workers. And now we're learning that grill cooks are also affected by this already deadly chemical. And you know what, we eat it. So we better start paying attention to this stuff.

In addition and in response to the health and safety hazards of Cintas Corporation that have been killing and injuring its workers, we are examining why OSHA cannot or will not do corporate-wide investigations when a national company such as Cintas has a record of ignoring worker safety.

The bottom line is that when OSHA fails to act, American workers pay the price, often with their lives. So today, with the tragic deaths of Victor Diaz and Carlos Diaz, for the tragic consequences to their families, for the effect it's had on their friends and co-workers and for their communities, we are going to review what went on. We're going to learn some lessons, and possibly we can honor these fallen workers by preventing workplace injuries and deaths in the future.

Thank you. And Ranking Member Wilson.

[The statement of Ms. Woolsey follows:]

Prepared Statement of Hon. Lynn C. Woolsey, Chairwoman, Subcommittee on Workforce Protections

Good Afternoon.

It is a pleasure to be in Linden today and I want to welcome all of our witnesses and attendees.

In particular, I want to thank Representative Donald Payne for suggesting this hearing and for all of his great work on behalf of working people.

I am delighted that Representative Wilson, the ranking member of the subcommittee is present today.

And I also want to welcome Representatives Rob Andrews and Rush Holt, members of the full Education and Labor Committee, who are [or will be] joining us.

While it is nice to visit the Garden State of New Jersey, I wish this hearing was not necessary, especially when these workplace deaths could have been avoided.

On December 1, Victor Diaz and Carlos Diaz—employees of North East Linen Company—were killed as they were power-washing a 20,000-gallon dilution tank at an industrial laundry facility located here in Linden.

They were working in a confined space but without the protective gear and precautions required by OSHA's confined space standard.

There was no attendant present to ensure their safety and no harnesses to haul them to safety when they got in trouble.

And so Victor and Carlos Diaz suffocated to death from exposure to toxic chemicals.

Like many workers in this country, Victor and Carlos Diaz worked in the industrial laundry industry where employees are largely forgotten and the hazards of that industry go unnoticed.

Yet these workers who clean the linens and uniforms for hospitals and other institutions face serious hazards: deadly chemicals, machinery that can kill and maim, carelessly discarded contaminated needles and painful back injuries.

Unfortunately, what happened to Victor and Carlos Diaz was not an isolated incident in the laundry industry.

For example, in March of last year, Eleazar [Al-a-zar] Torres-Gomez, an employee at Cintas Corporation's industrial laundry facility in Tulsa, Oklahoma died after being caught in machinery and dragged into a dryer, where he was killed.

Victor and Carlos Diaz were also working in a confined space, and deaths and injuries in these conditions are all too common as well.

In fact, this was the third multi-worker confined space fatality in the U.S. in the last 4 months.

More than 5,700 workers died in the workplace last year.

This amounts to almost sixteen deaths every day.

But this number doesn't even come close to accurately counting deaths resulting from work-related illnesses.

In fact, the National Institute for Occupational Safety and Health estimates that between 50,000 to 60,000 workers die every year as a result of workplace illnesses.

And the sad fact is that most of these deaths and illnesses could have been prevented had OSHA standards and other well-recognized safe working procedures been followed.

The members of this subcommittee, and the full Education and Labor Committee chaired by Representative George Miller, have made worker health and safety one of our top priorities, and this hearing will supplement our ongoing investigations into why American workers today are not protected.

Unfortunately, what we have established thus far is that the current Administration has failed to keep the promise to send workers home at the end of each day alive and in good health.

Instead, OSHA has bowed to the requests of employers and has relied on companies' voluntary compliance, when it should have been enforcing the law and issuing new, protective standards to address new and old hazards.

This Congress has been forced to move forward to compel OSHA and other agencies at the Department of Labor to live up to the responsibility given them under the law.

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This legislation also raises civil penalties on employees and makes felony charges available against employers who commit willful violations.

And the House is about to take up crucial mine legislation to force the Mine Safety and Health Administration to keep miners safe.

Last fall, the House passed a bill I had introduced—the Popcorn Lung Workers Disease Prevention Act—that would require OSHA to develop standards to protect workers exposed to diacetyl [die-ass-a-teal].

This legislation was necessary because popcorn and flavoring workers who work around the chemical are contracting "popcorn lung"—a irreversible and life-threatening respiratory disease—at an alarming rate, and OSHA has simply failed on a timely basis to protect them.

In addition, and in response to the health and safety hazards at Cintas Corporation that have been killing and injuring its workers, we are examining why OSHA cannot or will not do corporate-wide investigations when a national company such as Cintas has a record of ignoring worker safety.

The bottom line is that when OSHA fails to act, it is American workers who pay the price, often with their lives.

This hearing will look at a tragedy that occurred in this City, taking the lives of two innocent workers, Victor and Carlos Diaz.

And what I want to hear from all of our these heartbreaking events from happening.

How do we ensure that OSHA fulfills its mission to protect workers from unsafe and unhealthy workplaces?

The deaths of Victor Diaz and Carlos Diaz were a tragedy—for their families, for their friends and co-workers and for their communities.

What we must do is learn from this tragedy so that we honor these fallen workers by preventing workplace injury and death in the future.

Mr. WILSON. Good afternoon. Thank you, Madam Chairwoman Woolsey, and thank you, Mr. Payne, for hosting us in your congressional district today. At the outset, I would like to express my deepest sympathy and condolences to the families of Mr. Carlos Diaz and Mr. Victor Diaz, in the loss of their loved ones. I know that the Occupational Health and Safety Administration, OSHA, is investigating this accident to determine the cause. I am confident that the investigation will be thorough. Because there's an on-going investigation, this is a preliminary hearing and I look forward to a report on the completed investigation.

While congressional oversight is important, without a completed investigation there is little factual evidence to determine what potential changes are needed to existing OSHA regulations. More broadly, safety regulations already address many of the concerns to be examined today. For example, there are regulations addressing confined space and lockout/tagout issues. Can these regulations be improved? What other regulations are at issue? Currently, there are no clear answers.

While I believe more could be learned when the investigation is completed, I am hopeful that today's hearing takes full advantage of this opportunity by focusing clearly on workplace safety and the related laws and regulations.

Today's testimony will demonstrate that no one is sitting idly by when it comes to safety. This field hearing will give us a unique perspective on what New Jersey is doing cooperatively with industry and labor to cement safety as a cornerstone of every working day. I look forward to the discussion.

On a personal note, I am grateful to be in the home region of my daughter-in-law who is a proud native of North Jersey. I can report that the ties and friendships between the people of New Jersey and South Carolina are stronger every day. Additionally, I represent Hilton Head Island, South Carolina, where a huge number of energetic constituents are welcome transplants from New Jersey. And of course, you don't have to just, you don't need to relocate, just come and spend vacation at the shore and then the beach.

Again, I want to thank my New Jersey colleagues and we've got three very fine persons here today. I want to thank them for providing this opportunity to visit the Garden State.

[The statement of Mr. Wilson follows:]

**Prepared Statement of Hon. Joe Wilson, Ranking Republican Member,
Subcommittee on Workforce Protections**

Good afternoon. Thank you, Mr. Payne for hosting us in your Congressional District today. At the outset, I would like to express my condolences to the families affected by the accident in Linden. I know that the Occupational Safety and Health Administration (OSHA) is investigating this accident to determine the cause and I am confident that the investigation will be thorough.

Because there is an ongoing investigation, however, I am concerned that this hearing may be premature. While Congressional oversight is important, without a completed investigation there is little factual evidence to determine what potential changes are needed to existing OSHA regulations. More broadly, safety regulations already address many of the concerns to be examined today. For example, there are regulations addressing confined space and lockout/tagout issues. Can these regulations be improved? Are other regulations at issue? Currently, there are no clear answers. Might there be other goals or objectives, then, in holding this hearing? While I believe more could be learned when the investigation is complete, I am hopeful

that today's hearing takes full advantage of this opportunity by focusing clearly on workplace safety and the related laws and regulations.

Today's testimony will demonstrate that no one is sitting idly by when it comes to safety. This field hearing will give us a unique perspective on what New Jersey is doing to work cooperatively with industry and labor to cement safety as a cornerstone of every working day. I look forward to the discussion.

Again, I thank my New Jersey colleagues for providing an opportunity to visit the Garden State.

Chairwoman WOOLSEY. Thank you, Mr. Wilson. I think he's trying to say he wants you to bring your tax dollars down to South Carolina.

Now I'm honored to yield time, as much time as he may consume to Congressman Donald Payne.

Mr. PAYNE. Thank you. Thank you very much, Madam Chairwoman for taking the time to come from sunny California to the Garden State. Of course, we told the weather to cooperate with us. You know, we're supposed to have a foot of snow or a half a foot, whatever. And I am pleased that that did not happen. I think because you were coming, they gave us a little slack. So it's good to have you here and certainly commend you for the work that you've done on this Committee that you chair and the previous hearings that you had regarding this same issue shows that you're on top of the matter. Also, I commend you for your co-chairing of the Congressional Progressive Caucus in the United States Congress.

Let me also thank my good friend Congressman Wilson. You're right, every day I'm getting someone sending me a farewell letter, saying they're moving to South Carolina, but up here in New Jersey, you know, you can still vote up here.

Let me say that I appreciate your coming. We've traveled together to Iraq, actually, and I know your son is in the armed services that we had a chance to visit with when we went there and so we appreciate what you and your family are doing for our country. Of course, it's great to see my two colleagues, Congressman Rob Andrews, who as you know also chairs one of the labor subcommittees; and Rush Holt, who also is a Member of the Education and Labor Committee. So we're very pleased that we have such outstanding Congressmen who have decided that education and labor issues are so important to our country that they've elected to be on this very important Committee. So thank you both for coming. You didn't have to come as far as the others, but I'll thank you anyway.

Let me say that I certainly want to welcome the other persons here, friends, and colleagues to this important hearing which will examine the circumstances surrounding the deaths of two workers at the North East Linen Laundry facility here in Linden, and workplace facilities, in general. As I mentioned, we've had a hearing on this same issue in Washington several months ago and so it's just timely that we are staying on this key issue. It makes no sense that in 2008 people are still dying from preventable circumstances. It must stop.

It is also with a sense of sadness and anger that we hold this hearing today in my Congressional District. Let me be very clear about this. Victor Diaz and Carlos Diaz should be alive today. While OSHA has not yet issued a report, it is clear that they were

not provided with the training or protection they needed, the training and protection that the laws require them to have before being sent to their deaths in that tank. While we don't know everything about this case yet, as it's been mentioned by Mr. Wilson, they're still investigating the case, we do know a few troubling things and we have a number of questions about this tragedy that I hope our witnesses will be able to answer here today.

We know that North East Linen recently requested and was provided a free safety and health consultation from the State of New Jersey under a federally-funded consultation program. But the company inexplicitly limited this consultation to its hazard communications or chemical training program instead of asking the consultants to look at the entire operation. I want to know why companies are allowed to earn the public relations benefit of receiving a voluntary safety consultation without ensuring the entire operation is looked at.

I also do not understand how this company could receive a passing grade on its hazardous communication program when clearly the chemical hazards of entering this tank were ignored. Had Victor and Carlos Diaz received this training? One article about this tragedy called it a freak accident. That sounds like it was out of the ordinary like no one could have predicted it. It was something that was totally unimaginable. But it is my understanding that the hazards of confined spaces where these workers were killed are well known. We talk about confined spaces all the time. There are regulations about confined spaces. So how could this be a freak accident when we know what should have been done. None of it was done. In fact, my staff informed me today that on January 14, 2008, is the fifteenth anniversary of the publication of OSHA's confined spaces standard. So it's not something new. Wasn't just around the corner. It was on January 14th, 15 years ago that these regulations were confirmed.

Although we will have to wait a few more months for OSHA's final verdict, it certainly appears that this standard was grossly violated and Victor Diaz and Carlos Diaz paid the ultimate price because North East Linen apparently did not comply with the well-known OSHA standard. The deaths of Victor and Carlos were not the only tragedies to strike this city in my District or this State at the beginning of the holiday season. On December 7th, less than a week after the tragedy at North East Linen, two brothers, residents of Linden, window washers, Edgar Moreno, 30; and Alcides Moreno, 37; fell 47 stories off a building on Manhattan's east side when their platform collapsed. They lived right here in Linden. Our staff talked to the family just in the last few days and invited them to come, but she's of course, attending the hospital every day. But it's miraculous that he's still alive. Forty-seven stories off a building. Edgar Moreno was killed, but miraculously, his brother, Alcides, survives and is still in the hospital, as I mentioned undergoing several surgeries.

Elsewhere in New Jersey, more workers were dying. On December 3rd, a warehouse worker in Huntington County died after he struck his head twice in a fall near a loading dock. On December 5th, Arthur Crane, a 45-year-old lineman contracting for JBL Electric in Totowa was killed after falling 60 feet off a tower. Five dead

and one seriously injured in less than a week right here, practically in my District.

Like Victor and Carlos, three of these other four victims were immigrants. The Moreno brothers were from Ecuador. The warehouse worker who died in Huntington County was from El Salvador. This is especially troubling because official statistics show that while the number of deaths among white workers have remained relatively stable over the past several years, the number of deaths among immigrant workers continue to climb and climb and climb. There are reasons for this in my opinion. First of all, in addition to language barriers, they do more dangerous work and they're often less willing to complain about recognized hazards. In fact, according to a family member, Edgar and Alcides Moreno, the ones who fell off—fell down 47 stories, knew their scaffold had a mechanical problem before they climbed the tower, but they were assured by a boss that it had been fixed. Unbelievable. Unbelievable.

In all, December was not a good month for New Jersey workers. However, I am also proud of this State. New Jersey is one of the 24 States that provide federally-approved OSHA coverage for its public employees and one of only three States that runs its own public employee-only OSHA plans. We should be proud of that. We're proud of the Governor and his Department of Labor, and the Commissioner who we'll hear from in a few minutes.

We lead the country with progressive, effective, chemical plant security regulations that encourage refineries and chemical plants to use inherently safer technologies and provide workers with significant input into chemical plant security programs.

I look forward to the testimony of our witnesses today and I hope that we can move forward to ensure that we find a way to prevent any more of these tragedies. Let me thank you once again for calling this very important hearing.

Chairwoman WOOLSEY. Thank you for encouraging it, Congressman.

Now I have the privilege of introducing our distinguished panel of witnesses and in the order that they will be speaking. Eric Frumin is Director of the Health and Safety Program for UNITE HERE, which represents about 450,000 textile, laundry, and hospitality workers in the United States and Canada. Mr. Frumin has been with UNITE HERE since 1980. He also serves as the health and safety coordinator for Change to Win. Mr. Frumin has also advised trade unions and governments in Asia, Africa, and Central and South America, as well as the United Nations Commission on Sustainable Development. Mr. Frumin served as chair of the Labor Advisory Committee on OSHA Statistics to the U.S. Bureau of Labor Statistics from 1983 to 2003. He received his B.A. from the State University of New York in 1979 and his master's from New York University in 1981. I'm going to introduce all of the witnesses and then we're going to hear from them.

David Socolow, welcome. It's nice to see your nice face, David. We've missed it around the Congress. David is the Commissioner of the New Jersey Department of Labor and Workforce Development. He was appointed Acting Commissioner on January 17, 2006 and confirmed by the New Jersey Senate on June 30 of that same year. Before his appointment, Mr. Socolow had served as the De-

partment's Director of Unemployment Insurance. He previously worked as a senior advisor to the Deputy Secretary at the U.S. Department of Labor and as Chief of Staff to our fellow Committee Member Rob Andrews of New Jersey. Mr. Socolow earned his bachelor's from Harvard University and his master's in public administration from Rutgers.

Charles Wowkanech has been president of the New Jersey State AFL-CIO since January 5, 1997. Prior to that he served two terms as State Secretary-Treasurer and six years as Assistant to the President. He is second generation member of Local 68 of the Operating Engineers and was the youngest member ever named to the Local's Executive Board. Mr. Wowkanech also serves on the Department of Labor and Workforce Development's Advisory Council on Workers Compensation, Prevailing Wages and the Rutgers School of Management and Labor Relations State Advisory Council. He currently lives in Ocean City, New Jersey.

James Stanley is president of FDRsafety, a position he has held since March 2004. He is here today representing the Uniform and Textile Service Association. Previous to 2004, he was vice president of Safety and Health for AK Steel and worked at the Occupational Health and Safety Administration for almost 25 years. Mr. Stanley has also sat on the National Safety Council's Board of Directors and served as the National Safety Council's chairman of the trustees. He is a member of the Association of Iron and Steel Engineers and is chair of that organization's safety and health committee. Mr. Stanley earned his bachelor of science from Elizabethtown College.

Rick Engler is director of the Work Environment Council of the State of New Jersey. He is the author of Action Steps for Chemical Safety and Hometown Security in New Jersey. Last November, Mr. Engler was honored by the National Council on Occupational Safety and Health for his role in developing public policy. Mr. Engler served as legislative and program director of the New Jersey Industrial Union, an AFL-CIO affiliate for 11 years. He is also founder of the Philadelphia-Area Project on Occupational Safety and Health and served on then Governor-elect John Corzine's Environmental Policy Transition Committee. Mr. Engler received his B.A. from Antioch College.

Now we need you to know that you need to talk into the microphones and you will each have five minutes. We won't bat you down right away, but finish your thoughts when you see that the five minute—yellow will say you've got a minute left and then red will say time to quit. And then there will be time for questions and answers for you to I believe finish thoughts if we haven't gotten to all of your thoughts. So we will begin with and we're delighted to have Mr. Frumin.

**STATEMENT OF ERIC FRUMIN, DIRECTOR, OCCUPATIONAL
SAFETY AND HEALTH PROGRAM, UNITE HERE**

Mr. FRUMIN. Thank you very much, Chairwoman Woolsey, Mr. Payne, other Members of the Committee.

UNITE HERE greatly appreciates the opportunity to testify about the terrible tragedy at the North East Linen that killed Victor Diaz and Carlos Diaz on December 1st and also appreciate your

interest in holding this hearing to bring the facts to the public's attention.

For too long, when dangerous conditions and bad management result in workers' deaths, the workers die alone. Few people pay any attention other than their families, their co-workers and the crew on the ambulance or in the emergency room.

The situation at North East Linen was different, at least because some people in the news media paid a lot of attention for a few days. And because you are here today to focus your own attention on these events.

But that does not make this tragedy any easier for the families of Victor and Carlos Diaz, no matter how much attention anyone pays today or tomorrow. They are gone. Ripped from their families in a sudden and brutal moment.

We do not know exactly how this brutality came about. We do not know who at North East Linen gave an order for Victor or Carlos to go into that tank. We do not know who among the managers told them anything, or nothing at all, about the extreme dangers from entering tanks like the one at the laundry in Linden.

We don't know whether anyone in a position of authority at North East Linen took any of the strict measures which OSHA requires to protect people assigned to jobs inside these tanks. But we do know something about the laundry industry. We know enough about this industry to believe that managers in this industry are keenly aware of the dangers of so-called confined spaces like water tanks.

We have laundry workers who are here with us today. Every day, workers like these confront equipment that is considered confined spaces: huge washers, especially huge dryers.

Equally indeed at North East Linen's sister plant in New Haven, Connecticut, called New England Linen and both run by the same president, John Ryan, workers filed a complaint with OSHA's Bridgeport office in January 2006. OSHA's inspectors found dozens of violations and cited the company for violating the standard on confined spaces.

In addition to the confined space violation, OSHA also found other potentially life-threatening violations, some of which were considered bad enough to cause death or serious physical harm with total penalties amounting to \$25,000. So it should have been clear to the owners and managers at New England Linen, the same ones who run the New Haven plant, that OSHA rules are serious obligations for employers. More important, it should have been crystal clear to the owners and managers that the OSHA standard on confined spaces was important. In New Haven, OSHA required the company to do the kind of survey which had they done here in Linden, might have saved the lives, would have saved the lives of Victor and Carlos Diaz.

So what's the lesson here? From our experience, as Mr. Payne has always said, this is not a freak accident. The hazard from confined spaces is so well understood in this industry and generally. It's no surprise that these conditions would kill people. It was really more just a matter of time. In my opinion, it was no accident at all.

What we have learned from the news reports is these deaths were preventable. They would be alive today. What do the standards require? It's a long list to save time. I'll skip it. But they are very important protections for people. Mr. Socolaw can tell us more.

These are the requirements of the law of our land. This is the OSHA Act. It says that Congress shall set standards. It says the Secretary of Labor shall set standards. It says the Secretary shall enforce them, that employers will comply with those standards.

They put the requirements on the employer, not just on the Government, on the employer. Not just on workers, on the employer. And instead of receiving the protection from the managers that the law requires, the workers didn't get that protection. All they got was some plastic wrapped around their legs.

So at times like this, as painful as it is, workers want to ask themselves whose fault was it? Should they have trusted their managers? Too often workers trust their managers. They think it was their fault, that they did something wrong. Not so.

Workers don't feel free to complain as Mr. Payne has said. Employers like it that way, many of them, unfortunately. No trouble makers. No one complaining. Our experience is workers need to be able to speak out and to really speak out they need to have a union. Workers here do not have a union. With a union, they can find out how to protect themselves. They can find out—they can know what it means not to be a troublemaker, but to be a responsible worker. And until workers have unions and are free to speak out, they need a strong OSHA with enough resources to do the right thing to protect workers, not just in this industry, but in all industry, armed with the strongest standards we can design.

On behalf of the 150,000 workers in this industry, in the laundry industry, we again thank the subcommittee for holding this hearing, for recognizing the importance of supporting workers who speak up, who protest dangerous conditions. We urge you to take immediate action to get OSHA the tools and resources it needs.

I'll be happy to answer any questions. Thank you for the time.
[The statement of Mr. Frumin follows:]

Prepared Statement of Eric Frumin, Director of Occupational Safety and Health, UNITE HERE

Mme. Chairwoman, Mr. Payne, other members of the Committee: UNITE HERE greatly appreciates the opportunity to testify about the terrible tragedy at the North East Linen Co. that killed Victor Diaz and Carlos Diaz on December 1, 2007. We also appreciate your interest in holding this hearing to bring the facts to the public's attention.

For too long, when dangerous conditions and bad management result in workers' deaths, the workers die alone. Few people pay any attention other than their families, their co-workers and the crew on the ambulance or in the emergency room.

The situation at North East Linen was different, at least because some people in the news media paid a lot of attention for a few days. And because you are here today focusing your own attention on these events.

But that does not make this tragedy any less terrible for the families of Victor Diaz and Carlos Diaz. No matter how much attention anyone pays today and tomorrow, they are gone—ripped from their families in a sudden, brutal moment.

We do not know exactly how this brutality came about.

We do not know who at North East Linen gave an order for Victor or Carlos to go into the tank.

We do not know who among the managers told them anything, or nothing at all, about the extreme dangers from entering tanks like the one at the laundry in Linden.

We do not know whether anyone in a position of authority at North East Linen took any of the strict measures which OSHA requires to protect people assigned to jobs inside tanks.

But we do know something about the laundry industry.

We know enough about this industry to believe that managers in this industry are keenly aware of the dangers of so-called “confined spaces”—like water tanks.

We have laundry workers here with us today. Every day, workers like them confront equipment that is considered confined spaces: huge washers, and equally huge dryers.

Indeed, at North East Linen’s sister plant in New Haven, CT—called New England Linen and both run by President John Ryan—workers filed a complaint with OSHA’s Bridgeport office in January, 2006. OSHA’s inspectors found dozens of violations, and cited the company for violation of the standard on confined spaces.

In addition to the confined space violation, OSHA also found potentially life-threatening violations of OSHA’s standards on safe equipment maintenance, machine guarding, and chemical hazard training.¹

OSHA considered those hazards bad enough to cause “death or serious physical harm.” Total penalties amounted initially to nearly \$25,000.

So it should have been crystal clear to the owners and managers of New England Linen—the same owners who run North East Linen—that OSHA rules are serious obligations for employers.

More important, it should have been crystal clear to the owners and managers that OSHA’s standard on confined spaces was important. In New Haven, OSHA required the company to do the kind of survey of possible confined space hazards that trigger all the protective requirements that would have saved the lives of Victor Diaz and Carlos Diaz.

What’s the lesson here? Based on our years of experience in this industry, we believe that this was not just a so-called “freak accident.”

The hazard from confined spaces is so well-understood and predictable that it was no surprise that these conditions would kill these workers—it was only a matter of time before the dangers killed them.

So in my opinion, this was no accident at all. From what we have learned from the news reports, these deaths were completely preventable. Victor Diaz and Carlos Diaz would probably be alive if the company had complied with the law and given these workers all the protections that OSHA’s standard requires:²

The standards require:

- A careful survey of the workplace to determine where these hazards are lurking—the very survey that OSHA required from New England Linen after the workers complained there in 2006.

- A strict permitting system to prevent anyone from even starting a tank entry without a complete set of protective measures.

- Careful tests on the air inside the tank, and proper ventilation to make sure that enough clean air was present.

- Strict rescue procedures, including full body harnesses and lifelines, as well as proper standby hoist equipment and fully-trained stand-by rescue personnel who know how to use it.

- Full necessary protective equipment and communication equipment

- Proper breathing apparatus in case of problems with the available air supply.

Compliance with these standards would have assured that Victor Diaz could do this job safely, and that Carlos Diaz or anyone else helping him would know exactly how to rescue him in case of a problem.

These are the requirements that the law of our land clearly imposes on the company—not on the workers, or the government, but squarely on the shoulders of the managers of plants like North East Linen.

Sadly, according to press reports, instead of receiving the protection from their managers that these detailed rules require, the only so-called “protection” they had was plastic wrapped around their legs.

At times like this, as painful as it is, some people will speculate about whose fault this is.

Many workers want to trust in their managers to protect them.

¹Other “serious” violations in New Haven included fire and electrical hazards, storage of flammable or combustible liquids, and employee training. See OSHA inspections #123161820 and 309375582.

²OSHA Standard: 29 CFR 1910.146

And when workers suffer injuries—or even death—because they do not receive the legal minimum protection, workers sometimes ask whether the workers themselves were at fault.

Despite tragedies like this, many workers will continue to trust their employers to protect them. They are especially vulnerable, because they trust the wrong people.

They are vulnerable because they simply don't know how dangerous the work really is.

And worst of all, many workers who know about the dangers believe they have no choice but to accept these hazardous assignments.

And many managers like it that way. No problems from troublemakers.

But the experience here in Linden proves one more time that dangers on the job are too important and widespread to leave it up to individual workers to object, or to complain to OSHA.

Because despite what many of us want to believe, employers who should be responsible are not responsible, and we can't trust them to protect us.

That's why these workers need a union—OSHA's not enough.

Union members can find out how to deal with these kinds of employers—and get the support they need to protect themselves.

But at the same time, we also know that until every worker has a voice, until every worker is free to be a "troublemaker," we know that the only protection they have is a strong and vigilant OSHA.

An OSHA armed with plenty of resources, and the strongest standards we can design.

Standards like the one on confined spaces that would have protected the lives of workers here in Linden, if only their managers had done the right thing.

On behalf of the 150,000 workers in the laundry industry, we again thank the subcommittee for holding this hearing, and for recognizing the importance of supporting workers who speak up, who protest dangerous conditions.

We urge the subcommittee to take immediate action to help OSHA get the tools and resources it needs to protect workers. I will be happy to answer any questions you have.

Chairwoman WOOLSEY. Thank you. We're going to go through the whole witness panel and then we will ask questions in order up here.

Okay, David Socolow.

STATEMENT OF DAVID SOCOLOW, COMMISSIONER, NEW JERSEY DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

Mr. SOCOLOW. Chairwoman Woolsey, thank you very much for the opportunity. Thank you for holding this vitally important hearing in New Jersey; Congressman Payne, Ranking Member Wilson, other distinguished Members of the Panel. I'm delighted you're here and a special warm welcome from Governor Corzine to you, Ms. Woolsey, and to you, Mr. Wilson, to our Garden State, along with our profound thanks for your leadership and dedication to the life and health of America's workers.

Governor Corzine has established promotion of workplace safety as a top priority for state government and we subscribe to the comment as made earlier in this hearing that every worker and his or her family has the right to expect to arrive home at the end of the day safe and whole after that day's work. And we do have a long history in New Jersey as a pioneer in improving worker safety and health. I will only summarize it, but I will remind the Committee that, in fact, in 1965 before OSHA's inception, New Jersey enacted a comprehensive State Worker and Safety Health Act which really was the pattern for the federal OSHA Act led by our Senator Harrison Williams in 1970. And in 1983, as Congressman Payne men-

tioned, our State established safety and health protections for New Jersey's more than half a million public employees. In 2001, our State PEOSHA program, Public Employee OSHA program was recognized by federal OSHA as one of only three certified public-sector only state plans in the nation. So we're doing a lot to try to protect workers.

The other two major things that we do that I want to briefly touch on are safety and health training initiatives. We provide significant state-funded support to train workers in occupational safety and health curricula. We've committed millions of dollars of New Jersey State funds to provide comprehensive safety and health training, to assist employers to protect their workers and to emphasize the importance of robust worker involvement in workplace safety and to demonstrate to employers the value of well-trained workers and safety worksites. I know that President Wowkanech will touch on one of this initiatives. New Jersey sponsors the highly effective Occupational Safety and Health Education Project which is a partnership between our department and the New Jersey State AFL-CIO that targets high hazard industries, teaches occupational safety and health curricula to worker trainers so that they can then act as force multipliers and go out and train their fellow workers in the skills they have learned.

Again, we believe that this involvement, when managers directly and meaningfully involve unions and the workers that they represent in the development of comprehensive safety and health programs, that that significantly improves workplace safety.

And the other major thing that our department is involved in is the safety and health consultation service which is a service offered to employers free of charge and we encourage every employer in the Garden State to take advantage of this service so that they may understand the importance of safe and healthy workplaces, receive assessments of their working conditions, hazards, and potential hazards of their workplace and worksites, and obtain training to help ensure that workers know how to reduce the risks of particular jobs that inherently pose hazards to the safety and health. I know that we'll get into some questions about that consultation program, but we believe it does serve a valuable role.

But as the recent tragic events here in Linden and elsewhere as Congressman Payne so heartbrokenly laid out for us, we've had some real tragic deaths in workplace locations that are inherently hazardous. Our thoughts and prayers go out to the Diaz families and to the families of all the other workers who have had this kind of terrible event in their lives.

We believe that the confined spaces standard that Mr. Frumin just touched on is a vital component of a safety program to protect employees who work in a space such as a tank, a storage bin, a silo that is large enough for an employee to enter and work which has restricted means of entry and which is not designed for continuous occupancy.

Let me just emphasize one aspect of that confined space standard with the time I have left. Again, it requires for permit-required confined space settings, effective communication and consultation with the affected employees and their authorized representatives on the development and implementation of all aspects of the per-

mit-required confined space program. It requires as already has been said an in-house rescue team, or arranging for an outside rescue service. It requires a number of specific things which are laid out in my full-written testimony and the specific confined space training is recommended as part of the comprehensive 30-hour OSHA training course. Any business where confined space entry is even an issue ought to be training its workers on the OSHA 30-hour training course and as I said, our state government, together with our partners, plays a role in getting that vital training out so that employers need only ask and we'll provide that training.

However, while our state government can provide and sponsor training and consultation, we need robust enforcement from federal OSHA. And we also need development, continuous development of new occupational safety and health standards that reflect up-to-date knowledge of workplace standards. Unfortunately, under the Bush Administration federal OSHA has focused their attention on voluntary partnerships and alliances with unproven effectiveness. And also has completely stopped issuing new or improved health and safety standards during the past seven years. So I hope that this hearing will bring greater attention to those issues and I thank the Members of the subcommittee for taking the lead in protecting workers.

Thank you very much.

[The statement of Mr. Socolow follows:]

**Prepared Statement of David J. Socolow, Commissioner, New Jersey
Department of Labor and Workforce Development**

State initiatives for safer workplaces

Chairwoman Woolsey, Congressman Payne, Members of the subcommittee, thank you for holding this vitally important hearing in New Jersey. I am David Socolow, Commissioner of the New Jersey Department of Labor and Workforce Development. I join Governor Jon S. Corzine in offering a warm welcome to you, Madame Chairwoman, as you visit the Garden State, along with our profound thanks for your leadership and dedication to the lives and health of America's workers. I appreciate this opportunity to discuss what our state is doing to protect workers through safer and healthier jobsites.

Governor Corzine has established the promotion of workplace safety as a top priority for state government. Every worker and his or her family has the right to expect when he or she arrives at work each day that he or she will be able to return home safe and whole at the end of a day's work. We strive for this goal each day, reflecting a commitment to occupational health and safety in New Jersey going back for more than a century.

New Jersey's historic commitment to safer workplaces

Governor Corzine is building on New Jersey's long history as a pioneer in improving worker safety and health. We are proud of the efforts of labor, business and government in the Garden State to foster a culture of safety. Our state has been a leader in protecting our greatest assets, the working men and women of New Jersey, and communicating this commonsense value to an expanding number of our state's employers.

As far back as 1904, New Jersey's Factory Act sought to guard the safety of industrial workers and to "surround the workman with more protection than the common law gave him." Established in 1920, the New Jersey State Industrial Safety Committee remains active today, promoting cooperative approaches between management and labor to eliminate workplace accidents and injuries. The New Jersey State Industrial Safety Committee is the longest-running organization of its kind in our nation; it provides our state government with valuable advice and insight on issues of workplace health and safety today, as it has for state Labor Commissioners throughout more than eight decades.

In partnership with the Industrial Safety Committee, we sponsor annual awards to recognize the cooperative efforts of exemplary New Jersey businesses and their

workers to maintain jobsites free of lost-time accidents, some with zero-incident records that have stretched for more than a decade. From the past 80 years of New Jersey's Governor's Annual Occupational Safety and Health Awards Program, we've seen that when a jobsite logs millions of consecutive hours without a single lost-work-time incident, it's not simply good luck—such an achievement reflects a true culture of safety with buy-in from management and real involvement by workers and their representatives.

New Jersey's path-breaking commitment to workplace safety and health was also an inspiration for the federal Occupational Safety and Health Act. In 1965, before OSHA's inception, New Jersey enacted a comprehensive state Worker Safety and Health Act, which provided that "every employer shall furnish a place of employment which shall be reasonably safe and healthful for employees." In the late 1960s, U.S. Senator Harrison Williams of New Jersey took this concept to the halls of Congress, sponsoring workplace health and safety legislation to protect workers on the job. The Williams-Steiger Occupational Safety and Health Act of 1970, largely based on the 1965 New Jersey law, created today's OSHA to assure the health and safety of workers across America.

While the federal Occupational Safety and Health Act preempted state enforcement of New Jersey's earlier law, since the early 1970s, our state government has worked in close partnership with the federal OSHA agency to help protect workers. And while New Jersey's state government does not have jurisdiction for occupational safety and health enforcement in private sector workplaces, we continue to work with OSHA and the unions and businesses of the Garden State to educate, train and build stronger and coordinated labor-management approaches to making workplaces healthy and safe. In 1983, our state established safety and health protections for New Jersey's more than 500,000 public employees—and in 2001, our state PEOSHA program was recognized by federal OSHA as one of only three certified public-sector-only state plans in the nation.

The latest data show that New Jersey's private sector continues to have some of the safest worksites in the nation. Our most recent accident and illness rate, at 3.6 incidents per 100 full-time workers, remains well below the national average of 4.4. Any workplace injury is devastating to the worker and his loved ones—but we believe that we can continue to reduce the number and severity of these terrible events, save workers' lives and protect their health, by continuing our focused efforts to foster a culture of safety.

Occupational safety and health training initiatives

New Jersey provides significant state support to train workers in occupational safety and health curricula. We have committed millions of dollars of New Jersey state funds to provide comprehensive safety and health training to assist employers to protect their workers, to emphasize the importance of robust worker involvement in workplace safety, and to demonstrate to employers the value of well-trained workers and safer worksites.

In 1992, New Jersey enacted the Workforce Development Partnership (WDP) Act to provide a dedicated state funding source for job training, including incumbent worker training. Three percent of the money raised through the dedicated WDP payroll tax is allocated to support occupational safety and health training, and today, the state invests nearly \$1.5 million annually in WDP funding to bring training about safety and health protections to the workers who need it most. These state funds help provide a range of training and educational programs that reach workplaces across our state, providing thousands of workers with training that could make the difference between working safely or risking injury or death.

New Jersey's WDP program sponsors the highly-effective Occupational Safety and Health Education Project (OSHEP), a vital partnership between the New Jersey Department of Labor and Workforce Development and the State AFL-CIO. Targeting high-hazard industries, OSHEP provides health and safety training programs, including the OSHA 10-Hour General Industry Training Course and other customized occupational safety training, to workers at jobsites across the state. OSHEP expands its reach by teaching occupational safety and health curricula to worker-trainers who act as force-multipliers, by then training their fellow workers in the skills they have learned.

OSHEP has also developed and delivered truly critical and timely Security Awareness and Preparedness courses for workers in New Jersey's chemical and petroleum sector, pharmaceutical companies, water treatment facilities and hospitals. This training has helped to raise worker awareness and knowledge about maintaining security at these vital facilities. This innovative curriculum explicitly draws parallels among the systems required to promote worker safety, to prevent accidents, and to guard against deliberate terrorist attacks in high-hazard sites. More than 150 facili-

ties have taken part in the training, with thousands of workers trained to improve security at their facilities.

State OSHA consultation service

New Jersey's continuing partnership with federal OSHA enables the state Department of Labor and Workforce Development to provide important knowledge, training and assessments to employers and their employees through our Safety and Health Consultation Service. This service is offered to employers free of charge, and last year, New Jersey's Safety and Health Consultation Service provided services to nearly 500 public and private sector employers and their 38,000 workers. I encourage every employer in the Garden State to take advantage of the service so that they may:

- Understand the importance of safe and healthy workplaces, both for their employees' lives and well-being, and for efficiency and productivity;
- Receive assessments of the working conditions, hazards and potential hazards in their particular workplace or sites; and
- Obtain training to help ensure that workers know how to reduce the risks of particular jobs that inherently pose hazards to their safety and health.

Our approach in these consultations encourages the development of robust labor-management safety and health committees to maintain a consistent focus on these important issues and the involvement of both workers and management in keeping safety a priority. When managers directly and meaningfully involve workers and their union representatives, they can significantly improve workplace safety.

With each interaction between our consultation service and New Jersey employers and workers, we strengthen our statewide commitment to safer workplaces. By enhancing workers' knowledge and ability to recognize hazards, and by helping employers to recognize the value of communication in reducing hazards, we foster workplaces where labor and management cooperate to correct dangerous situations and to implement policies and procedures for safe work practices.

OSHA's confined-space standards

As the recent tragic events here in Linden have reminded us, some workplace locations are particularly hazardous. We were heartbroken to learn of the deaths of two industrial laundry workers last month who were assigned to clean a chemical storage tank, and our thoughts and prayers go out to the Diaz families. This senseless tragedy underscores how important it is for employers to comply with the OSHA standards for working safely in confined spaces.

Based on our Department's experience, these standards are a vital component of a safety program at a business with employees working in confined spaces. Confined-space entry standards are designed to protect employees working in a space such as a tank, storage bin or silo that is large enough for an employee to enter and work; which has restricted means of entry; and which is not designed for continuous occupancy.

The OSHA standards also differentiate higher-hazard, or permit-required, confined spaces. These are confined spaces with recognized serious safety or health hazards including the potential to contain a hazardous atmosphere or a material that could engulf anyone entering the space. These spaces also include those configured in such a way that an entrant could be trapped or asphyxiated by a downward sloping floor tapering to a smaller cross-section or by walls that converge inward.

One of the most crucial steps to ensuring worker safety involves determining if the worksite includes confined spaces and permit-required confined spaces. Effective communication is also a key element in this process and an employer must consult with the affected employees and their authorized representatives on the development and implementation of all aspects of the permit-required, confined-space program.

If the job site has permit-required confined spaces and if the employer decides that its employees will enter these spaces, the employer must develop and implement a proper written confined-space program and prepare an entry permit.

The employer also needs to clearly establish the duties of all authorized entrants, attendants, and supervisors. It is critical, too, that an employer provides comprehensive training so that employees working in confined spaces acquire the understanding, knowledge, and skills necessary for the safe performance of their duties.

Finally, an employer whose employees work in confined spaces must designate an in-house rescue team, or must arrange for an outside rescue service that can respond to a rescue summons in a timely manner. This approach, with its well-defined policy and worker training, is vital to providing consistent protection for workers when they are required to work in confined spaces.

Many of the businesses in New Jersey do not have workers involved in confined-space entry. However, the specific confined space training, particularly for permit-required entry, is recommended as part of the comprehensive 30-hour OSHA training course, and it certainly must be presented to businesses where confined-space entry is an issue. It is vital that all employers with workers engaging in confined-space entry commit to providing this specific training to their employees, in addition to other occupational safety and health course components.

Conclusion

The dedicated staff at the New Jersey Department of Labor and Workforce Development will continue to work with our many partners to maintain and build upon our existing culture of safety in New Jersey's workplaces. However, while our state government can provide and sponsor crucial training and consultation to employers and workers, as I noted earlier, the state of New Jersey does not have jurisdiction over occupational safety and health enforcement in the private sector. Robust enforcement by federal OSHA, and development of new national occupational health and safety standards reflecting up-to-date knowledge of workplace hazards, are the bedrock foundation on which our state programs depend. Yet under the Bush Administration, federal OSHA has focused attention on voluntary partnerships and alliances with unproven effectiveness, at the expense of vigorous and meaningful enforcement that actually changes employer behavior. OSHA has also almost completely stopped issuing new or improved safety and health standards during the past seven years.

I hope this hearing in New Jersey today will bring greater attention to this urgent priority—a matter of life and death for countless workers—and I urge the members of this subcommittee to take the lead in Congress in promoting stronger OSHA enforcement.

Thank you again for this opportunity to appear before you. I will be pleased to answer questions you may have.

Chairwoman WOOLSEY. Thank you.
Charles Wowkanech.

**STATEMENT OF CHARLES WOWKANECH, PRESIDENT OF THE
NEW JERSEY STATE AFL-CIO**

Mr. WOWKANECH. Good afternoon, Madam Chairwoman Woolsey, Members of the subcommittee. I, too, would like to join my colleagues and welcome you all to New Jersey.

As Congressman Payne had indicated in the month of December, there were five fatalities here in our State alone. Two of these happened at the North East Linen plant in Linden when Victor Diaz and Carlos Diaz were asked by their employer to perform job functions that they were not trained or evaluated for.

I believe that it is crucial to the success of this subcommittee's mission to speak to the workplace safety and health solutions that are practiced and promoted by labor unions and advocates of proactive workplace safety and health solutions that receive little attention from most employers simply because they are not required by any rule of law.

Educating rank-and-file union members ensures that we support OSHA in protecting our State's workforce from harm and we empower these workers to be active participants in developing workplace policies. It's no great secret that labor unions have played a key role in empowerment and that a unionized workforce is a safer, smarter, stronger workforce.

Sixty-three percent of a poll that was taken by the Employment Law Alliance said the top reason to join organized labor is to have workplace safety at the workplace. More than 40 percent of those polls believe that unions have a substantial impact on improving the working conditions of an average American worker. This is the

solution that I'm talking about here today as the Commissioner alluded to.

One of the hallmarks of our health and safety project here in New Jersey is the fact that we have a Joint Labor and Management Committee through our state university, Rutgers, where we bring middle management, top management of companies along with workers, along with federal OSHA, along with many other agencies to discuss how we can make this program better.

We have trained hundreds of workers in confined spaces, lockout, markout, those kind of things we do routinely. We have been working closely with unions that represent commercial laundry workers to provide customized training to their employees at laundry facilities. And we have seen the difference that this makes.

There has been a 40 percent reduction based on the Bureau of Labor Statistics, a 40 percent reduction in injuries and a 20 percent increase in production when Joint Labor and Management Safety Committees are formed. So it is sort of beyond me that if these statistics justify that not only are we going to have less loss of time, less fatalities and a higher productivity, it's beside me why these companies won't sign on to this kind of policy.

Besides direct savings in compensation costs, companies that implement these labor-management cooperative programs see an increase in worker productivity and moral as well as a decrease in equipment and process breakdown and failures. We have seen the positive impact of Joint Labor-Management Committees in other industries. Now is the time to make these committees the standard in the commercial laundry industry.

Today, I challenge the North East Linen Company to empower and educate its workforce by establishing a Joint Labor-Management Committee and utilizing the free resources provided by the State's Occupational Safety and Health Education Program, OSHEP, led by Rutgers University. I appreciate and applaud the commitment of this subcommittee to investigate these workplace tragedies and respectfully request that this subcommittee in its findings require the establishment of a Joint Labor-Management Committee at the North East Linen and require that the company offer safety and health training to all its employees through the services offered by the state-funded and approved training program.

There will be no greater tribute to Victor Diaz and Carlos Diaz than establishing a Joint Labor-Management Committee and educating employees at the North East Linen Company to implement safer working practices.

Thank you.

[The statement of Mr. Wowkanech follows:]

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**Testimony of Charles Wokkanech,
President of the New Jersey State AFL-CIO
before the Workforce Protections Subcommittee,
U.S. House Education and Labor Committee
January 14, 2008**

Dear Members of the Workforce Protections Subcommittee:

My name is Charles Wokkanech, President of the New Jersey State AFL-CIO and representative of one million working men and women in the state of New Jersey.

I would like to thank Chairman Miller and distinguished members of this subcommittee for giving me an opportunity to testify at this field hearing.

There were five fatalities in the state of New Jersey in the month of December alone. Two of these fatalities happened at North East Linen in Linden when Victor Diaz and Carlos Diaz were asked by their employer to perform job functions that they were not trained in or evaluated for. OSHA's investigation into these unfortunate incidents will focus on violations of confined space regulations, lack of adequate training and lack of proper safety programs. Someone should be, and will be, held accountable for this unfortunate loss of life. Holding an employer accountable for a preventable workplace tragedy is what the OSHA laws require and the OSH Act and regulations have prevented countless injuries, illnesses and fatalities. However, I believe that it is crucial to the success of this subcommittee's mission that we speak to workplace safety and health solutions that are practiced and promoted by labor unions and advocates of proactive workplace safety and health - solutions that receive little attention from most employers simply because they are not required by any rule of law.

While enforcement is important to ensure that employers are held accountable for a safe and healthful work environment; I believe it is more productive to stress Prevention as a critical part of any effort to reduce workplace injuries, illnesses and deaths.

At the New Jersey State AFL-CIO, our mission is to improve the lives of working families and bring dignity and fairness to the workplace. We work towards that mission by empowering and educating employees throughout the State through a grant provided by the State Department of Labor and Workforce Development.

Educating rank-and-file workers ensures that we support OSHA in protecting our state's workforce from harm, and we empower the workers to be active participants in developing workplace policies. It is no great secret that labor unions have played a key role in worker

"The Voice for Working Families in New Jersey"

empowerment and that a unionized workforce is a safer, smarter and stronger workforce. A recent poll released by Employment Law Alliance underscores why unions are critical to better working conditions. Sixty three percent (63%) of the poll respondents said that the top reason to join organized labor is workplace safety. More than 40 percent of those polled believe that unions have a substantial impact on improving the working conditions of average American workers.

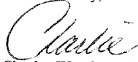
This is the solution that I am talking about here – utilizing our greatest resource and our greatest asset – our workforce – to ensure safe and healthful conditions at every workplace. Numerous studies highlight that a workplace where safety and health programs are crafted with employee input and management commitment is a workplace that has fewer incidents of injuries and illnesses. The New Jersey State AFL-CIO training program has been successfully engaged in doing just that. We have been working closely with unions that represent commercial laundry workers to provide customized training to employees at laundry facilities so that they understand the hazards at their jobs and know what steps to take to protect them from harm.

Research and statistics, compiled by the Bureau of Labor Statistics, demonstrate the positive impact of joint labor-management committees on overall injury and illness in the construction industry. There was a 40 percent reduction in injuries and a 20 percent increase in production. Besides direct savings in compensation costs, companies that implement these labor-management cooperative programs see an increase in worker productivity and morale as well as a decrease in equipment and process breakdown and failure. We have seen the positive impact of joint labor-management committees in other industries – now is the time to make these committees the standard in the commercial laundry industry.

Today, I challenge North East Linen to empower and educate its workforce – by establishing a joint labor-management committee and utilizing free resources provided by the State's Occupational Safety and Health Education Program (OSHEP) led by Rutgers University.

I appreciate and applaud the commitment of this subcommittee to investigate these workplace tragedies, and respectfully request that the subcommittee, in its findings, requires the establishment of a joint labor-management committee at North East Linen and requires that the company offer safety and health training to all its employees through the services offered by the state funded and approved training program. There will be no greater tribute to Victor Diaz and Carlos Diaz than establishing a joint labor-management committee and educating employees at North East Linen to implement safe working practices. There is no better strategy than this to ensure that such a tragedy does not ever happen again in our state or our nation.

Sincerely,



Charles Wovkanech
President

CW:jd
OPEIU:153

Chairwoman WOOLSEY. Mr. Stanley.

STATEMENT OF JAMES W. STANLEY, PRESIDENT, FDRsafety

Mr. STANLEY. Good afternoon, Chairwoman Woolsey, Ranking Minority Member Wilson, Members of the subcommittee, and all assembled. I'm Jim Stanley and I am pleased to appear before you today on behalf of the Uniform and Textile Service Association or UTSA which I am guiding as a safety advisory group member. I was an OSHA employee for 25 years, including serving as the Deputy Assistant Secretary of Labor in Washington for OSHA.

UTSA represents 44 member companies, all across the United States and Canada who provide uniforms and textile service prod-

ucts to a wide variety of businesses. The Association's membership represents just a portion of the 1200 or so similar companies in the U.S. Most importantly, before I begin, I would like to express my and the Association's deepest sympathies and condolences to the Diaz families. Tragedy at the North East Linen plant here in Linden has been a devastating loss to them and their friends and colleagues. The accident has had a major impact on the entire industry. No words can properly express the deep sadness and sympathy we all feel.

As UTSA's representative, my role today is to offer my opinions on OSHA and safety issues based on my experience in the safety field, as well as my 25 years with OSHA. Accordingly, I'm not in a position to speak for North East Linen nor am I able to comment on the practices of individual UTSA member companies. However, I and the Association believe that every company has a duty to its employees to ensure a safe and healthful workplace.

All agree that safety should be a top priority. But in UTSA's view, safety should be more than a priority. Priorities do change. It should be a core value, a value integrated into the business operations of all Association members.

I think this sentiment is echoed through UTSA, regardless of the size of our members. This is certainly a message that the Association has conveyed for many years and we will continue our drive to improve safety and health efforts with increased intensity in the coming months and years.

I recently partnered with UTSA to enhance the industry's safety program and drive for continuous improvement. Historically, the safety record of the Association's member companies has been good and with about 140,000 workers there have been a few—there have been a few plant fatalities in the industry over the past decade, yet the Association recognizes that additional steps must be taken to assure the proper commitment, systems, and practices are in place at every facility so that every worker is properly protected. We are taking numerous steps that are proactive and substantive and we are confident we'll make a marked improvement in our industry's injury and illness performance. Indeed, UTSA's over-reaching safety goal is zero injuries and illnesses, and of course, zero fatalities every single day.

Additionally, UTSA's board is driving the future of UTSA's safety program. To that end, the Association has assembled an advisory group of outside safety and health experts to guide the Association as it puts its comprehensive workplace safety plan in action.

I am proud to serve on this group, along with my esteemed colleagues, Mr. Wayne Punch, Safety and Health Director of Milliken; and Mr. John Henshaw, a former OSHA Assistant Secretary of Labor. I can safely say that all three of us would not participate if we didn't believe the industry is serious about making measurable improvements.

UTSA is taking swift action to implement its plan for improvement. I took part in a meeting two weeks ago with the UTSA's President and staff in which we outlined a comprehensive voluntary safety plan that goes above and beyond OSHA rules and regulations. UTSA's plan will make a difference across the industry and simply stated, its goal is to significantly reduce the number of

injuries and illnesses. The plan will include goal setting, best practices, sharing, training, performance tracking, third party audits, and industry-specific on-site training, safety tools and programs.

Another action that the Association is taking is establishing an Association-wide baseline numbers related to workplace illnesses and injuries. This is especially significant since BLS currently combines dry cleaning businesses and possibly others with our industry's illness and injury data. We believe this doesn't currently accurately reflect the uniform and textile service industry performance. Once assembled, this data will be shared with OSHA.

Perhaps the most important aspect of the plan will be the integration of the OSHA Challenge Program into our efforts. Our goal is to assist every member company, improving workplace safety and health programs and to prepare each to qualify to participate in OSHA's VPP Program.

World class performance doesn't just meet compliance with OSHA standards. It means leading the industry and attaining injury and illness rates well below industry averages and continually improving to create a safer workplace.

This concludes my remarks. Thank you for allowing me the opportunity to speak to you today and I welcome any questions you may have.

[The statement of Mr. Stanley follows:]

Prepared Statement of James W. Stanley, President, FDRsafety

Good Afternoon Chairwoman Woolsey, Ranking Minority member Wilson, members of the subcommittee, and all assembled.

I am Jim Stanley and I am pleased to appear before you today on behalf of the Uniform and Textile Service Association or UTSA, which I am guiding as a safety advisory group member. I was an OSHA executive for 25 years, including serving as the Deputy Assistant Secretary of Labor.

UTSA represents 44 member companies all across the United States and Canada who provide uniforms and textile service products to a wide variety of businesses. The association's membership represents just a portion of the 1,200 or so similar companies in the U.S.

Most importantly, before I begin, I would like to express my and the association's deepest sympathies and condolences to the Diaz families. The tragedy at the North East Linen plant here in Linden has been a devastating loss to them and their friends and colleagues. The accident has had a major impact on the entire industry. No words can properly express the deep sadness and sympathy we all feel.

As UTSA's representative, my role today is to offer my opinion on OSHA and safety issues, based on my experience in the safety field, as well as my 25 years at OSHA. Accordingly, I am not in a position to speak for North East Linen nor am I able to comment on the practices of individual UTSA member companies. However, I and the association believe that every company has a duty to its employees to ensure a safe and healthful workplace.

All agree that safety should be a top priority, but in UTSA's view, safety should be more than a priority—it should be a core value—a value integrated into the business operations of all association members.

I think this sentiment is echoed throughout UTSA, regardless of the size of our members. This is certainly a message that the association has conveyed for many years and we will continue our drive to improve safety and health efforts with increased intensity in the coming months and years.

I have recently partnered with UTSA to enhance the industry's safety program and drive for continuous improvement. Historically the safety record of the association's member companies has been good and with about 140,000 workers there have been very few plant fatalities in the industry over the past decade. Yet the association recognizes that additional steps must be taken to ensure the proper commitment, systems, and practices are in place at every facility so that every worker is properly protected. We are taking numerous steps that are proactive and substantive, and we are confident will make a marked improvement in our industry's

injury and illness performance. Indeed, UTSA's overarching safety goal is zero injuries and illnesses and of course zero fatalities.

Additionally, UTSA's Board is driving the future of UTSA's safety program. To that end, the association has assembled an Advisory Group of outside safety and health experts to guide the association as it puts its comprehensive workplace safety plan into action. I am proud to serve on this group along with my esteemed colleagues Mr. Wayne Punch, Safety and Health Director of Milliken and Company, and Mr. John Henshaw, the former OSHA administrator. I can safely say that all three of us would not participate if we did not believe the industry is serious about making measurable improvements.

UTSA is taking swift action to implement its plan for improvement. I took part in a meeting two weeks ago with the UTSA president and staff in which we outlined a comprehensive voluntary safety plan that goes above and beyond OSHA compliance. UTSA's plan will make a difference across the industry, and simply stated its goal is to: Significantly reduce the number of OSHA Recordable Rates and Dart Rates. The plan will include goal setting, best practices sharing, training, performance tracking, third-party audits, and industry-specific on-site training, safety tools, and programs.

Another action that the association is taking is establishing association-wide baseline numbers related to workplace injury and illness. This is especially significant since the Bureau of Labor Statistics current combines dry-cleaning businesses and possibly others with our industry's illness and injury data. We believe this does not accurately reflect the uniform and textile service industry's performance. Once assembled, the data will be shared with OSHA and the industry in order to set a foundation on which to build and track continuous improvement.

Perhaps the most important aspect of the plan will be the integration of the OSHA "Challenge" program into our efforts. Our goal is to assist every member company in improving workplace safety and health and to prepare each to qualify to participate in OSHA's VPP program.

World-class performance does not just mean compliance with OSHA standards. It means leading the industry in attaining injury and illness rates well below industry averages and continually improving, to create a safer workplace. Let me summarize by noting that UTSA's member companies are committed to providing a safe workplace for their employees. The association recognizes that not all facilities are the same and there is room for improvement. That is why the association is moving forward with a major safety and health improvement effort with the ultimate goal of improving workplace safety industry-wide.

This concludes my remarks, thank you for allowing me this opportunity to speak to you today and I welcome any questions you may have.

Chairwoman WOOLSEY. Thank you.
Mr. Engler.

STATEMENT OF RICK ENGLER, DIRECTOR, NEW JERSEY WORK ENVIRONMENT COUNCIL (WEC)

Mr. ENGLER. Thank you very much for the opportunity to testify today. Thank you, Committeewoman Woolsey and Representatives Payne, Andrews and Wilson for inviting us here today to make some remarks. As the last person to testify I will abbreviate my remarks to keep them on point and to allow time for questions.

The Work Environment Council is an alliance of 70 labor, community, and environmental organizations working together for safe jobs and a healthy, sustainable environment. In the immediate Linden area, our members include affiliates of UNITE HERE, Teamsters, Steelworkers, Communication Workers, Auto Workers, and other unions as well as environmental organizations and if you came off at Exit 13A of the turnpike, you came down—as you came down Route 1, you went by the largest oil refinery on the East Coast, the Teamsters Local that's in the forefront of fighting for safety and health and accomplishing things through contracts and through staying vigilant, not only for its own members, but for the

communities of Linden and Elizabeth that surround this giant facility.

We also extend our heartfelt sympathy to Carlos and Victor Diaz. We think that these deaths were clearly preventable, that they were possibly criminal, and that they cry out for justice. It is also absolutely crystal clear to us after looking at the situation for many years, that until there is a President of the United States that cares about working people this problem will go on and on and on. And I'm not going to talk at length the failures of the Bush Administration. This Committee has certainly looked into them and more needs to be done to examine the sorry track record. But I will rather emphasize some of the deficiencies of the consultation program and in the OSHA statute, looking forward to a period, hopefully, where we can once again look to a major structural reform of the Occupational Safety and Health Act, as we have not done for over a decade.

OSHA is now investigation the deaths at North East Linen, as has been point out. However, the only time OSHA examined this company at location until workers died, was when the State Consultation Program, federally funded, conducted a limited visit in January 2007 and found no hazards. The review of the employer's injury and illness records showed none recorded. Workers were not included in the consultant's visit's opening or closing conference. Thirty-three workers received hazard communication training, but somehow the victims were not included.

Although related to hazard communication, OSHA's confined space entry standard meant to prevent exactly this type of tragedy was not addressed. Observedly, OSHA enforcement staff will not have access to the consultant's report unless North East Linen voluntarily shares it with them. That's within the policies and regulations under the Act. That's not a particular problem associated with the leadership of our State Labor Department. It's a structural problem built into the consultation program.

Washington State has consulted several analyses of the association between the consultation and enforcement activity of their division of occupational safety and health and compensable claim rates. All three studies showed that enforcement inspections that were associated with a decline in workers compensation rates relative to businesses with no agency visits. No statistically significant change was found among businesses that received only consultation visits.

A GAO report of a number of years ago in 2001 found that OSHA had no way to measure the effectiveness of the consultation program, and yet problems continue. We ask that as this Committee and Congress looks at OSHA reform for the following things to consider: one, employers should only be able to receive consultation services if they have a trained joint safety and health committee with meaningful worker rights and they allow a complete facility inspection for all potential hazards with committee participation. Employees and their unions should also be able to receive consultant inspections upon request. OSHA consultants should refer employers to OSHA enforcement if all hazards are not abated within a period appropriate to the seriousness of the hazard. And all infor-

mation accessible to the employer should be accessible to employees and their union.

OSHA requires fundamental structural reform in addition to changes that have to be made in the statutory language, the regulations and the administrative policies relating to the consultation program and I suppose the one I'd like to emphasize the most today in closing is the question of joint safety and health committees. Education is very important. Training is very important. And our organization and organizations that we've been involved with since the early 1970s have been involved with training initiatives that have trained thousands and thousands of workers. The problem is no amount of training is a substitute for power and we very much appreciate that Congress has passed the Employee-free Choice Act which would help to start level the playing field on issues of working conditions. We think a further reform that would be appropriate to adopt is mandatory by law occupational safety and health committees as they have in Western Europe, Canada and many parts of the world.

In our State we have four OSHA offices with 56 inspectors. It would take 75 years at least and our estimates are even higher for all the workplaces to be inspected. One OSHA inspector for every 60,000 employees. No matter if we had a President who was committed and a Congress and a budget that could provide many more resources for OSHA, we can't ever provide enough and that's why workers and committed management in the workplace have to be the eyes and the ears for safety and health. And that's why the OSHA Act itself as was proposed over a decade ago should be amended to require employers to establish joint safety and we would add now security committees. These committees should have clearly-defined rights and responsibilities including the right to survey the workplace on a regular basis, training, and to investigate accidents, near accidents and exposures. A number of states already require such committees and we do propose some draft statutory language attached to the written testimony.

More than 50 labor organizations in our State support mandatory safety and health committees. John Corzine last summer pledged to our organization that he has supported their establishment as well. And so we think that this is one appropriate aspect of OSHA reform. OSHA Act clearly requires reform. It's time. We appreciate that Representative Woolsey and I'm sure other Committee Members and Senator Kennedy have sponsored the Protecting America Workers Act which incorporates some, not all, but some of the needed changes. We ask this Committee to continue to prepare in 2008 the major OSHA reform in 2009.

Thank you.

[The statement of Mr. Engler follows:]

Prepared Statement of Rick Engler, Director, New Jersey Work Environment Council (WEC)

Chairwoman Woolsey, Representatives Payne, Andrews, Holt, and Wilson, witnesses and guests, my name is Rick Engler. I am the Director of the New Jersey Work Environment Council. WEC is an alliance of 70 labor, community, and environmental organizations working together for safe, secure jobs and a healthy, sustainable environment. WEC provides training, technical, and organizational assistance to workers and unions and links workers, communities, and environmentalists through campaigns to promote dialogue, collaboration, and joint action. Our mem-

bers in the Linden area include affiliates of UNITE-HERE, Teamsters, Steelworkers, Communications Workers, Auto Workers, and other unions, as well as environmental organizations.

WEC extends our heartfelt sympathy to the family, friends, and co-workers of Carlos and Victor Diaz. Their horrible, clearly preventable, and possibly criminal deaths at North East Linen on December 1, 2007 cry out for justice.

Our testimony addresses three problems: 1) the Bush Administration favors ineffective, voluntary efforts and superficial partnerships with employers over mandatory standards and enforcement initiatives; 2) OSHA's consultation program has serious deficiencies; and 3) OSHA requires major statutory reforms.

The Bush Administration has made insuring friendly relationships with corporations a higher priority than protecting worker health.

Major workplace hazards such as repetitive motion injuries, airborne infectious diseases, and violence remain unaddressed. The first act of the Bush Administration in 2001 was to revoke OSHA's new ergonomic standard. Musculoskeletal disorders caused by ergonomic hazards continue to be the largest source of job injuries in New Jersey and the nation. Yet the only significant rules that have been issued by the Bush administration concerning any hazard are ones that have been mandated by law or required by court order.

OSHA should issue new standards to address present day hazards.

The Occupational Safety and Health Act of 1970 was landmark legislation enacted by the Congress with the goal of assuring "so far as possible every working man and woman in the Nation safe and healthful working conditions." Since that time, progress has been made. Job fatalities and injuries have declined and exposures to many toxic substances have been substantially reduced. However, in recent years, progress has slowed and the death rate has been largely unchanged. In New Jersey, between 115 and 129 workers have died on the job every year between 2000 and 2005.¹ Moreover, new groups of workers are at risk. Latino and immigrant workers have a high fatality rate. They work in dangerous jobs and dangerous industries. Many of these workers are unorganized. They do not know or are unable to exercise their legal rights. Those who are undocumented are particularly vulnerable and fearful.

OSHA should conduct enforcement initiatives on the hazards that are causing deaths. These include confined space entry, machine lockout-tagout, falls, and high-way work zones, as well as in other industries employing immigrant workers with high fatality rates.

At workplaces that use extremely hazardous substances and that could endanger surrounding communities in the event of an accident or terrorist attack, OSHA has conducted few inspections, even with increased public attention to these facilities since September 11, 2001. Of the 21 facilities in New Jersey that could each potentially harm up to 15,000 people, according to employer data collected by the US Environmental Protection Agency, OSHA has inspected just eight since 9/11. For example, OSHA has never inspected Kuehne Chemical in South Kearny, a plant where a "worst case" release of deadly chlorine could kill thousands. This facility is arguably the most potentially dangerous plant in our state to workers and communities. This is an outrage.

OSHA's Process Safety Management Standard (PSM) requires facilities with extremely hazardous substances to review what could go wrong in the event of a release and to ensure safeguards.² OSHA should aggressively enforce this standard.

The number of workers and workplaces covered by OSHA today is double what it was in 1970.³ In New Jersey, there are four OSHA offices with a total of just 56 inspectors, one for roughly every 60,000 employees. It will take 75 years for OSHA to inspect all jobsites in our state just once. And we are one of the better states. The national average is 133 years.⁴

OSHA needs more staff to issue standards and conduct inspections.

OSHA should abolish the silly partnerships, the superficial alliances, and other voluntary compliance efforts that are about PR, not worker safety.

A Congress and President that care about working people can require OSHA to issue standards, conduct basic law enforcement, and can focus and increase OSHA's staff resources to ensure safety and health.

OSHA's Consultation Program has serious deficiencies.

OSHA is now investigating the deaths at North East Linen. However, the only time OSHA examined this company location until workers died was when the State's federally funded consultation program conducted a limited visit in January 2007 and found no hazards. Their review of the employer's injury and illness records showed none recorded. Workers were not included in the consultant's visits opening or closing conference. Thirty-three workers received Hazard Communication training, but somehow the victims were not included. Although related to Hazard Com-

munication, OSHA's confined space entry standard, meant to prevent exactly this type of tragedy, was not addressed. We know that commercial laundries often have hazards from excessive heat and repetitive work—but these were not addressed either. Absurdly, OSHA enforcement staff will not have access to the consultant's report unless North East Linen voluntarily shares it with them.⁵

Washington State has conducted several analyses of the association between the consultation and enforcement inspection activity of their Division of Occupational Safety and Health (DOSHS) and compensable claims rates. All three studies show that enforcement inspections were associated with a decline in workers' compensation rates relative to businesses that had no DOSHS visits. No statistically significant change was found among businesses receiving only consultation visits.⁶

Therefore, WEC calls for the following changes to OSHA's consultation program:

- Employers should only be able to receive consultation services if they have a trained joint safety and health committee with meaningful worker rights and they allow a complete facility inspection for all potential hazards with committee participation.
- Employees and their unions should also be able to receive consultant inspections upon request.
- OSHA consultation should refer employers to OSHA enforcement if all hazards are not abated within a period appropriate to the seriousness of the hazard.
- All consultation information provided to the employer should also be provided to employees and their union.

Other problems, however, require statutory changes to the Act.

- Unlike in New Jersey, where the Work Environment Council and public sector unions led a successful 2001 campaign for a public employee OSHA state plan, 8.6 million workers facing hazards everyday in 21 states are not covered by the OSHAct. The Act should be amended to cover all public employees nationwide as well as millions who work in the transportation and agriculture industries and at Department of Energy contract facilities who lack full protection under the Act.

- The current national system for reporting work-related injuries and illnesses markedly underestimates the magnitude of these conditions. A recent study that examined injury and illness reporting found that the Bureau of Labor Statistic's Annual Survey missed more than two-thirds of occupational injuries and illnesses.⁷ The Act should be amended to establish a more comprehensive injury and illness surveillance system, such as the one developed for traumatic workplace fatalities, a program that does not rely on employer based data sources.

- Even with significantly more staff, OSHA would not have enough personnel to regularly inspect every worksite. Yet workers remain largely an untapped source of expertise about the dangers they face everyday and can offer practical solutions to prevent those hazards. As Governor Jon Corzine has said, "Who knows better than workers about the hazards they face on the job." Therefore, workers and unions need to be empowered by a reformed OSHA to have meaningful participation rights. The Act should be amended to require employers to establish joint safety, health, and security committees. These committees should have clearly defined rights and responsibilities, including the right to survey the workplace on a regular basis, to training, and to investigate accidents, near-accidents, and exposures. A number of states already require joint safety and health committees. (Proposed statutory language is provided at the end of this testimony.)

- OSHA whistleblower provisions have not been updated since their adoption in 1970. Experience has shown them to be woefully inadequate. The Act should be amended to give real whistleblower protection to employees so they will be able to use their participation rights without putting their jobs on the line.

- Finally, the civil and criminal penalty structure for violations needs to be reformed to provide meaningful incentives for employers to comply. Currently an employer may only be charged with a misdemeanor when a willful violation leads to a worker's death. This should be a felony. All penalty money should be set aside for health and safety training, education, and research.

Clearly, the OSHAct requires major reforms. It is time. We appreciate that Representative Woolsey and Senator Kennedy have introduced the Protecting America's Workers Act, which incorporates some of the needed changes.⁸

WEC asks Congress to prepare in 2008 to make OSHA reform a priority in 2009. We request that this subcommittee hold additional hearings to address the Bush Administration's weakening of OSHA enforcement and the statutory deficiencies of the OSHA Act that have become evident since its passage in 1970.

Thank you for holding this important hearing and for providing the Work Environment Council the opportunity to testify.

PROPOSED DRAFT LANGUAGE ON SAFETY, HEALTH, AND SECURITY COMMITTEES

Prepared by the New Jersey Work Environment Council, January 11, 2008

Within three months following the effective date of this rule, the owner or operator of the facility must establish a Safety, Health, and Security Committee for that facility.

Existing safety and health, environmental, or similar committees that meet all of the requirements of this section may be used in lieu of establishing a new Committee by written agreement of the owner or operator and the employee representative(s), if any.

The Committee shall be composed of employees and management, with at least an equal number of employees to management representatives.

The total number of Committee members to be selected shall be determined by the number of employees at the facility as follows:

- 10-19 employees—2 members
- 20-99 employees—4 members
- 100-299 employees—6 members
- 300-499 employees—8 members
- 500-999 employees—10 members
- 1,000 or more employees—12 members

Alternate members may be designated if members are temporarily unavailable.

All committee members shall be employed at the facility.

In workplaces with an employee representative, the employee representative shall select employee members. In workplaces without an employee representative, management shall actively solicit volunteers among employees potentially exposed to hazardous substances. If there are no volunteers to serve as committee members at a facility where there are no employee representatives, the owner or operator shall select employee members.

The owner or operator shall prominently post at each process a current list of the names and work location of all committee members, which shall specify whether they are employee or management members.

The Committee shall be co-chaired by an employee committee member and a management committee member.

The Committee shall meet at least monthly at a time, date, and location agreed to by the committee.

A majority of committee members shall constitute a quorum for the transaction of committee business.

Actions by the committee shall require an affirmative vote of a majority of the members present.

The Committee shall have authority to:

- a) identify, discuss, and make recommendations to management concerning potential hazards and risks relevant to security, safety, health, and the environment and potential responses;
- b) survey the workplace for potential security, safety, health, and environmental vulnerabilities and determine a schedule to survey all or part of the facility monthly;
- c) assist in the investigation of, as soon as practicable, accidents, releases, fires, explosions, and near-miss incidents; and
- d) participate in the initial and ongoing development, review, and revision of any Risk Management Plan, Facility Vulnerability Assessment, Inherent Safety Options Analysis, Risk Reduction Plan, and emergency response plan, as required for that facility.

The Committee shall ensure that its recommendations are reduced to writing and that the status of past recommendations is reviewed at the subsequent meeting. The owner or operator shall address each recommendation, accepting the recommendation, offering a revision, or denying the recommendation and providing justification for the denial. In the event of a disagreement within the Committee, such disagreements shall be documented and shall be retained by the owner or operator.

ENDNOTES

¹NJ Dept. of Health and Senior Services, Occupational Health Service Annual Report, FY2007, July 2007. www.state.nj.us/health/eoh/odisweb/documents/annual-report-fy07.pdf

²WEC letter to OSHA dated February 20, 2007 and OSHA response of July 5, 2007.

³Testimony of Peg Seminario, Director Safety and Health, AFL-CIO before the Senate Employment and Worker Safety Subcommittee of the Health, Education, Labor, and Pensions Committee Hearing on "Is OSHA Working for Working People?" April 26, 2007. www.aflcio.org/issues/safety/upload/SeminarioOSHA20070426.pdf

⁴AFL-CIO, Death on the Job: The Toll of Neglect, April 2007, citing data from the Bureau of Labor Statistics. www.aflcio.org/issues/safety/memorial/upload/doj-2007.pdf

Data for number of OSHA inspections in New Jersey is from OSHA as of September 2007.
⁵ OSHA Regulation 1908.7(a)(3) says: "The identity of employers requesting onsite consultation, as well as the file of the consultant's visit, shall not be provided to OSHA for use in any compliance activity, except as provided for in § 1908.6(f)(1) (failure to eliminate imminent danger,) § 1908.6(f)(4) (failure to eliminate serious hazards,) paragraph (b)(1) of this section (inspection deferral) and paragraph (b)(4) of this section (recognition and exemption program)."

⁶ Z. J. Fan et al. The Effect of DOSH Enforcement Inspections and Consultation Visits on the Compensable Claims Rates in Washington State, 2004-2005, December 2006. <http://lni.wa.gov/Safety/Research/Files/Cne2006.pdf>

⁷ K.D. Rosenman et al. How Much Work-Related Injury and Illness is Missed by the Current National Surveillance System? *Journal of Occupational and Environmental Medicine*, Vol. 48, No. 4, April 2006. The study focused on Michigan.

⁸ Press release from Senators Kennedy, Murray and Reps. Woolsey, April 26, 2007. <http://kennedy.senate.gov/newsroom/press—release.cfm?id=886469E3-04D2-4E72-B33A-38A9A538CCCB>

Chairwoman WOOLSEY. I thank you. Thank you for your testimony. I now recognize myself for five minutes and each of us will have five minutes to ask you questions. When the time is over we probably will do another round unless we've used up your whole day.

Thank you so much. This was very good. I don't know if any of you know, I was a human resources executive for 20 years in the high tech industry of telecommunications in California. We had CALOSHA and we had management, actually employee safety committees. I was the management member on there, so it was amazing in that safe industry what we would find when we would walk through our plant and how the workers then related to their responsibility to keep the plant, the doors open, you know, whatever. All the stuff they were supposed to do. It made all the difference in the world. And then they would feed back up to management what needed to happen. Management took it seriously. If there's a will, there's a way. So I'd like to start with that and using North East Linen as our example because that's why we're here today and I'd like to start with you, Mr. Stanley, with your OSHA background and I know you're not going to speak for UTSA, but with your OSHA background, talk to us from your perspective, how different could this tragedy have turned out had North East Linen been—had to, not voluntarily, but had to have training, not ought to, but must have had training, how different would this have turned out and why aren't—why isn't business making that happen? I mean the resources are available to them through their very own State.

And I'd like you, Mr. Socolow, Commissioner, to tell us how to go about promoting these programs and how you get there.

So let's start with you, please.

Mr. ENGLER. Thank you. Obviously, I don't know anything about what happened at North East Linen, but on a situation where you take a general company and we have let's just say confined spaces, any company—in order to have an effective safety and health program there's three major components. One is top management has to be totally and unwaivingly committed to the safety and health of their employees. And that's just not a—

Chairwoman WOOLSEY. And what if they aren't?

Mr. ENGLER. If they aren't, they're not going to have an effective program. That's number one. You have to have top management doing the right thing and the right thing isn't just saying safety is our number one priority. The right thing is not only saying it, but

doing something about it. And that's giving the resources, allowing the resources for an effective safety and health program, allowing people to—and requiring people to go through the facilities, correct conditions and provide training. And secondly, you need an effective program and usually the emphasis on an effective program is your front line managers. Front line managers have to have the tools to manage safety and health in the workplace. So management has to give the front line managers the tools to do that. It's not just production and it's not just quality. It's safety too.

And finally, and to your point, the employees have to be involved whether it's through a safety and health committee or through any other means that they're involved in the safety and health process. All of those things have to happen. And in any case, and when you have those three elements, then the required training will be done. The enforcement of the rules will be done and both parties, both workers and management will stand up and do the right thing.

Chairwoman WOOLSEY. All right, Mr. Wowkanech, what happened with North East Linen?

Mr. WOWKANECH. I think you'd probably get a better answer from Eric Frumin, but I believe that they were not cooperative with the union and they didn't want to engage in any of these type of practices and as a result their employees were not trained in these type of activities and should not have—weren't familiar with the regulations or what they were entitled to in terms of protection or people outside the tank. They just went in there. But I wanted to point out to what my colleague, Mr. Stanley, said and I know the Commissioner will talk about it as well. We were just involved here in New Jersey in a very, very incredible project. As you know, New Jersey is also the home to many of toxic chemical companies as well as a very big petrochemical base and New Jersey proudly became the first State to mandate that all the workers in these facilities had to be trained in terms of security training. But it points to what this gentleman had said. I got involved in the project through Governor Corzine and Commissioner Socolow and we had over, and you're in Washington with the various committees, so you know. We had over 28 different agencies involved in this project to design the curriculum that the workers in these plants would be taught and participated in designing the curriculum. That was the important part. They were at the table. But it was an incredible experience for me. It took almost nine months. I can't tell you how many countless meetings I went to, Chairwoman, but the important fact is when we first started we had the workers. We had some companies that were some pretty bad players that didn't want to play, okay? And we came into this conference room and people weren't talking. At the end of nine months, after an exchange of ideas from management, from the workers, from federal OSHA, from Homeland Security, from the FBI and the New Jersey State Police, I mean it was an incredible experiment. People actually started contributing and developed something that I think is very special here. And the companies, the chemical companies and the petrochemical companies put some skin in the game by deciding to send workers, along with management to our state university to be trained and then allow the workers in the plant to be trained on company time. So it sort of was maybe a long descrip-

tion of what Mr. Stanley just tried to describe. The cooperation didn't start at the beginning, but I think what we're looking for here once the Governor established this regulation, and said this is what you're going to have to do and the companies and the unions and everybody else realized that we've got to get together to do this or we can't do business here any more, things happened.

Chairwoman WOOLSEY. So how is this promoted and how is it enforced, Mr. Commissioner?

Mr. SOCOLOW. So with respect to the chemical industry and petrochemical industry standard that was essentially done as a homeland security initiative and then recognizing that the key to homeland security is worker safety, that they actually go hand in hand. But I think—and so it was enforced and created through our State's efforts to regulate those industries from the perspective of chemical and petrochemical security for homeland security, hometown security.

That being said, I think President Wowkanech is exactly right. This is a good template for how an industry can be brought into a discussion with a whole host of agencies. It was alphabet soup putting this together with all the different acronyms and all the different agencies, government agencies, but all real, meaningful participation by workers, by unions, and by industry. And industry, I think, has to hear that when they have this kind of experience and they have this kind of bad worker safety record, that it's time to do something different and to develop something that goes above and beyond anything that might be required by formal federal OSHA rules, to develop something in this kind of a partnership. I think it's a very good idea and I certainly would support it.

Chairwoman WOOLSEY. Mr. Frumin?

Mr. FRUMIN. I think the critical missing element in the laundry industry generally and at this company in particular, based upon the facts that are available to us is that the employers don't worry about OSHA enforcement. They just don't.

Chairwoman WOOLSEY. Why is that?

Mr. FRUMIN. OSHA does not routinely as a matter of policy, as a matter of affirmative policy, does not initiate program comprehensive safety inspections at industrial laundries. It's off their target list. It's a high-risk industry. Wall Street Journal even blessed it as such last month. So that's a critical problem and this industry has a lot to learn about what it means to function in a responsible way. This company, in particular, has a lot to learn. Their record of discouraging worker voices is very clear. The National Labor Relations Board, General Counsel just issued a complaint against this company for mistreating workers who were speaking up and that message would get out very clearly to any workers there who would speak up on any subject. What is stunning is that they continued to do so on the face of a worker complaint, again, no program inspections at the same company's plant in New Haven in Connecticut a year ago that they would fly in the face of that experience and ignore it. So we have a problem with a mandate that's not felt at the workplace in this industry.

And the critical difference is is there a mandate? Is there a will to make that mandate felt. We have a failure of enforcement here that has just left us with horrible, horrible effects. Now I think Mr.

Engler can tell you how that mandate can translate down in New Jersey in a variety of other industries as well in addition to the example you've heard about here which I think would be useful to put in context how stunning the bad behavior was at this one company in New Jersey because we have a lot of other companies who have the same kinds of problems, but the lack of enforcement here is just breathtaking. That it should happen as a matter of agency policy to exempt an industry from routine enforcement, leave it up to workers who are then are subject to that kind of abuse by an employer, it's a prescription for disaster.

Chairwoman WOOLSEY. Thank you. Mr. Wilson?

Mr. WILSON. Thank you, Chairwoman. I thank all of you for your presentations today. It's been very instructive.

Mr. Stanley, in one of the subcommittee hearings last spring, Secretary Ed Foulke made a statement that one fatality is one fatality too many. Last month, the Bureau of Labor Statistics reported the sixth consecutive year of a reduction in worker-related deaths and injuries across America, yet fatal accidents occur in the laundry industry as well as others despite OSHA's success. Based on your experience how can companies and individual workers best work together so that safety, as you identify, is a core value?

Mr. STANLEY. Well, basically, the companies that I've been associated with that I recently retired from a company that has this year had a total reported rate of 0.2 and they have 6,000 employees and they are in heavy manufacturing, so it can be done. The goal in the companies—you can't set a zero goal for—you can set a zero goal for a year, but you have to set your goals on a day-to-day basis. Every day, everybody should come into the facility and say today no one is going to get hurt in here. And so basically the answer to your question is it will never happen unless management and workers are cooperating and step up and both of them do the right thing. And do the right thing is following the rules of the road, training workers, correcting hazards and holding everybody, management, and workers, accountable to do that right thing.

Mr. WILSON. And Mr. Stanley, I was encouraged to hear that the Uniform and Textile Service Association will be taking aggressive steps to improve health and safety of its workers. In fact, I was impressed by the formation of the Safety Advisory Group that you will be serving on. As a member of the Advisory Group, what guidance will you give UTSA in terms of how to instill safety as a core value throughout the industry?

Mr. STANLEY. Well, we set forth five general areas and I'm not going to go through every one, but first of all, we're going to survey every company in our association to determine what the actual recordable rate and dart rates is so that we can use that as a baseline to go forward. And we're also going to develop an annual safety management institute for our front line foremen, bring them in and give them the tools to manage safety, how to conduct an audit, and how to do a toolbox talk and how to work with your employees for safety and health.

And our audit team is going to be an independent audit team is going to be made available to all association members, either announced or unannounced, whatever way they want to do it, but to audit, get another set of eyes into our member companies' estab-

ishments and go through their safety and health program and give them recommendations in how to improve. And we're also hoping to put every worker, every single worker that we can through an 8-hour safety and health awareness program and maybe every employee in the facilities through an 8-hour safety and health awareness program which has been shown to be very, very successful in heavy manufacturing sector. As a matter of fact, it has been so successful that some companies have done it more than one time, two and three and four times.

And then we're going to—the association is going to become a certified OSHA challenge administrator and we're going to take the VPP rules, not necessarily say that everybody is going to get into the voluntary protection program and I understand the feelings of some people in this room about VPP, but that aside, what is required under the voluntary protection program, the programs that are required, we're going to initiate and look at every single one of our association members that steps up. We think that's going to be truly rewarding.

Mr. WILSON. And a final question, drawing upon your 25 years of promoting worker safety, what is your opinion regarding the premise that unionized plants are safer than similar, nonunionized plants?

Mr. STANLEY. Well, actually it's 40 years, Congressman, that I've been safety and health. I've been a safety and health guy for that long. I started on the Philadelphia waterfront in 1966 and—

Mr. WILSON. Well, you're holding up well.

Mr. STANLEY. I am holding up well. But I have—I really can't put a figure on this. I've been asked this question a hundred times over the years. When I was with OSHA, when I was in the steel industry, and now that I'm a consultant. I have been in some facilities that have been union, that are the best run safety and health programs that anyone would ever want to see. I have been in similar facilities that have been nonunion and also have had an excellent, excellent program. And the opposite is also true. I have been in union facilities that scared me and I have been in nonunion facilities that were so hazardous that you wanted to turn and run. So I don't think there's any measure. I don't think there's any way to measure whether or not the organized labor facilities are any better than the unorganized, the ones that want to do the jobs, the companies that want to do it, I don't think whether or not they have a union is the primary thing. If they want to become world class—all the information and all the help from everywhere is there to do it. It has to be the companies that want to do it.

Mr. WILSON. Thank you.

Chairwoman WOOLSEY. Congressman Payne?

Mr. PAYNE. Thank you very much. Let me ask the same question perhaps to Mr. Frumin, Mr. Wowkanech, and Mr. Engler. What is your opinion from the industry association and we know we're talking general and there's no question that individual companies and leaders of companies make a difference, but just take in general, what do you believe with a unionized plant as opposed to non-unionized plant as relates to safety and other conditions?

Mr. FRUMIN. To cut to the chase, this is at at-will employment country. Unless the law protects your job, they can fire you for any-

thing or for nothing at all. And you on the Committee know this very well. So it doesn't take much for an employer to send a clear message to a worker that if you speak up about any issue, you're a troublemaker, we're going to get rid of you one way or another. And that's the message that New England Linen, North East Linen has the ability to send to workers here in Linden. And that's what the National Labor Relations Board General Counsel themselves concluded. That's a bad message to send out to a workforce in a dangerous industry because people are going to scared to speak up. And that's before you deal with issues of literacy, about people with documentation problems, whatever, just in general. So if workers don't have the ability to feel comfortable speaking up about workplace conditions and they're on the wrong end of the power dynamic in that workplace, they're not going to be able to do anything to protect themselves and we're afraid that that's what we're dealing with here at North East Linen.

Now having said that you also on the Committee know that the whistleblower protections under the OSHA Act are extremely weak. They're extremely weak, worse, in fact, than under so many other laws and the work that you've done, Chairwoman Woolsey, to greatly improve those protections is vitally important, not only for people who are in all those other situations, but particularly for people concerned about safety. So I would say right now, in America, whether it's in Linden, New Jersey or Linden, California, if there is such a place, workers have no real protection if they're whistleblowers about health and safety. And they need that protection and they're going to get it—if they're going to get it at all, they're going to get it because they're a member of a union and they've got that protection.

Short of that, they don't have any protection at all. I'm curious what the others think.

Mr. PAYNE. I just might comment that we tried to get it, employee, anyone from the plant, but no one volunteered, so you could almost assume that things aren't so bad since nobody want to come forward, but maybe that would be a wrong assumption. Maybe that's hard to prove a negative, I guess.

Charlie?

Mr. WOWKANECH. Congressman, I think the answer to that question is very simple. Victor Diaz and Carlos Diaz. I think if there was a union in that plant and they had another way to go to get—rather than get in that tank that day or possibly they may have had some training, that this wouldn't have happened. It's been just my experience over the years that we try and operate in a cooperative spirit here, but when the companies don't have any pressure or they don't have any mandate, and there are some good companies. I don't want to say that all corporate America is, but there are some good companies, but by and large, what makes these companies develop these programs and adhere to the program is when there is a union involved. It's very, very simple.

The other example, and it's funny you talked about the whistleblower protection, but we had a situation in this State, not dealing with laundry workers, we had a situation in this State about three or four years ago with our nurses where because of HMO regulations and the reduction of staffing, nurses were starting to com-

plain about their workload and the amount of patients that they were handling. Well, what happened is they started getting removed from their positions, so the nurses' unions in our State came to us. We drafted a piece of legislation. And now the law was passed and I think we became the fourth or fifth state in the nation here to enact that legislation.

Mr. PAYNE. Well, Charlie, it sounds like you're wired or something.

Mr. WOWKANECH. But now nurses, no different than these laundry workers, had a voice. They have a voice. If they see something wrong on the hospital floor or something that's being done, they can now bring it to the hospital management without the fear of having their shift changed, having their days changed, or getting fired. And that's why I think it's incumbent upon this Committee in this town of Linden, New Jersey, to send a strong message to this company to say that you must, if you can do that, you must form this committee. I mean the State is going to give them the money. The State is going to send the people in there to train the workers. So after losing two employees, if they're unwilling to do that, then they need more than a union. They need to be put in jail.

Mr. ENGLER. I would like to add that there was an interesting subtlety to Jim Stanley's comment earlier and as you know, Jim, you and I go back a ways and there's often not subtlety to our interactions, but when it was discussed, when you brought forward the idea that there would be employee involvement through some means, there was a lack of specificity there. And that kind of a replay on the earlier debate we had during the OSHA reform over ten years ago where we said at least in a fixed workplace, not necessarily a mobile workplace, or building sites that move, there needs to be a mandatory safety and health committee with authority, with clear responsibilities, and clear worker rights.

And management said well, maybe there could be other means to do that and then we said what are the other means? And there would be suggestion boxes or stuff, dialogues, tailgate sessions, I mean things that might have an interactive educational fuzzy and warm feel to them, but were not about what is a core element of OSHA reform, mandatory committees, with a series of rights, the right to inspect the workplace on a regular basis. The right to have that training that we've talked about a lot. the right to be able to investigate not only accidents, but near misses. And some in a state campaign that industry frankly defeated in the early 1990s, one of the initial part of a bill that we had was in eminent danger situations, there ought to be a clearer authority for trained members of joint safety and health committees to direct a particular operation, not a whole plant, but a particular operation to temporarily cease until the danger is corrected. All these things are part of OSHA reform that are necessary and having some kind of superficial pledge of employee involvement is not sufficient.

And there is a challenge that we can put to trade associations on this question. I believe that I saw an interesting dialogue of your Committee on the Texas City, Texas disaster whether there was an interaction with the head of the American Petroleum Institute to the effect of how is API going to please its own members

and that people were going to be kicked out if they didn't comply. Well that would be an interesting thing for your trade association to adopt, for other trade associations to adopt, that if there are bad actors within the trade associations, they can't be members. The American Chemistry Council has threatened this for years. I don't know if they've implemented it. There's other challenges for trade associations. For example, the Chemistry Council of New Jersey which boasts up the wazzoo about its wonderful illness and injury and environmental and security record, refuses to disclose its injury and illness rate by facility. If people are serious about this, what's the big deal about saying okay, the form is already required, we'll make a photocopy of the OSHA log and submit it to the Mayor or to people upon request who live in the community. The union has a right to it. Workers have a right to it, but it would be another spotlight on recalcitrant employers and their associations to make the log of injuries and illnesses essentially a public document. And the New Jersey Chemistry Council was given the opportunity to do that and they ignored us entirely. We thought it was a reasonable request. No additional paperwork. A few cents in xeroxing. We thought the chemical industry and the oil industry in the State could afford it and they said no.

Mr. PAYNE. Thank you very much.

Chairwoman WOOLSEY. Mr. Andrews?

Mr. ANDREWS. Thank you, Madam Chairman. I want to thank you for bringing your advocacy for this cause to our home state. It's great to see you, great to welcome our friend from South Carolina. And Don Payne, thank you for having us in your District, and letting us see firsthand your usual thorough advocacy for the people of your District. I thank the witnesses also.

I want to ask Mr. Stanley, there's an ancient principle in our law that we draw distinction and penalties and remedies between those who carelessly commit a wrong versus those who commit a wrong knowing that they've done something wrong.

OSHA law already understands and recognizes this distinction. There are differences in penalties and remedies between a knowing violation by an employer and a careless violation. Is that correct? Is that your understanding?

Mr. STANLEY. A knowing violation that causes death.

Mr. ANDREWS. Yes. I wonder if we might extend that principle in a different way. What if we have an employer and I'm not speaking with direct reference to the case here because I know you're not here to talk about that specific case, what if we have an employer that owns multiple plants and the employer is found to be in violation of a specific OSHA standard in Plant A. There's no inspection at all of Plant B or Plant C. But a death results as a result of a failure of the same standard that the employer failed to meet in Plant A in Plant B. Do you think it is good public policy that the law should treat that violation in Plant B as a knowing—a violation where the employer had actual knowledge of a problem in this area of this standard?

Mr. STANLEY. First of all, it is presently treated as a repeated violation which carries with it the maximum penalty of \$70,000, similar to what you're saying in knowing and I will categorize that as a wilful violation.

Mr. ANDREWS. Right.

Mr. STANLEY. If the investigation reveals that the violation in the second plant, repeated as it was, the employer knew or should have known to the degree of a wilful violation, then I believe that agency should, in fact, recommend that for criminal prosecution.

Mr. ANDREWS. I appreciate that. I think Madam Chairman, there's a point of some consensus right there. I think that if you have a situation where a single owner or single employer is responsible for a violation in one of his or her plants, has the same violation in another plant, it seems to me at the same presumption the employer knows what's going on should apply and the higher penalties and more strict remedies ought to apply as well.

Commissioner Socolow, you noted that your department does not have jurisdiction over violations of OSHA standards in the private sector. I know there are cooperative programs where states can have some of that jurisdiction. Can you identify for us what you think the weaknesses in those existing programs are and what improvements we might make so that more inspectors might be there and the context of that question is that my understanding is that for the nation if you add up the number of inspection personnel on the federal OSHA payroll, and the number of inspection personnel on state worker safety payrolls, it's about 2,000 people in a nation of 200 million workers. It strikes me that local police can write a speeding ticket on 287, not just the state police. Isn't there some way we can get more enforcement from state and local enforcers? How would we do that?

Mr. SOCOLOW. Well, certainly the federal OSHA Act gives states the option to become a state plan state and 24 states, including California, Madam Chairwoman, have taken that option and therefore they take control of all OSHA in their state. When you do that, you're essentially going into a grant program with federal OSHA and I will say that all 24 of those state plan states have written to the Congress, specifically to the appropriators, noting that that line of the OSHA budget has been underfunded. The states are overmatching to use the language. We're putting more money, state money into those programs than the rules say we should and so that would help those states that chosen to do that.

That being said, you have either way, you've created a state program that's supposed to be at least as good as federal OSHA and in fact, many of those states try to go above and beyond what federal OSHA is doing. But that's as good as you're going to get. You're not going to see additional funding.

Mr. ANDREWS. I guess I'm asking a slightly different question which is that even if New Jersey is not a state plan state, if one of your employees were to go in during one of these consultation sessions and find an egregious violation, do you think that he or she should have enforcement authority to either do something about it or at least have some recommendation to federal OSHA where they would have to do something about it?

Mr. SOCOLOW. The rules now of that consultation program which is separate, are that if you see a hazard, you, in fact, tell the employer they have to comply, they have to come into compliance. They have to remedy that problem and then you—and I think it's been recommended by Mr. Engler that the amount of time that

then elapses to give the employer time to figure that out, trying to fix that problem ought to be shortened because right now under the federal consultation program the state consultant goes in. It is absolutely supposed to be a no gotcha consultation program.

Mr. ANDREWS. Right.

Mr. SOCOLOW. The whole purpose is to give them an opportunity to fix their problems. I think that it's true that the way federal OSHA has that set up, that's almost an endless process. But eventually, if they don't correct it, yes, the state consultation program does refer that to OSHA.

Mr. ANDREWS. I assume my time has expired. I think your testimony points out there is a difference between a safe harbor during which an employer is making a good faith effort to bring the plant into compliance which you want to encourage.

Mr. SOCOLOW. Right.

Mr. ANDREWS. And dilatory tactics that delay forever the repair or address of a problem identified during that process. My sense is that the great risk of those dilatory tactics is with us today.

Mr. SOCOLOW. I think that's right. And Congressman, federal OSHA could change that by regulation or certainly with the encouragement of the Congress.

Mr. ANDREWS. I think the Committee with the Chairwoman's indulgence would be interested in the panel's views, each of the panelists' views as to how that legal change might look. Thank you.

Chairwoman WOOLSEY. Mr. Holt?

Mr. HOLT. Thank you, Madam Chair. With the others here I'd like to join the family in mourning the deaths of each Mr. Diaz. I'd also like to join in thanking Mr. Wilson for coming to New Jersey, the Chair for holding this hearing, especially Mr. Payne for his assistance here in looking after the welfare of the folks here in his part of the State, and my friend, Mr. Andrews, for his perceptive questioning and legislation that's in the works. I'm pleased to see UNITE HERE here. Here, here. I really do agree with the earlier comment that if they had been able to organize this site, we wouldn't be holding this hearing here today because of these deaths.

Mention was made earlier of Pete Williams. Workers never had a better friend than New Jersey Senator Pete Williams. And OSHA is certainly a case in point. From the time it was passed, the rate of workplace deaths has fallen to about a quarter of what it was. There are several hundred thousand, three or four hundred thousand people, at least, who lived because of what Pete Williams did. And they will never know who they are. Not to mention the many thousands who have their eyes, their arms, and they will never know who they are. OSHA has worked. It can work better. But it is worth underscoring that legislation can work.

And there are some things that we need to do here. Certainly back in Washington we need to do mine safety. We need, as Mr. Andrews and Ms. Woolsey are about to do, we need to bring government workers under this coverage. But there are some things with the existing OSHA we need to work on.

Let me run through several questions and you can answer them in turn as you see appropriate. First for Commissioner Socolow and Mr. Wowkanech, both of whom we're very proud of here in New

Jersey I must say, why do you think New Jersey has better statistics? Lower death rate, 2.6 instead of 4 per 100,000. Is it because we have organized unions? It's not surely because we only have safer jobs here. I mean office work can be dangerous and deadly if there isn't an eye towards safety. Is it because we have industrial committees or consultation services?

I'd like to ask Mr. Frumin who knows a great deal about OSHA statistics, whether these claims that—just how good these statistics are and what can we do to include things that don't make it into the statistics, the near misses, the musculo-skeletal, the MSDs, and minor injuries that actually terribly costly. I mean \$1 billion a week estimated in direct costs of workplace injuries and four or five times that in indirect costs. So there are reasons to cut back on these minor injuries and to keep track of them so that we can keep cutting back, but also they are perhaps a measure of the safety of the workplace.

And I would also like to ask Mr. Stanley, your website says that employees should avoid unsafe acts and risky decisions. Do you think that Mssrs. Diaz should have avoided those risky decisions? Could they have avoided those risky decisions? Were they in a position to do so?

And finally, Mr. Stanley, what would be the harm in having mandatory joint worker-management safety committees? What is there to object to? Is it so costly? Why would a company object?

So let me throw those questions.

Mr. SOCOLOW. All right, I'll start off, Congressman. I first wanted to say I think you're right in one of your second questions that we shouldn't crow too much about incident rates and accident rates. I think that there are some questions about the data, but I think that they do serve to provide at least relative data across time and across different industries.

New Jersey does, in fact, have lower rates and I think that is, in part, because we do have more enforcement resources from the federal government than in some other places. We are blessed to have a slightly more robust enforcement presence, still not enough, but more from federal OSHA. I think we also have done a lot to try to create a culture of safety with our outreach and our efforts at the state government level with our partnerships. But I do think that there is a piece of that that is absolutely attributable to union density. New Jersey has one of the highest union densities in the country, almost one out of five workers in New Jersey belong to a union. And that's one of the few states in which that number is actually going up.

It's been asked of a number of people do we think that a union helps make workers safe? I think it can't help but be the case because even without an occupational safety and health joint labor-management committee, there is at least that avenue for whistleblowing or for a voice. But I think that even more, unions have played a very constructive role in bringing management to the table and having this be one of the issues that workers and management agree on because safety and health actually is in the best interest of the business. It is good for the bottom line and it's something that unions can bring management to the table on and make a real difference, to get them interested and involved, so that they

can fight about other issues, but they can agree on safety and health. So I think that that plays a real role in New Jersey.

Mr. HOLT. I think the Commissioner did a pretty good job at answering my question.

Mr. ENGLER. Can I just add one thing here is that the other reason I think that we have lower injuries and illnesses, even though the surveillance system is very suspect. There's a study we refer to in the testimony about that, is that there is a history here of unrelenting and aggressive advocacy by the labor movement and by allies among environmental and community organizations. In 1983, a coalition passed the right to work and community right to know law which was then expanded, sponsorship by Representative Florio and Senator Lautenberg to cover the whole United States and led to OSHA's hazard communication rule.

More recently, the public employees state plan in New Jersey is the most recent state to adopt such a plan. And today, even if it's not that many people in this room know about it, the New Jersey Education Association has one of the most advanced programs for protecting its members on safety and health of any union in the United States. And when they protect their members, they're also protecting our kids and the community as well. And so I think that when you look at the numbers and the charts and the graphs, it's one thing, but when you look to the actual history of people fighting for safety and health and environmental protection in this State, it's that rich history, that collaboration, those alliances that have made a substantial difference.

Mr. FRUMIN. Well, I would second the comments from Mr. Socolow and the others. Rick's point about the history and why things change is very important.

Mr. Holt, specifically to your question about the injury and illness data, this deserves a very serious examination by this Committee and I would hope that Madam Chairwoman that you would give yourself and the other Members of the Committee the opportunity to do that, to bring in witnesses to go over in some considerable detail the weaknesses in our injury and illness recordkeeping system. One of the most glaring of those weaknesses, however, is well-known to us. It was a decision of the Administration to remove from the OSHA log the specific requirement to record what are called musculo-skeletal disorders or injuries related to bad ergonomics. And that was the fallout from the Congress' horrific decision, not under your leadership, obviously, to repeal the ergonomics standard in 2001. That group of injuries are among the biggest single group of injuries in the entire economy and among the most preventable and among the most costly.

I'm here in New Jersey, but I'm a resident of New York. I just spent nine months with the Labor Commissioner's Advisory Council on return to work under the New York State Workers Comp. reform effort dealing with billion dollar consequences for decision making on workplace injury and workers compensation. The overwhelming number of long-term, long disabling injuries and this is true in every single state, New Jersey included, are musculo-skeletal disorders, typically lower back injuries, but others as well, which cost employers a lot of money and the decision by the Administration to specifically remove that category of injuries from

our record keeping system in a very sort of a slick way, was really unfortunate. I don't trust the statistics, even though I had a hand in helping to create the framework for them and I think if we look at what makes people speak up and complain about an injury on the job, we can address a range of issues here. Why does a worker complain that they're injured on the job? Why do they complain about safety problems at all? Do they feel free to speak up? Those are vastly important issues. In our industries, we've looked at this in great detail. We'd be happy to bring more of this to your attention. We've seen rates of nonreporting of injuries by workers to the employers of over 50 percent, over 50 percent from California to New York to Boston to Las Vegas. This is rife in the hotel industry. These are workers who are being abused. It is highly unfortunate, totally distorts our understanding of the problem and our ability to make decent policy planning as a result. So I appreciate your asking the question. I urge you to look at it in more detail.

Chairwoman WOOLSEY. Mr. Holt, is that the end of your list of questions?

Mr. HOLT. There are still two pending, actually.

Chairwoman WOOLSEY. We're going to let you have your two pending and you're not going to get a closing statement, okay? Your choice.

Mr. HOLT. Fair enough.

Chairwoman WOOLSEY. All right.

Mr. STANLEY. Congressman Holt, I'm excited that you looked at my website. My daughter put that together. It's an age old question of unsafe conditions and unsafe acts and it's been argued back and forth in the safety and health community for as long as I've been involved and as you know, that's been a long time. I cannot comment on what North East Linen and their employees knew or didn't know. On a general statement, all of us, everyone in this room deals with unsafe conditions and unsafe acts every day we get in our car and we go out on the highways. The fact is that all of us have been trained and think we're good drivers, yet everyone in this room breaks the speed limit. That's an unsafe act. We know better. We do it. We have all kind of reasons to do it. But we still do it. And for us to think that that doesn't occur in our workplaces, people that know their job and take a shortcut for whatever reason, that goes on. That's an unsafe act.

There's many other things on the website that—and that one little thing is in there as it should be, but creating a safer workplace through correcting conditions and training workers is also on the website.

The second question was I believe on joint safety and health committees which I am an advocate. I hesitated a little bit in my testimony as Rick point out because I think you can go further than joint safety and health committees as far as employee involvement. And I don't know what UTSA's position is on joint safety and health committees, but on a personal level, as a safety and health professional, I believe we would be much better off in addition to committees if we had them is to go out into the workplace and identify those workers that have experienced on a day to day basis in the workplace and train them to a level of an OSHA compliance officer and allow them to be eyes and ears in the workplace. That's

real employee involvement. And that's part of an effective safety and health program, along with a safety and health committee. So that's my position personally. The Association, I don't know what their position is since I've just been retained by them within the last month.

Mr. HOLT. Thank you, and I thank the Chair and my colleagues for their time.

Chairwoman WOOLSEY. So you're yielding?

Mr. HOLT. All done for the day.

Chairwoman WOOLSEY. You're yielding your overtime. We're going to have a series of comments with Mr. Andrews, Mr. Payne, Mr. Wilson and myself, but we're going to be quick, I promise. They promise.

Mr. Andrews?

Mr. ANDREWS. Well, thank you very much, Madam Chairwoman, again, thank you for this hearing. I wanted to also thank a long-standing friend of mine for her mentorship in the field of worker safety. Laurel Brennan who is here today from the AFL-CIO is someone I met before I became a public official. And she made sure in her wearing literally the hat of UNITE HERE when it was just called UNITE that she made sure that I became aware of these issues and has continued to educate me about them. I wanted to pay my respects for her and thank her for her work on my behalf and behalf of the people she advocates for.

I would just—this is not a question, just a closing comment, Madam Chairwoman, with your indulgence, I think we're lacking in three major areas and I think you can hear this as a consensus of the panel. The first is we have insufficient personnel enforcing the OSHA law and it is our responsibility as those who control the power of the purse to do something about that and put more inspectors and more enforcers on the job.

The second is I think there is insufficient sanctions and there are insufficient remedies when we do find a problem. We've heard a discussion this afternoon of broadening the definition of a knowing or wilful violation to include a multiple plant violations by one employer which I think would go a long way. Another idea I think we should explore in remedies is the idea of quicker collection of that which is owed. You know sometimes when people don't pay their debts to the federal government they're withheld from their tax returns, from their refunds. That's something we should strongly look at here. If we have an employer that is responsible for paying an OSHA fine, that fine should be withheld from any other payment to be made to that employer, including a tax refund.

I think we should look at a stronger debarment remedy. If an employer is a consistent and chronic violator of worker safety standards, I don't think that company should be getting a federal contract, whether it's to build weapons for the military or to build a highway or do whatever else. I think a stronger debarment revenue would get people's attention.

And then finally, I think Mr. Engler's point is very well taken. Good intentions are not good enough. You prevent worker safety by giving those who have the greatest stake in the prevention some power, some opportunity to do something about that. And I think the discussion that took place in the early 1990s about mandatory

workers management safety committees needs to be regenerated and enacted into the law.

We're never going to have 15,000 OSHA inspectors out and even if we did, it wouldn't make much of a dent. But if we have significant remedial improvement, if we have a stronger definition of what a wilful violation is, and if we empower those who are most at risk to do something about stopping the risk I think we'll make the progress that we commendably have seen here in New Jersey.

So Madam Chair, I appreciate the chance to hear these excellent witnesses today. I thank them for their participation and look forward to working with you and the Members of the Minority to pass a good law when we go back to the Capitol. Thank you.

Chairwoman WOOLSEY. Congressman Payne?

Mr. PAYNE. Let me also thank you for calling this very important hearing and for all of the Members of Congress who took time to be here today and of course, our panelists. I think Congressman Andrews said it right, they say that the road to, I'll say purgatory, is paved with good intentions and we have to take it out of the good intention phase and put some teeth into our laws. You know, Congressman Holt mentioned Senator Pete Williams as one of the greatest labor advocates ever seen in this country. I knew Pete very well. I had him in my local headquarters in '72 and '78 kicking off his two senatorial campaigns and he started his work with migratory workers because they were being discriminated against. They couldn't go to schools, here in New Jersey, they couldn't have bank accounts and they were Hispanic people that came into the State in the late '60s, early '70s and it was Pete Williams that championed them. And once again I see the same thing creeping in again. We have Hispanic workers. We have people from Central and South America who are in these industries that are unprotected and once again we're seeing continued advantage being taken of people who don't have a strong voice. And so we have to be vigilant about what's going on. We cannot continue to have exploitation of people who are trying to better themselves, but because they are sometimes intimidated by the law because of places they come from, the law is the last word. Many times they simply don't speak out. And so we can't let that continue.

I'm pleased with Mr. Socolow and our Department of Labor in New Jersey. New Jersey will once again get back where it should have been. We had the highest minimum wage back in the '60s and '70s, but we allowed the other states to catch up and even pass us, but I'm glad to say that New Jersey is back up to the \$7.25. But Governor Corzine says that next year he wants to index it to \$8.25 minimum wage. It will be the highest in the country again. These are progressive steps going in the right direction, if it wasn't for our labor leaders like Charlie Wowkanech and I didn't know Ms. Brennan as long as Andrews, I mean she didn't teach me anything but it is good to see you.

Let me just also say that if you have the right, we hear a lot of negatives, but the right thing happened in a very potentially deadly situation about two months ago. I was here in Linden with the former Mayor and the current Mayor at a recreational event, the annual PAL boxing tournament. And that evening while we were there, a police officer from Linden, I forget his name, but I'm sure

an officer knows his name, this police officer was shot point blank right in the chest, knocked him down, but it didn't injure him seriously because he had a bullet proof vest on. Why am I bringing that up? Well, I bring it up because there was the proper protection that should have been there had he not had that on, it would have been a different outcome.

So it shows that an ounce of prevention is much more than a pound of cure and if we would keep that same kind of philosophy as we move forward, many of these tragedies can be prevented. Just finally, just as we were having this meeting this afternoon, 2:31 a construction worker was killed, falling from a scaffold at Trumps Solo Hotel and Condominium Towers on a construction in Manhattan, plunged 30 feet down and he's dead. And the 46-story building has been a persistent source of controversy with community groups complaining about the size and the proposed use, and once again, today, as we sit here in 2008 in the new millennium, 21st century, we're still not taking—if you're going to have people on high levels, then you should certainly ensure that these equipment and scaffolding, whatever, you can't make—they've been scaffolding for a hundred years. And of course we had many, many more deaths then, but much of this is preventable. And so I think that we have a lot of work to do. Once again, let me just thank the Chairperson and the Ranking Member for calling this very important meeting. Thank you very much.

Chairwoman WOOLSEY. Ranking Member Wilson?

Mr. WILSON. Thank you, Madam Chairwoman, and again, I want to thank the witnesses for your input today. It's been very helpful to me. I also want to thank the staff persons who have assisted us today and in particular from our office, Legislative Assistant Melissa Chandler who has flown up for the event today. Additionally, I want to thank the Chairwoman for her courtesies today. I think she's been very fair to everyone and allowed all of us the time that we could have and again I want to thank the Garden State Members of Congress, led by Don Payne with Rob Andrews and Rush Holt, again, your warm northern hospitality, thank you very much.

Mr. PAYNE. That's what Huckabee said up in New Hampshire.

Mr. WILSON. I was not quoting him.

Chairwoman WOOLSEY. Thank you all for coming. Thank you to the witnesses. This panel has been so informative to us. My colleagues, particularly Congressman Payne for insisting that we get here and get here as quickly as possible. The audience, thank you for being here and listening and caring. It makes such a difference to look out at you and know that this means something to you. And to our staffs for putting this together, we're useless without them. You all know that.

I think I can speak for all of us when I say that the information we've heard today about the state of the American workplace is deeply disturbing. I mean the very idea that we still ignore near misses, that the employer isn't considered the ultimate responsible person in any industrial accident, excuse me, the employer is the parent in this situation. It isn't looking for some irresponsible employee or an employer that doesn't provide the right tools and equipment. The employer is the boss. When it goes wrong, they are

responsible, and we have to make sure they know it and they cannot wiggle their way out of it because we must make changes.

Today, we've focused on the deaths of Victor and Carlos Diaz. What happened to these workers, the impact it's had on their families, their community, the rest of the workers in their companies could have been prevented, all of this, but we should not forget that these tragedies are repeated like Congressman Payne said just minutes, well, hours ago, in New York, at least 16 times a day, every single day of the year, this is the 2008. It's the 21st century. We are going backwards, not forwards because we're not keeping up with the times. And we should not forget that the rate of death for Hispanic workers is in this country is on the rise as well.

These tragedies happen one at a time. We know that, but because of that they sometimes go unheard. The response and the changes are not always put in place as they should be, but they have a huge impact on everybody that's related to the people who are either killed or injured or whose lives are changed forever and we must do something about it and that's why we passed the Occupational Safety and Health Act 37 years ago and it's why we must keep it modern, today. What happened 37 years ago is much different now and we've learned a lot from everybody today.

Thank you very much. You've sent us off with quite a bit more to do. And we will do it. You can count on us. We're not a very big Committee, but we're a pretty powerful little Committee that has our hearts, every one of us in the right place on this.

Thank you again, Joe, for being here. Any Member that has any other questions, we have 14 days to submit additional materials for the hearing record and any Member who wishes to submit follow-up questions and writing, they have 15 days to do that to the majority staff and without objection, the hearing is concluded.

[Whereupon, at 4:13 p.m., the subcommittee was adjourned.]

