

Before the
State of California
Department of Industrial Relations
DIVISION OF INDUSTRIAL SAFETY

2
4/3/75

T R A N S C R I P T
of
P R O C E E D I N G S

In San Diego, California, Monday, March 24, 1975, at

Richard Wilkins, Chief
Fred Hermes, Division Counsel.

455 Golden Gate Avenue
San Francisco, California 94102

San Diego, Calif. - March 24, 1975.

Minutes of Public Hearing for the purpose of receiving evidence, comments, arguments,...relating to the use of the Short-Handled-Hoe by agriculture employees, a work operation that may be involved in back injuries.

Present were:

Terri Lopez	Calif. Rural Legal Assistance	El Centro
Richard D. Maltzman	Bud Antle, Inc.	San Francisco
Craig D. Collings	Western Growers Association	Newport Beach
John Gilmore	Evening Tribune	San Diego
Mile Davis	San Diego Union	San Diego
V. K. Nishken		El Centro
Curt Rutherford		Brawley
W. F. Macklin	Imperial Valley Vegetables Growers Association	El Centro
Bob Hawk	Imperial Valley Vegetables Growers Association	Holtville
Alton Pryor	California Farmer	Riverside
Jack J. Fleming	Fleming & Jack Ranches	Brawley
John E. Guillen	Aravjo & Guillen	Brawley
Mo Jourdane	California Rural Legal Assistance	Salinas
Greg Lefevre	KFMB-TV	San Diego
Dana Clay	KFMB-TV	San Diego
J. R. Signer	Division of Industrial Safety	Los Angeles
Jim Gonzales	California Rural Legal Assistance	El Centro
Jesse Constanancio	V.F.W.	
Fred Jenkins	Imperial County Farm Bureau	El Centro
Gene Rye	Imperial County Farm Bureau	El Centro
J. Kenert	Kenert Associates	San Diego
Octavio Aguilar	California Rural Legal Assistance	El Centro
Larry M. Bratton	Pan American Underwriters ✓	El Centro
Carlos Bowhery	California Rural Legal Assistance	Heber
Otis J. Glendenning	Desert Growers Association	Brawley
David Flanagan	S.G.L.F.	Santa Fe
Thomas Kilbride	United Farm Workers	
Joe Smith	United Farm Workers	
Ron Vera	California Rural Legal Assistance	El Centro
Mary E. Nunez	California Rural Legal Assistance	El Centro
Thomas Nohomeck	Inter-Harvest, Inc.	El Centro
Nick Nichols	United Prof. of Calif. AFT	San Diego
Tary W. Luter	Independent	La Jolla
Mary H. Smith		
Minnie Ybarra	National Farmworkers Service Center	San Ysidro
Father Victor Salardrin	San Diego State University, UFWA	San Diego
Jorge Carrillo	Self	San Diego
Escadella Munoz		
Mrs. Hernando		
Mr. Padilla		
Mr. Calkia		
Bob Log	Grower	Imperial Valley

CHIEF'S STATEMENT

GOOD MORNING, the announced public hearing is now called to order.

I am Richard Wilkins, Chief of the Division of Industrial Safety, and with me is Fred Hermes, Division Counsel.

This is an informational public hearing pursuant to notices mailed to numerous individuals and groups, published in newspapers, and also released to the news media.

I would like to suggest that you enter your names and addresses on the attendance sheet at the front desk. This gives you the assurance of receiving further information regarding future action on the material under consideration at this hearing.

For a brief background: the original petition to prohibit the use of the Short-Handled-Hoe was presented to the Division in September of 1972. Following three public hearings on March 6, 1973, May 1, 1973, and May 3, 1973, in San Francisco, El Centro and Salinas, respectively, the then Safety Board, on July 13, 1973, denied the petition on grounds that the issue was not within the scope and purview of Section 3316 of Title 8, California Adm. Code. Upon review, the California Supreme Court, on January 13, 1975, concluded that the issue was within the purview of said Section, but the Court remanded the case to the Division to make a final determination on the question of whether the Short-Handled-Hoe is an "unsafe-hand-tool" under the proper legal standards.

I would like to briefly summarize the events following the Supreme Court decision and occasioned the scheduled hearings:

The Division, following the guidelines set forth in the Supreme Court's decision, decided that further intensive study of all aspects of the use and effects of the Short Handled Hoe would be beneficial to all concerned. The Division has made an in-depth and thorough study of the whole record, and actively solicited information and comments from all concerned. As a result, we received a large response to our efforts from numerous groups and individuals expressing divergent views on the matter, and many requesting further public hearings. We have, therefore, scheduled two public hearings: one here for today, and the other in Salinas to be held on Thursday, March 27, at 9:30 a.m. sharp, at Salinas City Hall, Council Chamber Rotunda, 200 Lincoln Avenue.

PLEASE NOTE: that the purpose of these hearings is to receive further information, comments or suggestions that would be helpful and relevant to the issue. You may make your presentation orally this morning or present the same in writing to us here. Your presentation may be in the form of comments, suggestions, statistics, arguments, questions, answers or definitions, that you feel or would like the Division to consider in making its final determination on the use of the Short Handled Hoe. I would like to impress upon you that the decision will be based on the substance of the matter rather than the amount or cumulative evidence. I, therefore, request that in cases where your views or evidence is in agreement with the views expressed by others in this hearing, you may state that you concur and agree with the views expressed by that party rather than be repetitive.

To facilitate the conduct of the hearing, I believe it would be well to proceed in the following manner:

Anyone wishing to make a presentation, please raise your hand, upon recognition by myself, please come forward to the front microphone. Give your name and any organization you may represent or be associated with. You are required to do this each time you present any matter. As you know, we are recording the hearing. For the purpose of the record. At this time, is there anyone who wishes to step forward and make a statement?

1. MAURICE JOURDANE: I am Maurice Jourdane, State of California Rural Legal

Grover's Assistance, representing the original petition in this matter.

We will have appearances of other farmers who are coming in. Unfortunately, because the hearing was held in San Diego, they had to spend another four hours coming in on the bus this morning from El Centro, so they'll get here as soon as they can. What I would like to do is represent a substantial amount of information that are aware to the Division already, however, I would like to summarize our position at this time if I could and it might make things in context, I believe, more easier for people who aren't aware of these hearings and who aren't up-to-date on exactly what's happening, since this began several years ago. As you are aware, three hearings were held in 1973, and a substantial amount of testimony of statement at that time. In addition, I understand that a substantial amount of reading material has been received by the Division. In January, as you know, of this year, the Supreme Court remanded this matter to the Division for determination of whether the short hoe is safe and invited its opinion. In doing so, the Court said that if the short handled hoe so designed that it can only be used by the worker in a bent over posture that is dangerous to his health, it could be found to be unsafe and an unsafe hand tool. Because it is undisputed that the short hoe does require the worker to work in that posture, it is unsafe for the Court not to say that, that alone, is not enough, as you are aware that the law requires that there be no practical alternative in effect. Employers are required to use the most practically safe method of doing work. The testimony explained here stated and/or the testimony we have already presented or the written material we presented to the Division in the last several weeks went to that issue. What is the alternative, if any, available? We have presented and will present additional evidence to the point that throughout the United States the work done in California with the short handled hoe is done also with a long handled hoe. We have presented evidence and we will present additional evidence that a number of growers in California recognize that fact. Throughout the San Joaquin Valley the long hoe is used, for example, to weed and plant sugar

beets. In Imperial Valley and Salinas Valley, the short hoe is used for exactly that same purpose. We have presented evidence and will present additional evidence that shows that with the use of the precision planting, even lettuce can be weeded with the long hoe. In South Texas, in Florida, in Michigan where a substantial amount of lettuce are grown, they do the work with a long handled hoe. There was, last week in Salinas, A Symposium, and in course of that, Mr. John Ahearn, who is an agricultural expert, personally involved with the University of California at Davis, made a presentation entitled "Alternatives to the Short Handled Hoe." In the course of that presentation, he set out a number of alternatives. We have a tape of his statement and will present it to the Division. In effect, what he said was, "We could use a long handled hoe, or we could use what are called mechanical fingers to do the work, and with the use of precision planting, the use of the mechanical fingers has become a feasibility in California." And I would like to say one other thing; and that is that I saw in the El Centro paper, the other day, a statement by the Growers, to the effect that this is not a safety issue but that it is a political machine. I regret that that position has been taken. This is a safety issue! It's something that doctors in rural California know that it is a safety issue and farm workers know it is a safety issue. And it is unfortunate that when we get to the point that when we try to point out the fact that I'm sure the growers are never intended to cause any harm, which does work well, that it does have to be looked at, the whole issue. I think that the growers should know that we recognize that without them, the farm workers don't have any work and that we should work together to improve the industry for everybody involved in it. And the Courts again, would have to consider both the workers and the employers. Thank you.

Mr. Wilkins: Anyone else who wishes to be heard? Yes, Sir.

2. CRAIG COLLINS - Western Growers Association:

MR. CRAIG COLLINS: My name is Craig Collins. I represent the Western Growers' Association and I would like to read you the recommending statement in behalf of the Association. Western Growers' Association is a trade Association., representing growers and shippers of fresh vegetables and all this for saleable strawberries in California and Arizona. Our members ship 80% of the production of these commodities produced in California. Our members employ substantial numbers of workers who are engaged in the work of all of the thinning vegetables, including lettuce itself. The short handled hoe is particularly used in conjunction with thinning of lettuce and celery crops. We have not yet developed the ability to plant lettuce and celery seeds, for the certainty that they will show them to yield maximum production of these crops without the necessity of going through the field and pulling out excess plants by hand. The short handled hoe is often used by employees engaged in this process. They have found that with the short length of the hoe, is essentially engaged in the thinning operation, with much less effort from being involved first in standing erect and then bending over to view. It is not a desire, in any way, to jeopardize the life or safety of employees involved in these operations. To the contrary, we would like to do anything possible to protect these employees from injury. We find it difficult to believe, however, that the nature of work involved in this operation can cause injury because of the length of the hoe handle. Bending over is so common in any job that we feel the evidence is not yet established that in this particular type of operation, is unique in essence. In any event, if the Division of Industrial Safety feels that regulations are necessary, we ask three things: First, a clear and specific definition of the short handled hoe be given. Without this specific definition of this term, compliance will be impossible for our members. We suggest that a short handle hoe be defined, therefore, with a handle which is 12 inches long, from the blade of the hoe, to the tip of the hoe. Second, we suggest that an employer be prohibited from requiring the use of or supplying such a hoe, if the Division

of Industrial Safety deems it necessary to pass such a regulation. We strongly feel that the employer should not be punished if an employee brings such equipment for his own use and is used to using an employer's supply of the long handled hoe. Third, there should be exemptions where short periods of times during which a short handled hoe can be used since there has been no medical evidence that temporary use of a short handled hoe is detrimental in any way. We feel that the Division of Industrial Safety must allow temporary use of the hoe. On that belief, we recommend that use of the short handled hoe be prohibited for, of no more than 6 (six) weeks, with 2 (two) weeks rested from use of the hoe between such periods of use. Thank you.

RICHARD WILKINS: Thank you! Anyone else who wishes to be heard? Yes, Sir.

3. RICHARD MALTZMAN: My name is Richard Maltzman, and I'm an attorney in San Francisco, and I represent a company named Bud Antle, Inc. Bud Antle, Inc., one of the largest and busy in the United States, and it regularly employs upwards to 1500 State workers at any one time throughout the year. We have submitted a written statement by Mr. Robert Viandle, President of the Company, and I see no sense in reading it for the record; you have that in front of you. The Supreme Court, when it determined the short hoe case, felt that the medical testimony that would be before the commission was, in essence, under body and it was. However, I don't think it probably should have been. The medical testimony that was given, from my standpoint as a layman, should be under the standpoint of how this holds up in the court of law; it seems to be basically deficient in one material aspect, that was that the doctors were testifying that they had examined people who had worked with the short hoe and that they found that among people with bad backs they were checking, they found that there were large number of them

who had worked with the short hoe and they meet the gap to conclude that the short hoe was somehow or other related to their back injury, but being familiar with the farming operations of vegetable growers and, I recognize immediately that there's no such thing as a worker who works exclusively with a short hoe -- some of them do -- but on the whole, most lettuce workers work at times, with the short hoe and other times they're working as cutters and other times they're doing other job functions in the field and most of these job functions require working in a bent over stooped position. In fact, the man using the knife to remove the head of lettuce from the ground must get down and actually stoop further than the fellow who is using the short hoe. Our experience at Glan Lake hoe'rs and thinners are a transitory work force. Most of our hoe'rs and thinners work only for very short periods of time. The last time that we looked at statistics of this was back in 1960. We normally operated a crew of around 150 hoe'rs and thinners out of a work force, as I said, that ranges up to 1500 and sudden evidence belonged. The number of workers who were engaged in the hoeing and digging operation in 1969 as a class unit of statistics, was in excess of 7,000. So we had 7,000 people who came in and worked in that job function who are able to fill those 150 spaces. And this makes sense because the hoeing and thinning is the lowest paid job on the spectrum of agricultural work available. You make much more as a harvest crew worker and what happens is, we have many workers who come up and they work in a harvest crew for, let's say, Easter and maybe there is a week before the harvest crew starts operating so they wish to go out and make a few dollars while waiting that week, and they go out and find hoeing and thinning jobs. Hoeing and thinning are also the only agricultural jobs that I know of that is paid on a daily basis by most farmers. I said, a weekly payroll which we normally have. In any event, I took the transcript of the first three minutes that I had and I took two of them to the California Medical Clinic which has a large staff of orthopedic surgeons and neurosurgeons and I asked them to read the medical testimony and if one of the doctors were to give me an affidavit of statement in respect to

what they felt that testimony was. I have a statement here, which I'd like to read into the record because I think it's relevant. And then I have an affidavit and I'll present the affidavit to you here. This is the affidavit of Dr. Berkeley Huett:

"My name is Dr. Berkeley Huett." I am a medical doctor specializing in orthopedic surgery. I attended the Yale University and University of Colorado Medical School, interned at the University of California, and was in my residency in orthopedic surgery at the University of California for 4½ years. After completion of my education, I went into private practice in Massachusetts and I've been with the Palo Alto Medical Clinic, Palo Alto, California, practicing my specialty since November, 1973. I have read the medical testimony given by Dr. David Flanagan, Robert W. Murphy, and Robert Thompson, on March 6, 1973, May 1, 1973, and May 3, 1973. A hearing before the California Division of Industrial Safety are as follows: Some brief outline, are some general comments I would have about back pain, particularly how degenerative conditions appear in the back as well as some points about reproduction of pain due to degenerate disease that so that the known factors which make degenerate disease a fact, I regret that I do not personally submit these opinions and respond to a question of the Division of Industrial Safety with a short notice given at the hearings to be held March 24th and 27th, 1975., prevents my judging my personal friend. In terms of a general understanding of the problem, there are really three main aspects of symptomatic low back pain. One is the constitutional or hereditary factor. It is generally accepted by specialists in the area. The certain groups of people, even because of racial characteristics, diet or life style are more prone to symptomatic low back disease and other certain people. It is well noted that the Stewart study of the Eskimo cited at the original hearings reported that approximately 60% of the Eskimo tribe studied, had a condition called Spondylolysis and Spondylolisthesis referred to initially by Dr. Flannagan in page 13 of the March 6, 1973 hearings which would alleviate the bone structures of the back which may predispose the person to back pain.

This, in trust, to Anglo Saxon population which may have a total of 10% incidence of this defect among'st the bone natural. It would also seem that there are certain groups in tribes in Africa, which have little or no disc disease. Indians and some oriental groups also are known to have much lower incidence of back pain and symptomatic disc disease, then says your natives. Welch coal miners have a high report of incidence and back problems while South African miners are reported to have almost none. To this indeed, there is one variable in this equation. Secondly, there is a factor of how people use their back, this is somewhat a tricky proposition in that it has never been substantiated to my knowledge statistically that a group of people who do hard physical labor require a lot of stooping and bending and lifting activities have more back and disc problems than a group of sedentary or white collar workers. Indeed, it ought to appear from a physical standpoint that a man who professionally uses his back for a strenuous occupation, they have less trouble than one who leads a basically sedentary life but then uses his back infrequently and applies occasional high protein compression stresses to his lumbar spine. From my physical observation and discussions with my colleagues, will often have more difficulties with his back, and certainly a greater chance of symptomatic disc disease than someone who uses his back consistently in his occupation. If I may digress here for just a moment, in the reading of Dr. Huett's statement in the letter, by the way, we reported about a review of our own medical records to determine whether or not there were any cases of complete back problems than the workers who were in the hoeing and thinning category and we found none out of the three hundred and some odd complaints that were actually made. Interestingly enough, the highest category of the back problems that we found, were in the lumbar. We had 17 (seventeen) cases and most of them bend, picking up boxes had back problems. The second highest category was in the category of Foremen, which is consistent with the statement that's made here that the person who is not regularly working, who occasionally works, tends to have a high incidence

of back pain from the straining, coming on after a mild case of flu. X-rays we take showed a galaxy of rather significant structural spine deformities. She had forty degree lumbar scholietic curves, she had five levels of degenerative disc with severe arthritis in the joint behind the disc. She also has Spondylosis at L 4 5 with a second degree slip. This patient, in other words, had not one reason but three reasons in her X-ray and had a long history of severe back troubles. At 72 years of age, she was having her first back complaint. Now the real interesting part of this story is that in the routine back work up, it became evident that the patient has a marked abnormality in her resusitation rate and her total chemistry balance. Bone biopsy was performed, which showed diffused cancer which spread to the spinal bone so early that the cancer change is not evident on the X-rays. So we see that this unfortunate lady with deformed spine disclosed from the X-rays do not cause her back pain at all. It was the cancer which had metastasized through her bones which was causing her symptoms. The point that should be made here is that despite the severe structural spine deformity on X-Ray, the lady had never had a day of back pain in her life. Now, this is an illustration of a commonly observed. fact that when we're all finished here that there is no correlation between X-rays alone that any etiology of a person's back complaints. This is important because X-rays are used as the sole criterion for establishing whether the patients are incapacitated because of the prolonged use of the short hoe. This is rather meaningless because the severe x-ray changes may well not be symptomatic. The last point that should be made is that from a scientific standpoint, it would be almost impossible to single out the short hoe as it correlates to back pain. To do this would require a matched population of say, one hundred or more workers; one group using the long hoe exclusively, and as its sole strenuous occupation, one group using the short hoe exclusively and its sole strenuous occupation, and one group engaged in a sedentary occupation. These groups would have to be matched from a hereditary, from an environmental and from a psychological standpoint. They would have to be followed for a minimum of ten years and then x-rays of the lumbar spine, compared at the beginning

of the ten year period and at the end of the ten year period. Such a study, as a practical matter, would be impossible to do with any scientific validity since it would be impossible to control all the variables in the study to make it valid. Certainly if one group was engaged in substantial amounts of other strenuous work, especially if it was stooped labor, it would invalidate any conclusion which might otherwise be of scientific significance. It may be well that all forms of stooped labor, which could include planting, harvesting, picking or cultivating in specific crops, would predispose a worker to an increased incidence of degenerative conditions of the low back. Whether these degenerative conditions are symptomatic is another matter. And whether the short hoe, per se, is any worse than hand picking and harvesting lettuce is very difficult to say, impossible to conclude in the evidence presented in the previous hearings. I hereby declare that the foregoing is true under penalty of perjury.

Executed on March 21, 1975, at Palo Alto, California. Oakley Hewitt, M.D.

MR. Wilkins: Copies of this will be entered into the rest of this Exhibit 1.

(Who is speaking?) Mr. Jourdane testified in appeals board panel that evidence presented to the board, which I have not seen, shows that the long handled hoe is used in other states. I would like to suggest that there is a basic problem looking at the short hoe as a tool of agriculture, per se, rather than as a tool used in the farming of specific crops. It may very well be that reasonable alternatives are available in certain commodities and not available in other commodities. I can only speak from my theatrical incline from lettuce and celery, those are two commodities which I am advised by my clients, that they are extremely difficult to farm successfully without the use of the short hoe. I cannot speak for sugar beets -- I don't know anything about sugar beets! The Commission also made to Mr. Jourdane of a statement to the effect that precision planting and mechanical harvesting were devices that could eventually eliminate the need for the short hoe. I know, I speak, from my mind when I say that they would prefer to eliminate these short hoe if it was a viable alternative. It is not a simple answer though just to say precision planting and mechanical harvesting will do it, because we have spent substantial amount of money expounded on mechanical thinners and have found them to be less than efficient and they just don't work very well at present. Now, maybe in the future, they will be developed to the point where they will work effectively. Furthermore, precision planting is, as a concept, does not work every place. Precision planting, it is found, works reasonably well in the Salinas, Watsonville Area. This is a weak lettuce growing area, where the Summer months are perpetually cooled by ocean fog and a very high percentage of lettuce seed planting erminates, so precision planting, which is a device where they capsule these immiscible seeds so they are larger to be handled, works in the Salinas area because they will plant like two seeds in every 8 inches rather than 40 or fifty seeds every 8 inches they might plant in Imperial Valley and one of those two seeds by statistics, will germinate, and you will get a full stand out of that field without having to go to the mass planting like it is used in the Imperial Valley and the San Joaquin Valley. The extremes of temperature in the Imperial Valley and the San Joaquin Valley, I understand, will not permit this type of planting. So precision planting only works in the Salinas

Watsonville area. It won't work in Imperial Valley and in the San Joaquin Valley and so the concepts of competent precision planting with mechanical thinning are only germane to discussions of that one growing area, Salinas, Watsonville. In our letter, we pointed out the total access of any claims for industrial injury that were made by our workers in the hoeing and thinning categories. We would respectfully submit that the department has documents of every industrial accident that occurs on the farm. All employers are supposed to, as I understand, submit a report to the division of any industrial accidents and/or complaints and if the division will check it's own records, I think it will find that there is a relatively low incidence of complaints of back pain from the actual workers working in the hoeing and thinning fields. I also was presented, just before I came up here with a letter, addressed to Mr. V. K. Nishkin, who is in the audience here, from Ed Kendall, Insurance in El Centro. And Mr. Kendall wrote to Mr. Nishkin as follows: (and I would like this letter to be part of the record right after I read it.)

"Dear Mr. Nishkin:

"It is my understanding that you will appear before a legislative body, holding a hearing in San Diego, concerning the use of a short handled hoe that agricultural laborers are thinning and weeding their own crops. We are an average insurance agency, usual to our community. We insure several of the local produce growers in our mixed local business. As the short hoe matter, as it appeared in the news media, I began a research in workmen's compensation injury records in our files for produce growers to determine how extensively stooped labor back injuries occur. Most of these growers farm from five thousand to fifteen thousand acres that grow crops each year. These records extend back from five to ten years. I have even included a sizeable farm labor contractor. During this period, there have had to be a considerable amount of thinning and weeding, approximately forty thousand acres per year by these growers. I submit to you, with the total accident and loss records of these farmers. Not one involves a back injury either stooping or weeding and thinning. It is also significant that there are none for those who stoop to cut lettuce heads or stoop all day to pick cantelopes. I'm reminded of the point in times when the grape

I think the rest of this letter is not necessary to put into the record. I would like to present Mr. Kendall and hearing records of all the back injuries that he has handled.

Mr. Wilkins: This will be entered as Exhibit #2.

My last point that I wish to make is really not, my last point is that the present law under Division is now considering possible dispensing of the use of the short hoe. It is different than the law that is being considered than the original hearings that were held. The original law at that time really permitted for prescribing of the hoe and permitting its use, and the new law does provide all types of reasonable restraints to be put on the hoe this division has the power to order medical examinations before orders can be permitted to use the hoe, and it has the power to safeguard all the people who are physically able to use the hoe can use it. I am reminded of the fact, that, for instance, the longshoremen in Hawaii, the union contract requires that the, all workers who come to work on the docks had an x-ray of their backs, and anybody with Spondylolysis is not allowed to work as a longshoreman in Hawaii, even though clinically only 50% of the people responding to Spondylolysis ever wind up with any symptomatic back injuries, but the incidence of the people with Spondylolysis having back injury, I understand, from Dr. Huett, are approximately 10 times the average persons population I might expect. I would like to join the WGA's statement. I think that they said that I, many of the events that I disagree with and I would like to just express hopefully an argument: I have done this and am impressed that there has been a certain amount of chagrin expressed by representatives of the California Legal Growers Assistance that these hearings were even being held and I don't understand that because it seems to me that it is fully appropriate that further hearings be held and that this matter be considered in the light of the present law. In this regard I would like to read just the last couple of paragraphs from the Supreme Courts opinion that remanded this matter from whom Versus the Division of Industrial Safety. There, the Supreme Court, pointed out the determination of whether the tool is impermissibly unsafe, however, involves more than a single decision as to whether it causes some injuries. At any event, the traditional hammer, for example, may never be the cause of many sore thumbs that, that in itself is not demonstrated that the hammer is unsafe. As noted above, Section 6306, Subdivision A, defines safe and safety as "such freedom from danger as the nature of the employment reasonably permits" and Section 6306, division B, specifies that when determining the safeguard, which an employer must adopt the word "safeguard" should be given a broad interpretation so as to include any practical method of mitigating or

or permitting specific danger. I suggest to the Division that the nature of the work and us involved in the hoeing and thinning at the present time, does not reasonably permit an alternative method in lettuce and celery. I don't pretend to stand here and suggest that this will always be the case. I would strongly suggest that if the Division wishes to make any limitation upon the use of this hoe that a conditional use be permitted in lettuce and celery with the opportunity to renew it in, let's say, two years to see whether or not the industry at that time, has been able to effectively develop alternative means of doing this type of work. Thank you very much, for your time and attention and I appreciate it.

MR. WILKINS: Anyone else who wishes to be heard?

4. OTIS J. GLENDENNING: My name is Otis John Glendenning. I am presently the Manager of Desert Growers' Association in Brawley in the Imperial Valley. This is a cooperative labor association. At this time, I would like to submit in evidence of a letter from a gentleman who could not attend today, and thought this letter would not get here in time. I will give oral testimony, but at this time, I would like to submit the letter in evidence as part of the record.

MR. WILKINS: We will enter this as Exhibit #3, a letter from A. Mark Herring, M.D., 237 North 8th Street, El Centro, California. Is there anyone else who wishes to be heard? Yes, Sir.

5. JIM GONZALES: Good morning, my name is Jim Gonzales. I am an attorney with the California Rural Legal Assistance and at time to time, during the day, our office will be presenting witnesses before the Division of Industrial Safety on the legal hearings. Right now, I have Mr. Escadelle Munoz, who would like to testify and appear

Few questions: And give testimony to a few questions, and be brief. State your name. Escadelle Munoz! Farm Laborer

Okay, will you speak your name? And your age? 48 Okay, what is your occupation? And have you used the short or long handled hoe during the course of your employment? As a farm laborer? Answer: Yes I use both the long handled hoe and the short handled hoe.

Yes! A few times. Have you used the long handled hoe in that same type of work? I would say in that same type of work. (answer) I have worked many weeks in the lettuce fields.

Answer: Yes to the long handled hoe. Have you used the long handled hoe for that same type of work? Answer: Yes, I have a few times doing the same job. I used the long handled hoe and the short handled hoe...for hoeing....

MR. WILKINS: Will you speak up please?

MUNOZ: I've worked with the long handled hoe in Sacramento, in Stockton.

For what crop? Answer: Beets, and vegetables. And also thinning lettuce.

Have you worked in other states? Answer: Yes, I worked in Quincy, Washington and they use the long handled hoe in beets. No lettuce, just beets. Have you

worked in Oregon? Answer: Yes, in Oregon we used the long handled hoe in strawberries

MR. WILKINS: Thank you. Will you all come back here?

6. GENE RYE: Thank you. My name is Gene Rye. I'm Secretary-Manager for Imperial County Farm Bureau. To ban the short handled hoe would not be in the best interest for farm workers nor in agriculture. In many instances both the short and long handled hoes, that has been available and choice of the workers that have had to use the short handle has been

Since no claims of back injuries are being made to the taking over periods of parts of operations in lettuce, cantelopes, watermelons, asparagus and other crops. And since the Industrial Safety Department does not consider a ban on all the danger, it seems unwise to single out the short hoe and call it dangerous and later to use in agriculture.

Thank you.

MR. WILKINS: Thank you! Anyone else who wishes to be heard?

7. FRED JINKENS: Good morning. My name is Fred Jinkens, I've been farming in the Imperial Valley since 1950, growing vegetables, cotton, sugar beets, grain, and hay. At the present, besides my farming activities, I am representing more than 1200 (Twelve Hundred) farm families and active business firms operating in the Valley, as President of the Imperial County Farm Bureau. The results of the findings of this period today will have a far reaching effect on the agricultural property programs in my area. The growers' I represent vigorously protest any action that would ban the use of the short handled hoe in the valley, in fact all of California. For more than twenty years, I have personally worked with crews in the fields with a short handled hoe, which have been used to weed and thin crops. Certainly, there is an evidence of strained muscles from nonuse. The same has been workers started out from other farm jobs, such as cutting asparagus and lettuce, picking of nuts and fruit, and the packing of many vegetables that so dominantly grace the tables of the American housewife today. But never, have I seen, worker, male or female, hurt or otherwise immobilized or in any way addicted from working in my fields or those of my neighbors due to any injury from using the short handled hoe. However, I would not advocate that every man or woman suited physically would thus be suited physically for short handled hoe work, the same way that I would be hesitant to hire every job applicant to buck a hundred and forty-five pound hay bales out of

my own cotton fields or those hundred pound sacks of grain from harvester to field trucks. Still the work is important at all levels of activity. Mechanization, while developing fast on field farms is not complete at this time to replace all hand labor and my Farm Bureau Growers' members asked that the short handled hoe be allowed to remain as a tool to be used productively in our fields and to remain as an integral part of our cultural operations. To continue to bring food and fiber forward to the citizens of this State and in the Nation in the ample supply and at the reasonable price that has prevailed for so long compared to all other products of industry. Agricultural worker compensation insurance rates in California dramatically bear out my belief that injuries of any kind resulting from the use of the short handled hoe is exceptionally minimal, when compared to any farm worker activities, as exemplified by the rates; for instance, feed yards and stock farms, which include not all operation devoted to raising beef cattle, sheep and horses, is set at \$11.67 for a hundred dollar payroll. Field crops, which includes hay, alfalfa, and grains, is set at \$10.40 per hundred dollars payroll. Dairy farms \$6.73. Orchards, which includes all tree crops \$5.47. Potato crops, peanuts, including sugar beets \$3.26. Truck farms including all vegetables and melons and the like \$3.26. Only nurserymen and florists are lowered to \$3.03 to \$2.32 respectively. These "honkies" (People) are paying the claim of worker injuries in California. These statistics are hard facts, concrete evidence of how workers compensation insurance companies rate or evaluate their farm worker risks in the State. Thank you!

MR. WILKINS: Thank you very much. This will be entered as Exhibit #5.

Anyone else who wishes to be heard?

8. LARRY BRATTON: My name is Larry Bratton. I represent the Pan American Underwriters Insurance carriers in California, and Arizona and write approximately six and one half million dollars worth of workmen's compensation, and checking back through our records for many years past, near 1970, I could find no injury or loss of time from the use of the short handled hoe. This is about all I have to say! That there is just no injuries that I could find. Thank you!

MR. WILKINS: Thank you! Anyone else who wishes to be heard?

MR. JOURDANE: Mr. Wilkins, several of the farm workers here would rather do as we

did the only difference, have us asking the questions and respond to the question and I think we could get through it faster having response if we can. Mr. Padilla, speaks pretty good English, and we'll try his english.

9. MR. PADILLA: Good morning, Sir! I just want to say this: That the State examiner - they say that the short handled hoe can do the work. I'm against the short handled hoe. We could decide that on the field, with the short handled hoe, we use only one arm, we continue. With the long handled hoe, we use both, and here we are stooping all eight hours. We're standing. See, there's a lot of difference - we're standing. The same plan is now that _____ (inaudible) _____ like that. We come up to see every four inches and where you want it. The thing, you have to use that short handled hoe. You _____ (inaudible) _____ the long handled hoe. See, up North, in Washington, other places - they use long handled hoe. But we, Sacramento, and San Joaquin Valley - they use long handled hoe. But we - they don't have to use short handled hoe.

MR. JOURDANE: Let me ask you a couple of questions. Would you tell Mr. Wilkins what you do right now - what your job is?

MR. PADILLA: Well, my job is running the tractor because I can't stand that eight hours with the short handled hoe.

MR. JOURDANE: And do you plant in the course of driving a tractor?

MR. PADILLA: Yes!

MR. JOURDANE: What crop do you plant?

MR. PADILLA: Over here in Imperial Valley?

MR. JOURDANE: And are you able to precision plant sugar beets in the Imperial Valley?

MR. PADILLA: Yea, that's precision planter, it saves you a lot than the short handled hoe, because in precision planter, you can just plant two seeds a drop and the other way without the precision planter, you have to use a good lot of seed. In the precision planter, you just put as much seed as you feel like you want to do to say that the short handled hoe.

MR. JOURDANE: Let me ask you this: Can you -- when you do precision planting plant sugar beets, can the sugar beets be weeded with the long handled hoe?

MR. PADILLA: Yes, that's what I'm trying to tell you. It can be weeded. You can thin with the long handled hoe because you can drop every one inch one seed or two. So you can figure it out and do plants like that two inches apart. You can easily take a double with the long handled hoe. You don't have to use the short handled hoe.

MR. JOURDANE: Let me ask you about something else. When did you first come to the Imperial Valley?

MR. PADILLA: I came here from Arizona in 1929.

MR. JOURDANE: And did you work in the fields in the 1930's in the Imperial Valley?

MR. PADILLA: Yes, I did.

MR. JOURDANE: And during that period of time, did they use the short hoe or the long hoe?

MR. PADILLA: Well, they use at that time, because they didn't get the precision planters. They had to use the short handled hoe like only for thinning and after that they say to pull weeds, they use the long handled hoe.

MR. JOURDANE: When did they begin using the long handled hoe for weeding in Imperial Valley?

MR. PADILLA: For weeding, since I remember several years, but they changed that when I went to the Army and came back, I see a lot of the Braceros using the short handled hoe for thinning and weeding everything they can do it in the cotton, thinning, to hoe, they use the short handled hoe. Some of the job is unnecessary to use the short handled hoe. They just have to know what they're trying to do.

MR. JOURDANE: So, until the Braceros came to the Imperial Valley, the long hoe was used for weeding?

MR. PADILLA: Yes, for weeding.

MR. JOURDANE: AND what crops was that?

MR. PADILLA: There wasn't there too many sugar beets when I came over here, but they changed that plant sugar beets and used that type of lettuce and cotton and all that.

MR. JOURDANE: Do you now know why certain people are fighting or do you have any belief why they are fighting so hard to keep the short handled hoe?

MR. PADILLA: I don't know but like I'd say that I just quit that type because I just can't stand the short handled hoe. My back hurt too much. Some of the people said that they're impossible. Right now, I'd like to say that just why don't they go up there and try a couple of hours and find out the difference between the short handled hoe and the long handled hoe and then they can decide themselves. They can do that. O. k. Thank you Sir.

MR. JOURDANE: Thank you.

MR. WILKINS: Anyone else who wishes to be heard?

10. RON BERRA - I represent the California Rural Legal Assistance and my name is Ron Berra I'd like to introduce Mr. Calkia. Mr. Calkia does not speak English and we have Mrs. Nunez, who has been certified before as a translator in administrative hearings. She is a secretary in our office.

Mrs. Nunez translating for Mr. Calkia. Good morning, Mr. Calkia at your service,

MR. WILKINS: Will you speak clearer please.

MRS. NUNEZ: (for Mr. Calkia) Good morning, this is Mr. Calkia at your service.

I am ready since 1928. I started working in the Imperial Valley at that time thinning lettuce with a short hoe, and all of the thinning was done with the long handled hoe. And in 1940 or 1941, I'm not sure which, they started using the long hoe in place of the short hoe in order to do the thinning. Before 1920 when the thinning was done with the long hoe, the work was done at a very good pace. And this is why I say that the long hoe can be used adequately as it is being used by a body in the thinning of the watermelon. Part of the work is done with the short hoe and part is done with the long hoe in the San Joaquin Valley. I have worked with the long hoe thinning melons and cotton and sugar beets.

MR. BERRA: Do you have any medical disability right now from using the short handled hoe?

MR. CALKIA: What happens is that after I have been thinning for about 2 (two) hours I get pains in my back which goes all the way down to my toes.

MR. BERRA: Do you have any problems with your kidneys?

MR. CALKIA: I have an analysis made of my urine and I was told that there was nothing wrong with my kidneys, however, I do have back, great pains, that comes from my upper

back down to my toes.

MR. BERA: One final question. Do you know why there is any reason why the long handled hoe, the, why the short handled hoe was started to use after 1940?

MR. CALKIA: I don't know exactly who did away with the long hoe whether it was Japanese or the contractors.

MR. WILKINS: Let me ask you a question please. Have you ever filed a claim with the insurance carrier based on the fact (inaudible)?

MR. CALKIA: What I feel that the pain in my back had not been hurt.

MR. WILKINS: Anyone else who wishes to be heard?

MARY E. NUNEZ TRANSLATING FOR US.

11. Will you state your name? MARTINEZ! My permanent residence is in Alameda, Madera, 150 in Salinas. Mr. Hernando you stated before you wanted to speak about the use of the short handled hoe and the use of the long handled hoe, will you please swear him in.

Mrs. HERNANDO: I came to this country in 1953 and as a rule dropped almost the entire work year I worked with the hoe. I started in October in the Imperial Valley and then go on to the lettuce, and around April or so go back to Monterey County to thin. I know both kinds of work the long handled hoe work and the short handled hoe work. The work with the short handled hoe is very very difficult for all of us because of the extreme pain to our back there is tightening and we cannot sleep at night because of the pain. When we go to see our Doctors about this and explain to him the pain that we feel, the doctor asks us, what type of work do we do? We then explain to the doctor that we do short handled hoe work and explain to him the position of our body for eight hours a day. The doctor then tells us that the pain is there because of our work, and we cannot be use any anti-biotics when he just gives us aspirin or things of the like. On the other hand, I have also worked harvesting lettuce we also bend down, but this cannot be compared to the short handled hoe work, because of the difference of position of body. The body when you are harvesting lettuce, when you are bent down moves from one way to the other and there is no comparison. Also when you go to town in the San Joaquin Valley I have used the long handled hoe. I have done thinning of sugar beets, melons and cotton. And it has been a great difference

me working with the long handled hoe and the short handled hoe, the long handled hoe I do not feel the pain that I do with the short handled hoe. Principally this year, I am working for a company by the name of Blue Church. In that particular company, the company has the short hoe short even more than what they were already, to where your hands could barely grasp the short handle. Therefore, it is my belief that all the pains that we feel in our backs are the result of that short handled hoe.

MR. WILKINS: Could I ask again, has this lady ever been disabled or unable to work? Has she ever filed a claim? With the insurance company? Yes, at one time because the trouble I was having with my back, I made an application for a disability benefits but I was denied.

MR. VERA: Thank you.

12. BILL MACKLIN - Manager Imperial Valley Vegetable Growers Association .
My name is Bill Macklin: Manager of Imperial Valley Vegetable Growers' Association. Our position is substantially the same as the gentlemens Farm Bureau of Mr. Jenkins, Mr. Rye, also with Mr. Collings, Western Growers' Association., In the interest of brevity, I will submit our statement to you regarding you mailed it and confirmed it at this time. The one point that I would like to stress is that we would appreciate a clear and concise definition of what a hoe is. Rather than having to encroach in ambiguous terms, we suggest that you stop this Supreme Courts definition. of which of the emission of the Carmone Case; and we also suggest that at later decision that you do not restrict the right of the worker to exercise his/her freedom in choosing which handle he/she would like to use.

MR. WILKINS: This will be entered as Exhibit #6.

Anyone else who wishes to be heard? Yes, sir:

13. KENNETH WALKER -

My name is Kenneth Walker and I am from the Imperial Valley. I would like to talk against the use of the short handled hoe. I have had some experience, I have worked in the field for two years, thinning and weeding with the short handled hoe, and sometimes I think, I have a little bit of back pain from using the short handled hoe. I cannot be bent for more than five minutes and it is really painful to be using that kind of tool for farm workers. My family is mostly a family of farm workers and it is really bad to see your mother, sisters or brothers in the fields trying to feed

food into their house, and I feel that the short handled hoe is usually being fended mostly by farmers because of economic reasons of business. They worry all night, they really don't care much for the health of people, all they really want to do is to try to get as much labor as they can out of the workers. I feel that now with the precision planting who needs work for the short handled hoe and has never really been a need for it. Business has been in the past, show that precision planting wasn't around. They have the irrigation ditch with the sprinkler system and it helps germinate the seeds like the germination work in the Salinas Valley -- germination work, you know, seeds and things is a lot higher and I feel that the matter of fact light handled work with the short handled hoe for an hour a day won't get it. The reason for their own experience (not audible) to find out how it really is. I gotta be able to mention that other people do not make conversation to my mother constantly to go see the doctor and explain to the doctor about my back pains, and stuff like that because I'd like to keep my job because there is nothing I can do about it (not audible) and that's it, a man has to work the following day. It keeps happening, happening, happening. It is really too painful through that experience of my own, and I have experience of my own. It is really too painful through that experience because I have had experience of my own, so I would like to believe it.

MR. WILKINS: Anyone who wishes to be heard?

Yes Sir!

MR. VERA:

14. I would like to introduce Mr. Rodriguez, from the Imperial Valley. Mr. Rodriguez starts off by saying his name. The following statements. He says he entered the country 1963 and since then has been working with the hoe. He is now starting to say that he realized that he has thus far used the short handled hoe. He realizes that he would then to change to the long handled hoe he might have a little bit of the problem at the beginning. Practice makes perfect. At one time I went to Vermont to work, he said in the lettuce there was a man who was using the long handled hoe, and I understand that he was so good at it he was doing better than the one who was working with the short hoe. I believe that it can be done. I have found a disadvantage in working with the short handled hoe because you are stooping for a long time and

all of a sudden you raise up and when you raise up you feel dizzy and hard to see. I believe it is one of the reasons why my eyesight is getting bad, I am now fifty years old. Another of the reasons why my eyesight is starting to go bad is probably pesticides that are used on the ground. When I am stooping low to the ground, I am inhaling some of those pesticides. I am sure that if this commission will go to the Imperial Valley, out to the fields and talk to the people who are working with the short handled hoe, I am positive they would tell you they would much rather prefer to use the long handled hoe, as I am sure you would. Another thing too, is that people working with the short handled hoe very rarely work six days a week, because it just can't be done, it's too hard especially when we work with the Labor Contractor who expects a lot out of us.

MR. VERA: In regards to the experience where he was working up North with the man who was working with the long handled hoe, how did he come to feel that the man with the long handled hoe was being just as effective as he was with the short handled hoe.

MR. RODRIGUEZ: He says that when we were stooping we were feeling pain as we worked. The guy with the long handled hoe was not feeling that pain and therefore, I believe that he found it somewhat difficult in the beginning to learn how to use the short handled hoe who would be able to use it effectively.

MR. VERA: One final question. Was the man with the long handled hoe working side by side with him with the short handled hoe?

MR. RODRIGUEZ: Yes!

MR. VERA: Thank you!

MR. WILKINS: Anyone else who wishes to be heard?

15. BOB HAWK - Grower:

My name is Bob Hawk and I have been living in Imperial Valley all of my life, and have been a grower there for the past forty years, primarily engaged with grow crops and this sort of thing. We have a rather unique situation down there which is the fact that our soils are extremely ample. Any injury to a seedling plant, it will not die immediately, but it lingers on as we found through experience that this injury stops the development of this plant, so that it never reaches maturity. The cost of growing is based on acreage basis. There is a certain amount of our work that we can do mechanically. Tractor work, fertilizer application, and this sort of thing.

The potential of an acre of lettuce is something like about a thousand apartments, with injury which (not audible) _____ often with wind and rain, and these sort of things, but it does occur most often with the implements with which we singulate the plants so they have the space in which to develop. Timing is a very important part of the development of the plant, particularly in lettuce and celery and this sort of thing. Go to the field and harvest it one time. Later maturing plants due to injury are of no value because they're taking too long to reach their maturity, but it might be like searching if he were to operate from a great distance. With a long handle, there's something of this nature, his work couldn't be nearly as precise as than he's working close to it. Another thing, plants, melons, particularly and young lettuce, when those plants come very close together, it is impossible for an instrument to, such as a knife or a hoe, to reach in and remove one without a pretty high percentage of damage to the other. Consequently, there is a finger singulation that is important. This has to be done at arm's length and with a short handled hoe as a lead and the finger following. These people become very adept as using both operations they stroke mechanically almost and it is really an art that they develop but that hand there then finishes the job as it follows behind the hoe. It's been pointed that we're not all designed exactly the same in our body structure and our ability to perform certain functions. There are many occupations in the farming which will allow quite a bit of personal selection - there are people who like this type of work. In fact, men contract and they work on peach trays or something like this, their work is gaged on the precision and their ability to accomplish the job and the certain amount of it the more they get paid the higher rate for the more they accomplish and actually the workers have chosen this because they are more effective. There are brief periods in which they can straighten up and relieve the pressures - it does cause quite a bit of pressure, but you can imagine how it would be to raise up and down every time they had to make that hand motion to finish the job or make a complete job. These are some things that are pertinent in this (inaudible) _____ in this. But we don't expect everybody to be able to do it but they can enter some other farm and in every farm there's probably more workers in something else - irrigation tractor work and this sort of thing.

that they don't (not audible) at all to do this. It isn't mandatory upon them that they have to do this particular type of work. Thank you.

MR. WILKINS: (not audible) -experience, when did the short handled hoe become in common use?

MR. BOB Well, I became quite active in produce business in the mid 30's and this was in use then. In fact, the Philipinos did practically all the thinning at that time and as this work went right along, it expanded beyond the number of Philipinos that could fill it and other people came into it. There was anybody that needed a job in the 30's that you may recall were a straight depression and there were a good many of us who would have taken any kind of a job we could get, but it was used at that time along with some other instruments. There were loops just a strap of metal strap along one side and built around the kind of a block of wood that you carried in your hand. This was used many times and some for certain things, it was better than a hoe was, but it was the same length and it put you down close to your work where your eyesight is more effective as well as your (not audible).

16. JOSE - Farmworker

Years of work in the fields as a farmworker and from experience he associates back pains with the use of the short-hoe.

MR. WILKINS: You may proceed.

17. My name is Lotario Octavio, with C.R.L.A. in the El Centro Office.

Have a witness who wishes to testify.

Please state your name and your age.

My name is Antonia R. (inaudible).

What is your employment, please?

Answer: I work with the company of Inter-harvest.

Question: How long have you worked in the fields?

Answer: Since the year 1965.

Question: Have you ever used the long handled hoe for cane sugar?

Answer: Yes.

Question: Where have you used the long handled hoe?

Answer: In the San Joaquin Valley.

Question: What crops and what jobs have you (inaudible) with the long handled hoe?

Answer: In the San Joaquin Valley, I would thin (inaudible) with the long handled hoe.

Question: Have you ever used the short handled hoe?

Answer: Yes.

Question: In what parts of the Country for the State of California?

Answer: In the Salinas and in Imperial Valley - and also in Phoenix.

Question: What crops have you worked with the short handled hoe?

Answer: Lettuce.

Question: What did you do with lettuce? Did you thin or weed or what?

Answer: I would weed and also thin.

Question: Have you ever been injured on the job while using the short handled hoe?

Answer: Yes.

Question: Where were you injured?

Answer: In Phoenix.

Question: What job were you doing at that time?

Answer: I was thinning lettuce.

Question: Would you please tell us how your injury hurt?

Answer: When I terminated my row, I came out to get a drink of water, when I straightened up to get a drink of water, my knees gave out, I could not stand the pain, I would wobble. Since then I have great pains in my legs and since then I have not been able to work the same. I am at a point where I cannot use my legs.

Question: Have you filed a claim with the Disability Insurance or with the Workmen's Compensation?

Answer: Yes, I applied for disability and I was denied, and the company's insurance company also denied benefits.

Question: Is there anything else that you would like to state regarding the use of the short handled hoe and the use of the long handled hoe?

Answer: I believe that the use of the long handled hoe is better because you do not feel as tired as you do with the short hoe. And I protest the use of the short handled hoe because I personally (inaudible) in my own body and am feeling the pains that go with the use of the short handled hoe. There are many people working in the many different crews using the short handled hoe and must during the lunch hour lie down to rest our backs. And one we get home, there's very little we can do at home because of the pain that is started in this part of our body and she indicates that this part of the body up to their waist. Says the doctor do not give us anything more than aspirin. And I think also the generation has become (inaudible) continue to use the short handled hoe. And we are, as of now, mostly Mexicans, men and women working in the fields. Thank you.

MR. WILKINS: THANK YOU. Anyone else who wishes to be heard?

18. OTIS GLENDENNING - Manager Desert Growers Farm Group:

My name is Otis Glendenning. I am Manager of Desert Growers' Association, in the Imperial Valley, a farm labor co-op. There are a lot of aspects to this.

(inaudible) possibly have not been looked at today or have not been considered. It is the short handled hoe, the only implement of agriculture that is being considered to be (inaudible). The short handled

hoe is regarded as an enemy because you have to bend over to use it. There are many crops that use tools that force you to bend over to artesian or in some way or other to manage their care. Lettuce is cut by a knife, bending over and cutting it at the roots at the ground level. Asparagus is cut by one hand, grasping the upper part of the tip and the lower part at ground level when you might find it. In fact, either of these you have to get much lower and closer to the ground than you do with the short handled hoe. This short handled hoe, some of them may be as short as 12 inches; however, the hoes that we are using at present are 16 inches long, but you can much more easily swing one of these than you can reach under and take a knife and cut the root of the plant. As every phase of farm work, requiring bending over is yet to be eliminated. There are many phases that require bending over. The question also, is not is it an arduous job and what arduous jobs on the farm or is it a safe job? That is the question for this hearing today. The insurance figures show that it is the safest job on the farm today. Insurance companies deal with cold hard facts, and if it were not safe they wouldn't break the safes. Our beet production, they often bring up the fact that in Imperial Valley and the Salinas Valley that we use the short handled hoe and in other parts of the Country they use the long handled hoe. This is very likely more an economic reason than anything else. The Imperial Valley, the use of the land costs more - there's more money put into the crop than elsewhere. The cultivation of the crops cost more. For instance, in our Association, the sugar beet grower averages about \$65 an acre on hand labor alone. I doubt that there are any other beets grown in the United States where they spend this much on hand labor. To enable to compensate for this, they have to get higher production and they do get higher production. To do this, every crop has to be spaced properly and practically every weed has to be cut. This can only be done with either the fingers or the short handled hoe. I have used the long handled hoe and am probably as good at it as anybody in this room, but there is no one in this room that can take two plants and tie it together, cut one of them and remove the other. You can

do it only with your fingers or with the short hoe, but the short hoe, with the short hoe, the worker one time over cuts that off and goes on. There is no other way of doing it. There is no doubt that the precision planting be herbicized for the weeds are reducing and the machines are reducing the use of our labor. With our Association, I feel that our work has already been reduced by about one-third ($1/3$) by herbicides and machines. If you are forced to use long handled hoes, rather than short handled hoes, this would be reduced to about two-thirds ($2/3$), because there is nothing that you can do with the long handled hoe that you can't do with a beet thinning machine. This is the first attempt that in my knowledge to have any farm tool era implement declared unsafe. Tractor driving, tractors are a very dangerous instrument to use according to statistics and according to insurance figures and many other tools. Apparently, the short handled hoe is the safest tool on the farms. There have been some statements made about the workers being so tired and of the backs being so sore that I might say this: That our workers, we would like them to use a half hour or even an hour lunch period. Instead of that, they prefer working a straight 8 (eight) hour period every time they come to the end of the field, they eat a little bit of a lunch, a little rest and have a drink and go back working. In other words, they eat and rest on the farmer's time. They seem to prefer it this way. The farmer would prefer it the other way, but the farmer doesn't always get his own way of things, and in the fall when most of this work is done it is really the worker's market and there are more jobs than there are workers. If the workers didn't want to use this hoe, they wouldn't do it. As a matter of fact, a few years ago, one of our farmers thought that he could get by cheaper by using the long handled hoe, we bought 30 long handled hoes, they took them out to the fields and used them for one day and the workers threw them away and wouldn't use them anymore. They are extremely awkward to use and require a lot of experience and the workers work longer and harder. I feel that there is no doubt that we are going to gradually phase out all types of hand labor in sugar beets and lettuce and some other field crops and cotton. Cotton and sugar

beets are the main crops that we handle. This is being done as rapidly as a farmer can do it. It's an extremely expensive job and no one can say just when this is going to happen, but every year there is less hand labor used and there is no doubt in the near future there will be no hand labor used. If we outlaw the short handled hoe, this will accomplish this quicker because the farmer, even though he get's less production, he won't use the long handled hoe. He will go ahead with the machine. There will be more people out of work. I also notice one other thing here. We have two organizations in the city of Raleigh, composed largely of Mexican citizens: One is the American Citizens Club and the other, I believe, it's called the Dolvo Club. I don't see them here, protesting the use of the short handled hoe, and we use a great many of our workers from the town of Raleigh. In fact, we use more from more local laborers from Raleigh, than we do from what's known as the whole of Mexico. I think we should think long and carefully before we outlaw something like this. There has been a suggestion made that you men should go down and watch some of this work being done. I think this would be a good suggestion. There are a very few crews of men that you will see in the field when from one third (1/3) to a half of them are not standing up resting at any one time, in other words, this work is not, they are not continually bent down -- they are standing up if they are weeding or standing up as they go along the row until they come to a weed, if they are thinning, they hoe awhile and then they stand up and stretch and take a little rest and go back to work again. This is not nearly as arduous, as it has been made to appear. If there are no questions, I'll terminate my testimony this point.

MR. WILKINS: Thank you. Yes, Sir.

19. MARTINEZ - Supervisor:
My name is (inaudible) Martinez.

What is your age?

Answer: 67

Question: What is your occupation?

Answer: Laborer -- I don't know.

Question: Do you do much farm labor work?

Answer: Yes.

Question: Where do you work?

Answer: Brawley, California

Question: Is that in the Imperial Valley?

Answer: Yes.

Question: ^{Ok,} How many men do you say you supervise?

Answer: Well, sometimes around 25.

Question: Do your crews use the long handle hoe for their work?

Answer - inaudible.

20. JACK FLEMMING - Farmer:

(inaudible) long trial at the court here

today and I think it would be a bad day for this operation the reason for myself and for the Imperial Valley if they do away with the short handled hoe because a lot of people will be out of jobs down there. In fact, I disagree about the material submitted to you. I concur what the Western Grovers representative said today. I am a member of the Imperial Valley Vegetables Growers' Association.

(inaudible) I concur with what Fred Jenkins did in the Farm Bureau. That's all I have to submit.

MR. WILKINS: Thank you.

21. Ron Berra Att. with CRLA introduced LA VERRE TORRES?

My name is Ron Berra, and I am an attorney with CRLA. My name is La Vera. I came to the Imperial Valley in 1925. I've been working in the United States and in different parts of California til 1940. I was working in the fields, especially with hoe work, in the valleys of Salinas, Sacramento, San Joaquin, and the Imperial Valley and also (inaudible).

Until then the only thing I used is the short hoe thinning lettuce. All the other works were done with the long hoe. When I first came to work in California I found that all the work was being done with the short hoe. I have heard that people say that the short hoe does not affect the health of the worker. This is in error. You can just imagine what can happen to a man who works 8, 9, or 10 hours bent down (inaudible). It's not easy. (inaudible).

You, as judges, can just imagine what can happen to a man who works 8, 9, or even 10 hours bent down. It is not that easy, it is not too easy to withstand, and the only reason we do this is we have the necessity to work but we can have

(inaudible) to tell members of the family (inaudible) in order to rest. These men that say that the short hoe is not tied to the fact (inaudible) they seem to have eliminated back pain. (inaudible).

I say having to work in this position eight, nine, or ten hours a day, you also have in your back and your waist, even your eyes, nails, hands, and the bending. just bending continually, it will break. But they do not see us because they don't, because they are not using the short hoe, because they are not using it.

Ron Berra: Question: Is it your opinion, in this regard that before 1940, the short hoe was primarily used in the field?

Answer: The long hoe was used primarily for everything except for the thinning of lettuce which was done with the short hoe before then for a short time with the short hoe, before then.

MR. (inaudible) Question: If you had preference for using the long handled hoe would you use it?

Answer: He would rather use the long hoe.

Question: Why don't you use the long handled hoe right now?

Answer: The company will not permit us to use the long handled hoe because they want to take all the juice that they can out of us. (inaudible).

Question: One final question: If you have preference, do you work eight straight hours, or would you work four hours and take a lunch period then work four more hours?

Answer: I would want to work four hours, rest and then work four hours, in order to get some rest. Thank you.

22. TANIA WINTER -

My name is Tania Winter: I live at 6701 Vista Del Mar, La Hoya, I would like to testify as to the consumer. As a Consumer, I think we should be more concerned about injuring people then injuring seedling. I think that many farm workers continue to work with the short handled hoe simply because that they have no

choice. They are afraid of losing their jobs and so that they have a certain security, and they continue to do back breaking and painful work and as far as making medical claims and to maintain their California rights, and the pain in the back would probably not be considered a work related injury. In terms of that we are used to, so that they don't know what their rights are in terms of back injury. I thus far question the statement that was made previously, that certain people are suited for this kind of work. I think people do it because they need to work, not because they are suited to it. And, I as a Consumer, and always have been a consumer, really don't feel that people should be forced to do painful and crippling work to supply us with expensive food. I would be willing to pay additional money if it was really necessary, but I question that thought well, I don't know whether really the cost of money is equal. The previous gentlemen stated working on the short handled hoe not only is painful and crippling but it is not really efficient, because the work isn't stable they take work for a week so, therefore, working with the long handled hoe they have to be more efficient in the long run, and whether it is or not I think our primary concern should be for the welfare of people. And in this State in America I don't think they should exploit people and cause them to do painful and difficult work just for our comfort.

MR. WILKINS: Thank you. Anyone else who wishes to be heard?

23. Father VICTOR SALARDIN - Priest:

Naturally, Braceros, they are complaining to me about that short handled hoe they are always having sore backs, and I have heard farmers testify hearing about the reason why they shouldn't continue to use the short handled hoe. I think the most important thing is consideration of workers, I think the farmers of the Imperial Valley should look to the considering of the health of the workers and a human beings life worth more than all the profits that a person can make in the Imperial Valley. I want to emphasize again, that as a Priest, five years in the Imperial Valley, and I saw many farm workers, Braceros suffering with sore backs that had to use the short handled hoe.

Thank you.

From here-on the tape of inaudible - The following part of the Transcript are taken from notes of Fred Hermes, taken during the hearing.

24. Jim Gonzales, Attorney with CRLA introduced ORTIS - Farmworker:

He has worked several years in the field and has used the short-handled-hoe. He developed the back pains and associates such pains with the use of the short-hoe. He went on to describe the experiences and suffering he gets from the use of the short-hoe.

The farmers and growers make us to work continuously with the short-hoe, and if at any time, whether of pain or tiredness, we take a short rest, we are sent home. We continue to use the short-hoe because of economic necessity.

25. NICHOLS - Professor, San Diego University:

We are very concerned and disturbed by what the farmers and growers have said to-day in expressing their concern for the need to protect their plants by thinning and weeding with the short-handled-hoe. Isn't human life more important than the saving of the plants?

Please improve the working conditions of the farmworkers. The short-handled-hoe make life unsafe, unbearable and miserable.

26. MAURICE JOURDANE - Attorney with CRLA:

Commented on workmen's compensation cases and made lengthy rebuttle on the letter of Dr. Hewitt which was read in the record. He emphasized that there has been ample medical doctors testimony to the effect that degeneration in the spine is caused by constant stooping and the stress associated with use of the short-handled-hoe.

27. Ron Berra of C.R.L.A. introduced:

LA VERA: Farmworker: He stated that he has used the short-handled-hoe, and that the back pains and problems which he has are as a result of the use of the short-

handled-hoe. He stated that he has also experienced kidney pains because of the use of the shor-thoe.

Working in bent-over position is very tiring, painful and irritating. I have seen workers in the field whose noses bleed while in the bent-over position.

28. IVORA : Department of

She made comments concerning the farm-workers claims for workmen's compensation and disability claims. She stated that the majority of the farm-workers are not familiar with the law and their rights under the law. Furthermore, to file a claim for workmen's compensation benefits one has to submit exact information concerning the date, time, place, type injury etc.. which, more-or-less they have to pin-point as to place and employer. This is very difficult especially where the farm-workers keep moving from place to place to seek work.

It is bad enough that they cannot get the compensations and other benefits that they are entitled to, they are denied their rights and furthermore subjected to the painful experiences in the field.

The reason they do not get workmen's compensation is not because they are not injured, it is because they cannot pin-point the injury and also they are ignorant of the law and their rights.

Please ban the short-handled-hoe.

29. JOSE HARIO - Student Stanford University:

Please do away with the social injustices. We respectfully request that the Division of Industrial Safety to look at the problem in terms of human impact and suffering. We are looking up to you to protect us and the farm-workers, and do away with social injustices imposed by the farmers and growers.

30. MRS. GONZALES - El-Centro:

The use of the short-handled-hoe not affects the physical well being of the workers but definitely affects the relationship of the worker with his wife and children and all members of the family. Because of the suffering stemming

from the use of the short-hoe, this detrriorates the relationship of the parent child and with fellow workers and others.

31. MARY E. NUNEZ - Secretary with C.R.L.A.

She is a secretary with the California Rural Legal Assistance and has been and is in constant touch and contact with many of the farm-workers. She stated that the majority of the workers don't have much of an education and the only work they know of is working in the fields.

They have expressed their problems and suffering from the use of the short-handled-hoe. They use it because they have no choice, because they have to work. If they don't work continuously they are sent home. The pain and suffering caused by the use of the short-hoe is secondary to the problem of earning a living and getting food for the family.

Exhibit "1"

BEFORE THE
STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL SAFETY

My name is Dr. Oakley Hewitt. I am a medical doctor specializing in orthopedic surgery. I attended Yale University and University of Colorado Medical School, interned at the University of California and did my residency in orthopedic surgery at the University of California for four and one-half years. After completion of my education, I went into private practice in Massachusetts, and have been with the Palo Alto Medical Clinic, 300 Homer Avenue, Palo Alto, California, practicing my specialty since November, 1973.

I have read medical testimony given by Doctors David Flanagan, Robert W. Murphy and Robert Thompson on March 6, 1973, May 1, 1973, and May 3, 1973, at hearings before the California Division of Industrial Safety. What follows in brief outline are some general comments I would have about back pain, particularly how degenerative conditions occur in the back, as well as some points about reproduction of pain due to degenerative disease, and some of the known factors which make degenerative disease symptomatic. I regret that I cannot personally present these opinions and respond to any questions of the Division of Industrial Safety, but the short notice given of the hearings to be held on March 24 and 27, 1975, prevents my adjusting my calendar to be personally present.

In terms of a general understanding of the problem, there are really three main aspects to symptomatic low back pain. One is the constitutional or hereditary factor. It is generally accepted by specialists in this area that certain groups of people, either because of racial characteristics, diet, or lifestyle, are more prone to symptomatic low back disease than other groups of people. It is well known that the Steward studies of the Eskimos, cited at the original hearings, reported that approximately 60% of the Eskimo tribe studied had a condition called the spondylolysis or spondylothesis, referred to initially by Dr. Flanagan at page 13 of the March 6, 1973 hearings, which is a weakening of the bone structures of the back which may predispose a person to back pain. This contrasts to Anglo-Saxon populations which may have from a 1-10% incidence of this defect demonstrable on x-rays. It would also seem that there are certain groups and tribes in Africa which have little or no known disc disease. Indian and some Oriental groups also are known to have a much lower incidence of back pain and symptomatic disc disease than, say, Scandinavians. Welch coal miners have a high reported incidence of back problems while South African diamond miners are reported to have almost none. So this indeed is one variable in the equation.

Secondly there is the factor of how people use their back. This is a somewhat tricky proposition in that it has never been substantiated to my knowledge statistically that a group of

people who do hard physical labor requiring a lot of stooping and bending and lifting activities have more back and disc trouble than a group of sedentary or white collar workers. Indeed, it often appears from a clinical standpoint that the man who perpetually uses his back in a strenuous occupation may have less trouble than one who leads a basically sedentary life but then uses his back infrequently and applies occasional high torquing compression stresses to his lumbar spine. The latter, from my clinical observation and discussions with my colleagues, will often have more difficulties with his back and certainly a greater chance of symptomatic disc disease than someone who uses his back consistently in his occupation.

The third general factor in regards to symptomatic back pain is the psychological factor. It is a well known clinical fact that some groups of people are considerably more stoic than others. One housewife may have a very mild ligamentous postural type back pain, and be incapacitated by it. Another housewife will have a frankly prolapsed disc and a great deal of pain and neurologic deficit in her leg, but she will go to bed without seeing a doctor, limp for a period of weeks and months, and usually gradually return to normal activity and will only mention it in passing when a doctor takes a detailed medical examination. Of course, it is also known that the compensation of litigation is a factor which is notorious for aggravating and prolonging back complaints.

So, in summary I would say that it is extremely difficult to implicate or segregate one factor, such as the short hoe, as the cause of symptomatic degenerative low back disease. Instead, it is a many faceted problem characterized by constitutional factors, stress and traumatic use of the back, and finally by psychological factors.

The next point I would like to raise is the problem of trying to relate x-rays of the spine to a patient's back complaint. It is a well known fact that plain x-rays of the spine do not correlate with a patient's back complaint. There are many patients who have curved spines, fractures, spondylothesis, and widespread degenerative disc disease who never complain of a day of back pain in their life. To be anecdotal for a moment to illustrate my point, about a year ago I saw in consultation a 72 year old healthy robust woman with about a six week history of back pain coming on after a mild case of flu. X-rays were obtained which showed a galaxy of rather significant structural spine deformities. She had a 40 degree lumbar scoliotic curve. She had five levels of degenerative disc with severe arthritis in the joints behind the discs. She also had a spondyloethesis at L-45 with a second degree slip. This patient, in other words, had not one reason but three reasons on an x-ray to have had a long history of severe back troubles. Yet, at 72 years of age, she was having her first back complaint. Now the really interesting part of this story is that in the routine back work up it became evident that the patient had some marked abnormalities in her

sedimentation rate and her clinical chemistry panel. A bone biopsy was performed which showed diffuse cancer which had spread to the spinal bones so early that the cancer changes were not evident on the x-rays. So we see that this unfortunate lady's deformed spine disclosed on the x-rays were not the cause of her back pain at all, but it was the cancer which had metastasized through her bones which was causing her symptoms. The point that should be made here is that despite severe structural spine deformities on x-ray, the patient had never had a day of back pain in her life. Now this is an illustration of the commonly observed fact known to all clinicians that there is no clear correlation between x-rays alone and the etiology of a person's back complaints. This is important because if x-rays are used as the sole criteria for establishing whether patients are incapacitated because of prolonged use of the short hoe, this is rather meaningless because severe x-ray changes may well not be symptomatic.

The last point that should be made in this affidavit is that, from a scientific standpoint, it would be almost impossible to single out the short hoe as a cause of back pain. To do this would require a matched population of say 100 or more workers, one group using the long hoe exclusively and as its sole strenuous occupation, one group using the short hoe exclusively and as its sole strenuous occupation, and one group engaged in a sedentary occupation. These groups would have to be matched from a hereditary, from an environmental, and from a psychological standpoint. They would have to be followed for a minimum of ten years and then

x-rays of the lumbar spine compared at the beginning of the ten-year period and at the end of the ten-year period. Such a study, as a practical matter, would be impossible to do with any scientific validity since it would be impossible to control all the variables in the study to make it valid. Certainly, if one group was engaged in substantial amounts of other strenuous work, especially if it was stoop labor, it would invalidate any conclusions which might otherwise be of scientific significance.

It may well be that all forms of stoop labor, which could include planting, harvesting, picking or cultivating in specific crops, predispose a worker to an increased incidence of degenerative conditions of the low back. Whether these degenerative conditions are symptomatic is another matter and whether the short hoe, per se, is any worse than hand picking and harvesting lettuce is very difficult to say and impossible to conclude from the evidence presented in the previous hearings.

I hereby declare that the foregoing is true under penalty of perjury.

Executed on March 21, 1975, at Palo Alto,
California.

Oakley Hewitt, M.D.