

44/173

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

Public Hearing For The Purpose Of Considering Proposals Prohibiting Or Limiting The
Use Of Short-Handled Hoes By Agriculture Employees -- A Work Operation That May Be
Involved In Back-Injury Problems.

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

In Salinas, California, Thursday, May 3, 1973, at 10 a.m., In the Salinas Council
Chamber Rotunda, 200 Lincoln Avenue.

H. Edward White, Chairman
R. K. Humphries
Dale Harr
Albert W. Turner
Leo R. Westwater
Richard Wilkins, Secretary

Industrial Safety Board
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Industrial Safety Board
Division of Industrial Safety

455 Golden Gate Avenue
San Francisco, California 94102

3460 Wilshire Boulevard, Room 901
Los Angeles, California 90010

EXHIBIT C

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL SAFETY

Minutes of the public hearing for the purpose of considering proposals prohibiting or limiting the use of short-handled hoes by agriculture employees -- a work operation that may be involved in back-injury problems.

Present were:

7	David Alcaraz	--	Salinas
	Francisco Alcaraz	--	Salinas
8	Pedro Alvarado	--	Soledad
	Alex Amerzcua	--	Salinas
9	Jerry Andrews	International Harvester	Salinas
	Irene Murillo Arlas	Field Laborer	Salinas
10	Mervyn O. Bailey	Harden Farms of California	Salinas
	William H. Barker	Farm Bureau	Salinas
11	George Betz	Bruce Church, Inc.	Salinas
	Jose Cavazos	--	Soledad
12	Tony Cervantes	Soledad Development Corporation	Soledad
	Quin Denvir	CRLA	Salinas
13	Gaspar Diaz	--	Soledad
	A. R. Duarte	San Joaquin Farm Production Assn.	Stockton
14	Paul W. Englund	R. T. Englund Company	Salinas
	Hisauro A. Garza	University of California	Soledad
15	Oscar Gona	--	Salinas
	Domingo Gonzales	--	King City
16	Pascual Gonzales	--	Soledad
	Richard A. Gonzales	CRLA	Salinas
17	Ricardo Gonzales	Farm Laborer	Salinas
	Robert L. Grainger	Eckel Produce	Salinas
18	Lee W. Griffin	Farm Laborer	Salinas
	Beverly Hagopian	San Francisco Neighborhood Legal Assistance Foundation	San Francisco
19	Nick Henares	--	Carmel
20	Tom Henninger	California Beet Growers Assn.	Stockton
	Angelita Hernandez	--	Salinas
21	Hector Mendoza Hernandez	--	Salinas
	Rosie Hernandez	Farm Laborer	Salinas
22	Emilio S. Herrera	--	King City
	Charles L. Howe	San Francisco Chronicle	San Francisco
23	J. W. Huffman	Monterey Co. Agriculture Extension	Salinas
24	John W. Inman	Monterey Co. Agriculture Extension	Salinas
25	Joe Lopez	Farm Laborer	King City
	Helen Manning	Salinas Californian	Salinas
26	Fernando Martinez	--	Soledad
	Harry C. Mellon	Farm Laborer	Salinas
27	Manuel Mendoza	--	Soledad
	Robert S. Mills	SUIGA	Greenfield
28	S. Morin	--	Soledad

1	Norma Alicia Murillo	--	Salinas
	Margaret Murphy	United Farm Workers	Salinas
2	Rosie Negron	Farm Laborer	Salinas
	Manuel Olivas	--	Salinas
3	Santiago Lopez Perez	Farm Laborer	Greenfield
	Dennis Powell	CRLA	Salinas
4	John Radebaugh	National Farm Workers Health Group	Sanger
5	Ludovico R. Redula	Division of Industrial Safety	Salinas
	Cornelo Rocha	Retired Farm Laborer	Soledad
6	N. Michael Rucka	Morgan Beauzay Hammer & Rucka	Salinas
	Lupe Ruiz	Farm Laborer	Salinas
7	John Saavedra	Soledad City Councilman	Soledad
	Jesus Sanchez	Farm Laborer	King City
8	A. D. Studybaker	--	Carmel
	Roger Telg	Pan American Underwriters	Salinas
9	Richard V. Thornton	Grower-Shipper Vegetable Assn.	Salinas
	Frank L. Vargas	Labor Contractor	Chualar
10	Santos Villela	Farm Laborer	Salinas
	Cal B. Watkins	International Harvester, Inc.	Salinas
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1 MR. H. EDWARD WHITE: Now we'll move into our public hearing on the
2 short-handled hoe, and this hearing is now in session. Before I go further,
3 I'll introduce the other member when he arrives, I'd like to introduce
4 members of the Industrial Safety Board and the others at the head table.
5 I'm Ed White. I'm Chairman of the Board. On my immediate right is Dale
6 Harr, who is attending his first Safety Board meeting. He has just been
7 appointed by Governor Reagan to serve on the Industrial Safety Board. We're
8 delighted to have you here. On my far right is Richard Wilkins, Chief of
9 the Division of Industrial Safety and serving as Secretary to the Board.

10 Would you please remember to enter your names and addresses on the
11 attendance list. This gives you the assurance of receiving further information
12 regarding any future Board action on material under consideration at this
13 public hearing. This public hearing is somewhat unusual in that the
14 Division of Industrial Safety has no specific Safety Order to present for
15 consideration. The proposal before us to prohibit the agricultural use of
16 the short-handled hoe comes from a group of farm workers represented by the
17 California Rural Legal Assistance, and it is their position that the use
18 of the short-handled hoe is a cause of back injuries among farm workers.
19 Are you able to hear all right? Are you okay? You don't hear me too well
20 back there?

21 MR. _____: No.

22 MR. WHITE: All right. Let me repeat that. It's an important point.
23 The proposal before us to prohibit agricultural use of the short-handled
24 hoe-- is that better? Are you able to hear all right way back there?
25 --comes from a group of farm workers represented by the California Rural Legal
26 Assistance. It is their position that the use of the short-handled hoe is a
27 cause of back injuries among farm workers. The proposal has not been
28 completely evaluated by the Board, and it is the purpose of this hearing to

1 extend and assist such evaluation.

2 The original proposal to prohibit the short-handled hoe was presented
3 to the Board at its quarterly meeting held March 6th, 1973. The presentation
4 was detailed and thorough, making use of witnesses, doctors' presentations,
5 statistics and special studies. This presentation, thorough as it was,
6 could not be considered as a public hearing since it had not been advertised
7 in advance. A complete cross-section of the industry was thus not present,
8 and the Board, recognizing a need for further data from a broad segment, has
9 requested these public hearings. From the standpoint of the Board, it is
10 not necessary that the previous presentations of the California Rural
11 Assistance be repeated. We held a public hearing in Imperial, California
12 near El Centro on May 1 two days ago. This is the second public hearing
13 which we will hold on this matter.

14 Mr. Wilkins has received three letters from interested parties, and at
15 this time I'll ask him to give us a summary of what those letters are and
16 from where they were received.

17 MR. RICHARD WILKINS: We've received letters which will be entered into
18 the official records of these hearings. One from the Growers Harvesting
19 Committee in Modesto, California, which gives their views on the subject
20 under discussion. One from the California Beet Growers Association from
21 Stockton, which is a rather lengthy document with their views. And a letter
22 from Lindemann Farms, Incorporated, Los Banos, with their thinking on the
23 subject under discussion. These will become part of the official records of
24 the hearings.

25 MR. WHITE: All right, thank you. Now in connection with this, to give
26 us the proper flavor for these hearings and to sum up what has been
27 accomplished at the May 1 hearing in Imperial, and to give his position, I
28 would like to call on Mr. Martin Glick to present a summary of their proposals

1 on the prohibition of the short-handled hoe. After this summary the hearing
2 will proceed in a normal fashion allowing interested parties to speak in
3 turn upon this subject when recognized by the Chairman. We would appreciate
4 it if anyone wishing to speak comes forward upon recognition, and if you
5 show your hand, I will recognize you, to the front microphone. At that time
6 please give your name and any organization you may represent or be associated
7 with, and please do this each time you come forward. We're recording the
8 hearing for later study, and it helps when the tape is recording the
9 conversation, for the person speaking to identify himself so that the trans-
10 criber will be able to make a more intelligent transcription. So, Mr. Glick
11 if you'll come forward please.

12 MR. MARTIN GLICK: Thank you. I'm Martin Glick, Director of the
13 California Rural Legal Assistance, and as we did in El Centro, I will try
14 and briefly summarize the evidence you have before you on our petition on
15 behalf of many California farm workers to abolish el cortito, the short-
16 handled hoe, as an unsafe hand tool.

17 The presentation we've made to date really divides into two parts, the
18 first part dealing with the injury that is caused by the use of the hoe.
19 You have now heard a total of nine doctors, including both the affidavits and
20 the actual live witnesses who have been before you. Those were Dr. Murphy,
21 Dr. Calvin, Dr. Thompson and Dr. Flanagan. I think we can safely say there
22 was a unanimous view among those nine doctors of the unacceptable high risk
23 involved, and the high rate of injury that results, from the use of the short
24 hoe. They find that an inordinately high percentage of back problems occur
25 among farm workers in the Salinas Valley and the Imperial Valley with those
26 farm workers who use the short-handled hoe. Their estimates were at least
27 four times the number of low back problems, with a far younger segment than
28 they normally find low back problems, than occurs in other parts of California.

1 and other parts of the United States. They also brought forward a number of
2 case histories which actually showed how that injury works and what results.
3 Their testimony taken together really comes to the point that back injury
4 from use of the hoe is literally inevitable.

5 Perhaps the best way I can present this is just to read from Dr. Murphy
6 the one paragraph summary of his testimony where he said: "To summarize.
7 Maintaining the body in a bent position as is necessary for use of a short-
8 handled hoe places great stress on the intervertebral discs of the spine
9 which greatly accelerates the development of degenerative disease in those
10 disc structures and promotes the development of degenerative arthritis of the
11 spine, which is secondary to the disc degeneration. Performance of even
12 simple activities while in this bent position adds further stresses which
13 are magnified many times over what they would be if performed in the erect
14 position. The result of this is a worker whose spine ages much more rapidly
15 than the rest of his body until a point is reached at which he is no longer
16 able to work because of low back pain even though the rest of the body may
17 be quite young." And the example he gave is that you might have a forty-
18 year old farm worker who has a seventy or eighty-year old back because of
19 the great rate of degeneration that has occurred because of use of the
20 short hoe.

21 As Dr. Flanagan stated, one might be tempted to say the spine may not be
22 in an optimum position when using the short hoe, but there is no weight
23 involved in the work being done. But that's simply not the case. For an
24 average 170 pound male in this position the muscles are actually lifting more
25 than 90 pounds every second. If you multiply that times the number of
26 seconds in that position during an eight or ten hour workday, it represents
27 thousands of pounds daily, and it is easy to see that this significant amount
28 of weight is being applied to the spine at the very point where most

1 degeneration occurs and most symptoms develop. There is no doubt in my mind
2 that the short-handled hoe plays a very important and significant role in
3 the development of pathology of the lower back region, and should be
4 considered a health hazard of major proportions to the segment of the
5 population which is required to use this tool. The short hoe is a primitive
6 and barbaric tool which was developed when human health and dignity were
7 of little consideration, but it has no place in our advanced society..

8 The injuries which result, which the doctors testified to, are arthritis,
9 herniated discs, and, in fact, fracture of the structures themselves. They
10 also testified to the fact that treatment is largely ineffective, that when
11 that man's back has degenerated to the point where it's a seventy-year old
12 back in a thirty-year old person, you can treat it and keep it a seventy-year
13 old back, but there's no way to ever go back and rebuild what has already
14 degenerated, and that operations are largely ineffective, and most of the
15 treatment is to try and control the pain which results. They did testify at
16 length about the kind of pain that's involved, the nerves that are involved
17 in the back, but I think that's a subject that all of us are familiar with
18 without even the doctors' testimony.

19 There is also in front of the commission a survey done by the University
20 of California at Santa Cruz where they examined a sample group of two-hundred
21 in both Orange Cove, where the long-handled hoe is used, and in Soledad,
22 where the short-handled hoe is used. In that survey they found four times
23 the number of low back related injuries among the Soledad population than
24 were found among the Orange Cove population.

25 And finally on this subject, there was the testimony of farm workers
26 themselves. Innumerable witnesses have been before this commission
27 testifying to the pain they suffered and endured both while they were using
28 the instrument and then in later life, ten or twenty years later, when the

1 Inevitable back problem did, in fact, result. A sample of that is in the
2 affidavit of Elejo Deharo. He said: "When I work with the cortito, I find
3 it very hard to work eight hours. I come home with so much pain that
4 sometimes rubbing and hot patches don't help. It does not matter how slowly
5 the boss allows us to work because it is still very hard on the back, neck
6 and thighs to work bending so close to the ground. I believe that if the
7 grower would bring twenty hoes with long handles and twenty short handles, no
8 one would pick up the short handle. Only a man out of his mind would choose
9 the short handle. I want my wife and children, who are willing to help me,
10 to be able to work, but the only way I will allow it is with the long handle.
11 Please don't force me to ruin my childrens' backs as I have done against my
12 will with mine."

13 In addition, there is evidence before the commission on the cost to the
14 State from the use of the short-handled hoe. The primary cost is in welfare,
15 welfare and disability coverage. Estimates are not before the commission,
16 but the doctors have testified to the number of referrals that have been made
17 of those disabled for that kind of coverage. There is some additional
18 coverage from workmens compensation where sudden injuries are caused because
19 of a weakened back when the short-handled hoe was in use. Dr. Murphy
20 estimated that one-hundred million dollars in California alone is paid out
21 in workmens compensation for low back injuries. In addition, of course, there
22 is social security disability and the medical expenses related to operations
23 and treatment. Secondly, there's a cost to the work force, that cost of
24 those people who will prematurely have to retire and cannot live long and
25 useful work lives. And finally, again testimony before the commission of the
26 cost to those persons injured in their own lives which are lost, an
27 unestimable cost and an unacceptable cost.

28 Second there is testimony before this commission on an alternative.

1 Given the safety hazard of the short hoe, it would be enough just to show
2 that, but in addition the following was shown. Practices were surveyed in
3 every state and extensively throughout California. Those showed in the
4 principal crops which are in concern here that in sugar beets the long hoe is
5 used exclusively in Colorado, Idaho, Maine, Michigan, Utah, Wisconsin and
6 parts of California. That in lettuce the short hoe is used in Florida,
7 Illinois and Wisconsin, and in parts of the San Joaquin Valley. That in
8 cotton the long hoe, I'm talking about the long hoe, the long hoe is used in
9 Arizona, Arkansas, Georgia, Mississippi, New Mexico, North Carolina, Oklahoma,
10 South Carolina, Tennessee, Texas and here in California in Bakersfield.
11 There is no use literally of the short-handled hoe except in Salinas, in El
12 Centro, and in those growers who have expanded from the Salinas and El Centro
13 areas into other states and have taken the short hoe with them and continued
14 to use it in those other states even though the predominant practice in
15 those other states is use of the long hoe. That's the evidence that the survey
16 showed, and the survey showed similar results in the crops of tomatoes, celer
17 carrots, melons and literally every other crop.

18 The most authoritative source on the use of the long hoe as an
19 alternative is, of course, the farm worker himself as he has testified before
20 this commission, again in numerous occasions both in San Francisco and El
21 Centro, that they have thinned, and they have weeded, in all of these crops
22 with both the long-handled hoe and the short-handled hoe, and they can do
23 it with the long-handled hoe, with the short-handled hoe, depending on the
24 particular planting of the particular crop at the particular time, but that
25 it absolutely can be done.

26 In addition, there is labor contractor testimony in affidavit before the
27 commission in addition to farm worker testimony that both can be used.

28 I think that's a summary of the evidence we have presented showing one,

1 that's it's unsafe and should be outlawed even though there was no present
2 alternative, and second that a safe alternative does exist. We have
3 several witnesses. We have for the commission brought only one more doctor
4 today so that you don't have to suffer through a number more. I think his
5 testimony is quite different from some of the other doctors as he has had
6 a different kind of experience. So we will be presenting that. Mr. Thornton
7 from one of the growers associations approached us and said he has a number
8 of witnesses that have to get back, and we'd be pleased to defer and have
9 him be able to put on some of his witnesses. Our witnesses will volunteer in
10 turn, but we'll proceed at your pleasure.

11 MR. WHITE: Just to be sure we understand each other, we don't mind
12 suffering because each doctor has been very lucid and completely clear, but
13 we prefer to dispense with his time. We've already got nine doctors and we
14 feel that perhaps we're adding icing on the cake. So, if it's all right with
15 you, Mr. Glick, Mr. Thornton would you like to have one of your people come
16 up, or you yourself come up.

17 MR. RICHARD V. THORNTON: My name is Richard Thornton. I'm with the
18 Grower-Shipper Association. I will not be testifying, but we do have
19 several witnesses who we'd like to have come up and present their viewpoint
20 to you. We also have a doctor that will be with us at a later time this
21 morning. We don't know exactly what time. At this time I'd like to present
22 some farm worker witnesses.

23 MR. WHITE: Would you tell us your name, please.

24 MR. ORNOVEGO: My name is Ornovogo. I don't believe it's that bad, the
25 short-handled hoe. There's very many people have been doing this for many
26 years with a short-handled hoe. They can't work with them long-handled hoes.
27 They will injure you more than a short-handled hoe because you have to move
28 your body more often. With a short-handled hoe you have to move your hands

1 bent over. With a long-handled hoe you have to do it twice, you have to go
2 down, up, then hold the hoe. I don't think that's very well. For instance,
3 they take the short-handled hoe away. They can put the long-handled hoe.
4 They're going to put machines. Now, we're working precision planting. You
5 can go to the short-handled hoe but a machine cannot do that, or a long-
6 handled hoe, because you have to hit it just right. It will be in between
7 and the long-handled hoe for the farmer won't do very much good either. It
8 will take them all day for them to even do a days work. And for myself, I
9 wouldn't go for that long-handled hoe. I prefer the short-handled hoe. I
10 have one kidney. It never has bothered me. A doctor he's never been in the
11 field. He doesn't know the job. I know the work. I've been doing this for
12 twenty-five years. I do a good days work and I go home and get a good
13 nights sleep. I can go anyplace. I'm not worried about my back. Some
14 person did this. He probably started two or three years ago, and now he's
15 complaining because he wants to be standing up and enjoying himself at all
16 times. I'd like to see him do the work, but do it right. That's what I
17 want to do. Thank you.

18 MR. WHITE: Thank you, Mr. Ornovago. Any questions or comments at all?
19 All right, thank you very much. Mr. Thornton, do you know their names and
20 addresses if we need them? Will you have them?

21 MR. THORNTON: Yes.

22 MR. WHITE: Thank you. The next individual, please.

23 MISS LUPE RUIZ: My name is Lupe Ruiz and I work for Mr. Frank Vargas.

24 MR. WHITE: How do you spell your last name?

25 MISS RUIZ: It's R-U-I-Z. I have been doing thinning for quite some
26 time. I think it's better the short hoe than the long hoe because I've tried
27 it with the long hoe and it kind of hurts your underarm and your back. I
28 think it's a lot better the short hoe because you do the job better too, and

1 you do a better job than with the long hoe. I guess that's all.

2 MR. WHITE: Any comments or questions? There are questions that occur,
3 but I suppose the answers are obvious. Does it make a difference what
4 crop you're working with?

5 MISS RUIZ: No. We've been doing lettuce for a long time and it doesn't
6 bother my back or anything. Just go home, take a shower, and that's all.

7 MR. WHITE: How many years have you been doing this?

8 MISS RUIZ: Well, I've been working for Frank Vargas for a year, and we
9 worked for Johnny Rosa for about four years or five years.

10 MR. WHITE: I see.

11 MISS RUIZ: And it doesn't bother me.

12 MR. WILKINS: Would it bother you to tell us how old you are?

13 MISS RUIZ: Thirty-four.

14 MR. WILKINS: Thank you.

15 MR. WHITE: Any other questions? Thank you, Miss Ruiz, very much.

16 MR. _____: I've been working for Mr. Vargas for six years thinning
17 lettuce. I never had no trouble with my back with a short-handled hoe. I
18 agree all the time with a short-handled hoe. I wouldn't go with a long-
19 handled hoe. So, I've been working and I've never had trouble with my back.

20 MR. WHITE: Have you used the long-handled hoe?

21 MR. _____: Yes, sir, before when I was a small kid. But I mean you
22 have more trouble with that long-handled hoe because I used to tend cotton
23 before, but I mean I agree with a short-handled hoe. I get along better with
24 a short-handled hoe than with a long-handled.

25 MR. WHITE: Perhaps, Mr. Thornton, if it's true of these people, if
26 they had their choice of the short or the long, I gather that they would
27 prefer the short.

28 MR. _____: I agree with the short-handled hoe.

1 MR. WHITE: You'd prefer it. If you had your choice, you'd still take
2 the short.

3 MR. _____: Yes, I would.

4 MR. WHITE: That's true of Miss Ruiz and Mr. Ornovaga? Any questions?
5 Thank you very much.

6 MISS ROSIE NEGRON: My name is Rosie Negron and I have been doing this
7 thinning for quite some time too. I have been working for Frank Vargas for
8 two years, and with Johnny Rosa for about four or five. I have picked
9 strawberries before and that goes on your knees too. I have diabetes and my
10 doctor has never prevented me from working on this kind of job, and I have
11 never had backaches. I have worked in packing sheds myself, and it even
12 hurts your back in packing sheds. So everything with thinning it hurts the
13 same way for awhile. You go home and you take a shower and you are okay.
14 I would rather hoe with a short hoe than with a long one. I have thinned
15 with a long one and I don't like it. Your back and your neck hurts, and you
16 have to twist your body a little bit more with a longer hoe than with a
17 short one. The short one, you just go in one position, just bending, and
18 then once in awhile you get up and you're okay. You bend down again and
19 you work again. I have never had trouble with my back at all. So, I'd
20 rather have the short hoe than the long one.

21 MR. WHITE: Could you use the long hoe in this area if you wanted to?
22 Do they have them here to use?

23 MISS NEGRON: No, they don't. Just a few men that I know that had it,
24 but they didn't thin all day with them. They just had it in their hand just
25 to take a weed or two, or irrigate, or like that, and I have used it from
26 them just for awhile and I don't like it. I give it back to them.

27 MR. WHITE: Questions? Thank you very much, Miss Negron. Mr. Thornton
28 and others, we don't need different people to say that they like the short hoe

1 or don't like the short hoe. If they can add anything, then perhaps if you
2 have other people here, Mr. Thornton, that would like to give you their
3 names, just issue a deposition rather than take the time for everyone to come
4 up. Tell Mr. Thornton who the names are to be sure we have a count. All
5 right, thank you. This gentleman, yes sir.

6 MR. HISAURO GARZA: My name is Hisauro Garza and I'm currently a doctora
7 student at the University of California at Berkeley. I came to this Valley
8 back in '64 or '65, and I'm a doctoral student in sociology, by the way.
9 I came back in '64 or '65 to this Valley and that was the first time that I
10 have ever heard of the cortito. Up to that time, I was eighteen years old
11 at the time, I had always used the long-handled hoe in Texas. So, it was a
12 real shock for me to come here and work with the short-handled hoe. I
13 basically wanted to despite the fact that I'm not a current farm worker. I
14 haven't been for the last four or five or six years, but I did do farm work
15 in '64 and '65 like I mentioned earlier. I'd like to relate to you a couple
16 of incidents that I think have burned a spot in my heart and in my mind, and
17 I will never forget them.

18 When we were working in the fields, working for Jose Ervin, Eddy Garcia
19 and Hunt from King City and stuff thinning lettuce and beets, I recall that
20 during the break in the afternoon about three or four o'clock that everybody
21 would eagerly await this ten minute break, would throw down the short-handled
22 hoe, and with their bodies slightly bent forward from the excruciating pain
23 and the bent position all day long, would try to roll over the rows where the
24 vegetables, the lettuce or what have you was planted, to try to let the heat
25 from the ground sort of massage their backs, and try to in that way sort of
26 alleviate the pain. To me this is an incident that I experienced that I
27 will never forget because we even had little verses that we composed in the
28 fields to try to forget the pain. There is a little saying that is called

1 el cortito, the short-handled hoe, will even change your style of walking,
2 and that's a truism of a very special type because it does, in fact, alter
3 your style of walking for quite some time, and being bent forward and so forth

4 I just went out this morning, and one of my nieces is totally disabled
5 from el cortito use. Her pelvic structure has apparently been altered
6 through the years of working in the fields. I would also come home in the
7 afternoons with my back in dire pain, and I would see my cousins, like I
8 said I was eighteen years old at the time, my cousins with small frames,
9 ninety-five and hundred pounders, trying to lay back on their beds, and as
10 their bodies kind of unfolded back to meet the bed surface, I could see the
11 tears rolling out of their eyes just crying from the pain as the body was
12 trying to assume its natural erect position. And as I mentioned earlier,
13 incidents of this type will always remain with me despite the fact that I
14 have removed myself from the presence of actual farm work.

15 As I mentioned earlier, I'm pursuing a PhD in sociology at Berkeley, but
16 as I mentioned also, I did do work with the long-handled hoe in Texas for at
17 least eight or ten years when I was about nine years old until I was about
18 eighteen. I thinned cotton and I also weeded onions, cabbage and so forth,
19 and I found, just like I said earlier, it was just a complete shock to me
20 to know that people could work like burros in the fields, and I was a senior
21 in high school at the time and having my own sort of political consciousness
22 at the time, realizing that the incentive behind all this sort of
23 exploitation was not the caring for a human being, or caring for our farm
24 worker on a human level, but the profit motive that sort of superseded every
25 other thing. That to me is completely atrocious. Thank you for your time.

26 MR. WHITE: Just a moment, Mr. Garza. Questions perhaps?

27 THE BOARD: Who do you represent here, yourself?

28 MR. GARZA: Myself. I was told of this hearing and I wanted very much to

1 testify before you because this has a lot of significance for me.

2 MR. WHITE: You mentioned you are a doctor, or are you studying
3 sociology?

4 MR. GARZA: I am studying sociology. I'm currently in my doctorals for
5 the PhD degree at Berkeley, U.C. Berkeley.

6 MR. WHITE: Any other questions? Thank you very much for coming up.

7 MR. ROBERT L. GRAINGER: Mr. Director, my name is Robert Grainger and
8 I'm a farmer, not a corporate farmer, a farmer. I'm associated with Eckel
9 Produce. I've been a farmer for twenty-eight years in the Salinas Valley,
10 and in that whole twenty-eight years the people who have worked for me have
11 used that short-handled hoe. And in this twenty-eight years the people that
12 have come to work for me are faithful workers. Great numbers of them have
13 returned year after year to work in my fields and they prefer the short-handled
14 hoe. I respect the intelligence of these people that do this work. I know
15 it's hard work and they take a great deal of pride in the work that they do.

16 In order to produce in our Valley and our Valley is one of the most
17 productive valleys in the United States, and to produce our type of crops and
18 produce them well, we cannot allow doubles (doubles are two plants growing
19 side by side), half cut plants which are thinned and only half done, weak
20 plants, sick plants. We can't stand those. If we have this, we can have
21 as high as a fifty-percent reduction in our production. Now, I don't believe
22 the long-handled hoe can do this job. As the crops mature and the foliage
23 grows larger, sometimes these jobs take two hands, one hand to pull back the
24 foliage, and the other hand to clean the weeds. We're not doing this just
25 because we want to hurt somebody's back. It's a necessity. If we do not
26 produce, we do not survive. When you have to hoe these weeds out of crops
27 that are for processors, processors won't allow weeds in the crops. They
28 harvest it mechanically, and when the weeds are there, there's a dockage and

1 we lose.

2 Now, there are great strides being made in precision planting, and in
3 herbicides and controls of weeds, and in the control of weeds by herbicides
4 It isn't completely foolproof, and we have to clean the plants, clean the
5 doubles out, and clean the weeds out, or they rob the plant that's mature
6 and strong of moisture and fertilizer. In the strides that are being made
7 with herbicides and precision planting, the restrictions asked by, and
8 sometimes given, to the ecologists and the trade unions are curtailing our
9 planting and our use of these various chemicals. Therefore, there is only
10 one way in my mind that we can clean these up and do it properly, and that's
11 with the short-handled hoe. A long-handled hoe puts the man too far away
12 from his work, and it can't be done properly. The people that work for me,
13 and have worked for me, take a great deal of pride in their work that they
14 do, and they want to do it with the short-handled hoe, and we have a
15 wonderful relationship. I have a crew right now. These people are all happy
16 to be there. They're happy to do their work. They want the work done
17 correctly and they do it with the short-handled hoe. Just as an added
18 thought, all our products, or most of our products, for instance, packing
19 lettuce is done on the ground bending over, picking strawberries, packing
20 strawberries, packing celery, everything we do in our industry, I would say
21 our industry is a complete industry of bending over. In my opinion, if we
22 have to turn to the inadequate hoeing and thinning of the long-handled hoe,
23 I'm afraid we'll turn completely to mechanization because I think it will do
24 just as well at the job, and unfortunately that puts people out of work.

25 Thank you.

26 MR. WHITE: Thank you, Mr. Grainger. Questions?

27 THE BOARD: Yes. Mr. Grainger, I'd like to ask how much have you actually
28 tried the long-handled hoe in this Valley?

1 MR. GRAINGER: We have tried it on various occasions when we've had a
2 shortage of help. People have insisted on using it and so we provided it,
3 and it just does not work out to give us the best answer for the production
4 that we need.

5 THE BOARD: How much did you figure it cut down your ability to clean
6 the rows? Twenty percent? Forty percent?

7 MR. GRAINGER: I don't know what percent it would be, but there was a
8 difference in production.

9 THE BOARD: You feel it was a significant--

10 MR. GRAINGER: Very significant to me, yes.

11 THE BOARD: Have many of your workers over the years complained about
12 back problems to you?

13 MR. GRAINGER: People always complain about back problems. I've thinned
14 and hoed and I'm a great big man. I've thinned lettuce along with the
15 workers when I was a younger fellow and I was starting out in the farming
16 business, and it hurts and it hurts badly for about three or four days.
17 Then after that you're in shape. It's just like anything else you do whether
18 you're packing lettuce, or you're loading a truck, it hurts and it only hurts
19 until you're used to it. If you stop for a day or two, then it's going to
20 ache again, but it goes away same as any other job.

21 THE BOARD: Do you have any feeling for the average age group, the normal
22 work crew you have?

23 MR. GRAINGER: I don't screen them for age group, I hire them for their
24 ability to do the job. I have older men in my crew, older women, young
25 women, some school kids in the summertime.

26 MR. WHITE: Any other questions? Thank you, Mr. Grainger, very much.
27 Yes, sir.

28 MR. GEORGE BETZ: My name is George Betz, Bruce Church Company. I'm

1 speaking as an individual. I came here simply to listen. I have had no
2 plans to participate; however, a couple of comments were made and I would
3 like to comment on those comments.

4 The use of the short-handled hoe throughout the industry, that I've
5 been in the industry, is commonly used as illustrated in this picture. It is
6 by chance that I had this picture. Perhaps you've seen it. It's out of the
7 local paper. It's out of our local paper, and I had it to show my people
8 how not to thin, and that is a commonly accepted way of thinning. A couple
9 of points on that. You'll notice the individual has a glove on his left
10 hand. This is normally often seen. The individual cannot get the weeds,
11 and cannot get the doubles, with a glove on his left hand. I tell our
12 people gloves are for men and women-- women and children and I accept that a
13 man with gloves cannot get the proper job done. The hand on the knee again
14 is commonly accepted. From my observation with the labor force for the
15 past three years, we've eliminated both of these practices so we can get the
16 job done. As the result of that, that left hand is on the bed. The man is
17 able to establish a rhythm in the thinning operation. I have tried it.
18 I can't thin. I've tried it. I feel we should try what our men are doing,
19 and I've tried it. I can't do it as that picture shows, but I can do it
20 with my hand on the bed therefore supporting my back. Now I heard mentioned
21 earlier ninety pounds on the back. I'm in no position to say this is true or
22 is not, but I know what I've experienced in trying this. The rhythm is
23 established. The individual can establish a rhythm with his hand on the beds
24 supporting his back and this carries him right through the field. Once
25 they're in that position, they don't want to get up, and therefore they are
26 able to do the job we want, and I myself can do the job. Again I emphasize
27 that that is a common accepted way of thinning. This is my personal opinion
28 of what I have observed across the State with many crews, with our company

1 and other individuals. Our people now I tell them I want to see a dirty left
2 hand. That means they've pulled the weeds and doubles and that hand is on
3 the bed. I just offer that from my experience.

4 With the using of the long-handled hoe, I've observed-- the question was
5 asked of an earlier witness-- I've observed the quality of our work being
6 decreased. If we have a standard of say ten percent weeds you want to leave,
7 or fifteen percent, the quality is being reduced thirty percent. The cost
8 of the operation with the long-handled hoe, in my opinion, would eliminate
9 the use of thinning by this method, therefore going to mechanical means of
10 one method or another, therefore eliminating in this area employment for
11 roughly 2,000 individuals. This would be the result of the long-handled hoe.
12 We have found it does not-- the short-handled hoe used as I've explained it
13 does not interfere, or is detrimental to the individual's back. Again, this
14 is perhaps in the training of the short-handled hoe. Maybe that is what this
15 comes under, but I offer this for a comment.

16 MR. WHITE: Thank's, Mr. Betz. Do you have an opinion why the short-
17 handled hoe then isn't used elsewhere in the United States?

18 MR. BETZ: I'm not familiar with the crops throughout the United States.
19 The states I heard mentioned earlier refer in my mind to different kinds of
20 crops, cotton and so forth. With produce such as lettuce without the short-
21 handled hoes used, you can't get a crop with the quality that we are
22 expecting to get and the yield that is necessary to survive. You can't,
23 because of mechanical damage, produce the yield that you want with lettuce.
24 Lettuce is a completely different crop than cotton or sugar beets.

25 MR. WHITE: You used the expression "devils." I know what a double is,
26 what's a devil?

27 MR. BETZ: Beg your pardon.

28 MR. WHITE: You said something about doubles and devils.

1 MR. BETZ: No, doubles.

2 MR. WHITE: All right, there's not another expression?

3 MR. BETZ: No, sir.

4 MR. WHITE: Thank you. Any other questions?

5 THE BOARD: What company-- I didn't get the name of the company.

6 MR. BETZ: Bruce Church Company.

7 THE BOARD: What position do you hold in that company?

8 MR. BETZ: I'm Production Services Manager, and the opinions being
9 expressed here are mine. Like I said, I hadn't planned to testify, but
10 after observing the hearings, I felt I should offer this point.

11 MR. WHITE: Could we keep that photograph or do you need it?

12 MR. BETZ: Yes, sir.

13 MR. WHITE: All right. Is it from a current edition of the paper?

14 MR. BETZ: Yes, from the Salinas Californian two or three weeks ago.

15 MR. WHITE: I see. Do you know the reason why it was in the paper?

16 MR. BETZ: It was on other material related to the labor situation here.
17 It had nothing to do with the short-handled or long-handled hoe. It was just
18 a picture of a field worker.

19 MR. WHITE: I see. All right. Thanks, Mr. Betz, very much. Yes, sir.

20 MR. JOHN SAAVEDRA: Members of the commission, my name is John Saavedra.
21 I'm a city councilman in Soledad. I am a former farm worker in the Salinas
22 Valley. I was raised in the Salinas Valley since 1943. I have tremendous
23 empathy for people who are working with the short-handled hoe because that
24 is a job that is not designed for the human body. I heard mention about
25 precision planting. Precision planting as it is planted nowadays can
26 accommodate a long-handled hoe. I remember when I was doing thinning, the
27 planting was thick and you couldn't thin it with a long-handled hoe. As a
28 matter of fact, the opportunity was never offered to use the long-handled hoe.

1 I cannot speak as a city councilman as such, but as a former farm worker.
2 I heard mention a comment stated that my people, apparently somebody is
3 talking about owning people or something like that. I don't like those terms.
4 Also they were saying cost factors. The cost factor may be a little higher
5 with the long-handled hoe, true; but then what's the price of a human back.
6 I have had surgery on my back twice, and I attribute that to short-handled
7 hoe work. Gentlemen, that's about the only thing I can say at this time.
8 Thank you very much.

9 MR. WHITE: Just a moment now, Mr. Saavedra, there may be questions.

10 THE BOARD: I would like to ask, the threat of doing away with a couple
11 of thousand jobs in this area, what is your opinion of the reality of that?

12 MR. SAAVEDRA: Selfishly speaking, sir, I would say that that type of
13 a job if it's mechanized, I feel that it's all right because I'm speaking
14 mostly on the sense of the human injury to the back. But if the job can be
15 done with the long-handled hoe, unfortunately I was never given this
16 opportunity to try that long-handled hoe to see if I could do it or not.
17 I will never know if it can be done, but if the mechanization, which is
18 aiming in this direction, it's coming in this direction, it's going to get
19 here. Why should we continue to have people suffering with the short-handled
20 hoe, their backs, their injuries, the long process of surgery. I was on my
21 back for twenty-one days and I had to live with it. It's hard. I can't see
22 anybody going through this suffering which I went through.

23 MR. WHITE: How long did you work in the fields?

24 MR. SAAVEDRA: As far back as I can remember, sir. I remember as a
25 little boy they used to take me and I'd sit in the car, or I would sit on
26 a crate, or wherever I could. You know, there is no babysitting of this
27 nature. Throughout my grade school and through high school, all summertime,
28 during Saturdays and Sundays, everything from carrots, onions, to lettuce,

1 to most of your farm work jobs in this area.

2 MR. WHITE: Would you say fifteen years, twenty years?

3 MR. SAAVEDRA: I incurred my back injury at the age of twenty-three,
4 and I worked steadily, well off and on, from about eleven-years old, off and
5 on, until about fifteen, sixteen, and then from then on I worked full time
6 as a farm worker. The only other reasons why I do not work as a farm worker
7 is because I cannot work. I was told by the doctor that I can never again do
8 stoop labor, lift anything beyond fifty pounds, and the other alternatives
9 are to re-educate myself and find some other source of income.

10 MR. WHITE: How did you hurt your back?

11 MR. SAAVEDRA: In a stooped position, sir.

12 MR. WHITE: Did something happen all of a sudden, or did your back--

13 MR. SAAVEDRA: Well, according to the doctor my back had already been
14 weakened by the time that I had been doing some stooped labor, but what
15 happened was that I stooped down to pick up a head of lettuce and that's
16 what did it right there. There was no explanation whatsoever.

17 MR. WHITE: All right. Okay, thank you very much for coming up, Mr.
18 Saavedra.

19 MR. N. MICHAEL RUCKA: Members of the commission, my name is N. Michael
20 Rucka. I'm an attorney licensed to practice law in California. I'm a
21 partner in the firm of Morgan, Beauzay, Hammer & Rucka, and my practice is
22 predominantly workmens compensation injuries. I would like to offer some
23 insights and suggestions based upon my experience over approximately seven
24 and one-half years in this field.

25 I understand that when you took testimony in El Centro, there was some
26 testimony relative to the causal relationship of working in a stooped position
27 to low back injuries. I'm not exactly sure, not being present in El Centro,
28 what that testimony was. I think if you would look at the records of the

1 Workmens Compensation Appeals Board, you would not find that they would be
2 very satisfactorily enlightening. That comes about because of a number of
3 various reasons. The first is that most back injuries that you see in farm
4 workers are not easily identifiable as a sole cause. You don't find the type
5 of specific incidences that you see in other kinds of trades. When you deal
6 with trades like construction, services, you tend to see different types of
7 injuries. That is, you see injuries caused by specific lifting episodes.
8 In industries where there is a lot of repetitive bending and stooping, you
9 see a different kind of injury. That is, an injury that comes about over a
10 long period of time.

11 In the workmens compensation field there's a doctrine called the Beverage
12 Theory. The Beverage Theory comes out of a case Beverage versus the
13 Industrial Accident Commission which was decided in about 1957. In that case
14 the courts of the State first recognized what medicine had recognized
15 sometime before, that certain types of physical activity cause a wearing
16 and tearing on the body. Because our constitution provides that there shall
17 be a total, if you want to call it, a total coverage for people who work,
18 anything that vaguely resembles a specific injury, or a disease process, is
19 going to be covered as a workmens compensation injury if it's approximately
20 caused by the work activities, that is if the work activities aggravate,
21 accelerate, or in some way hasten the process. And so in the Beverage case,
22 Mr. Justice Peters I believe was the author of that case, and he pointed
23 out that the repeated bending activities that brought about, in the opinion
24 of the doctor for Mr. Beverage, brought about the problem that Beverage had
25 came about because of the insidious nature of the repetitive bending activities
26 That is that each act of bending over, of stooping over, was, in and of
27 itself, a minor injury, infinitesimal in its degree if you measure it on a one
28 by one basis, but taken together collectively constituted a major injury.

1 That is, such as the gentleman that testified just before me, caused him to
2 have surgery and to have to cease gainful employment in that type of
3 activity.

4 Today medicine knows that arthritis is a very common thing that's to be
5 found in almost everybody's back. But interestingly enough, people who
6 don't work in repetitive bending activities don't seem to have as much
7 difficulty with their back as people who do. And medicine has, I suppose,
8 with that kind of empirical evidence has concluded that obviously there is
9 a wearing out that comes about because of this activity, and there is
10 objective evidence of this wearing out when you look at an X-ray. You can
11 take an X-ray of a farm worker's back, and an X-ray of a day laborer's back,
12 and in that sense I don't want to just limit it to farm workers because I
13 don't think that's true. I think if you talk about the kind of repetitive
14 activities of bending, you're going to see the same kind of results on an
15 X-ray. You're going to see filling of the inner spaces between the discs.
16 This is a sign that the back is wearing out.

17 Now, I indicated that you're not going to find a lot of support in
18 looking at the workmens compensation cases for whether or not the short-handle
19 hoe was the sine qua non of the disability that an individual might have,
20 and I say that for several reasons. First of all, it wasn't until the late
21 '50's that the doctrine of repetitive trauma to the back was an accepted
22 doctrine, so before 1957 or so there aren't going to be any cases anyway
23 to speak of. There may be some that have been resolved that were in effect
24 the same way, but the courts, or the Appeals Board, at that time the
25 Industrial Accident Commission, reached the result that they did by
26 different means. Secondly, because of the nature of the activity, that is
27 it's a repetitive motion activity that does it, not the use of a specific
28 tool, the tool doesn't cause the wearing out, it's the position. If you just

1 held the short-handled hoe in your hand and never had to bend over with it,
2 It would cause you no problem. So that when an injured person comes to an
3 attorney, the attorney isn't going to plead that the injury was caused by
4 the short-handled hoe. He's going to plead that it was caused by the
5 repetitive bending, stooping and lifting activities. I would suggest that if
6 you were to look then at the Appeals Board's records since 1960 or '61, you
7 would see that there were a great many applications for adjudication of claim
8 that were filed alleging injury coming about because of repetitive bending,
9 stooping and lifting activities. So, it's important to understand that an
10 attorney that's worth his salt, that doesn't want to be guilty of malpractice,
11 is not going to plead that the injury came about by use of the short-handled
12 hoe.

13 Secondly, you have a problem when you're dealing with a minority group
14 of any sort. That problem is doubly difficult when you're dealing with
15 somebody who doesn't speak your language. So how many attorneys have native
16 to them the ability to speak spanish. Well, I won't get into that as a
17 major issue, but I would point out that there was a dispute that was
18 involving the University of California Boalt Hall about a year and a half
19 ago wherein they pointed out that there were less than one percent, I think,
20 of the attorney population in California that were of Chicano derivation,
21 and I would dare say that that's probably true for those that speak spanish.
22 So, that means if you're going to take a case involving somebody who speaks
23 as a predominate language spanish, you're either going to have to speak
24 spanish yourself, or you're going to have to have an interpreter at your
25 disposal for the initial takein interview to send him along to wherever else
26 he's going. It's true you can use an interpreter that you can hire, but
27 the question is how many people are in the position to afford that, even
28 though it may be possible to recover it out of the workmens compensation case

assuming that the attorneys know that this is a possible right, and I wonder how many do.

Thirdly, you have a problem of earnings. Attorneys in workmens compensation cases like to get paid like everybody else. Their remuneration is directly tied to the earnings of a farm worker, to the earnings of the injured employee. They get paid roughly ten to fifteen percent of whatever the employee recovers as the result of his industrial accident case. The amount of recovery for an injured employee is directly related to the amount of his own earnings. So if you have a man who's a migrant laborer, which brings up the fourth problem that he is a migrant, he may or may not have good earnings. If he doesn't have good earnings, many attorneys are going to be disenchanted with the prospect of taking such a case. So that a man may have a bona fide injury, and yet have no place to go to file a claim because he's not going to find counsel that's going to take it. I would suggest also that it requires a degree of sophistication to understand the nature of repetitive trauma injuries, to know how to plead them, to be successful.

I alluded to the problem of the migratory nature of the employment. Now that's not particularly true in the Salinas Valley as it is in other places in California. In the Salinas Valley there are enough crops that go year round that the migrant nature of the employment can be restricted probably to a hundred square miles. That's not as big a problem as it once was. But in the past that was a big problem and so, therefore, statistically you're going to have difficulty in amassing the kind of information you'd like to get from claims being filed because a lot of guys didn't file claims for back injuries because they were busy moving with their families. I can tell you of several cases that I currently have in my own office in which that is, in fact, the case where my client, because the family has moved to

1 Texas to work the crops, even though the client has a bad injury, has also
2 moved to Texas, and clearly if I were not persistent in my own approach with
3 the case, would the case be followed up and would it be processed.

4 Lastly, I would suggest that there's a major problem with respect to
5 coverage, and that's the other reason why lots of attorneys, and it's almost
6 sounding like it's a defense of attorneys and I don't want it to be, I want
7 it to be an explanation of what the problems are in this, and that is that
8 they have a problem getting coverage. Up until very recently we didn't have
9 large corporate farming. The aggra business is a relatively new concept,
10 and so you had the situation with a lot of small growers with a lot of
11 different insurance companies. And how do you go about getting the information
12 to plead a repetitive trauma case the way it's supposed to be pled so you can
13 prove out the fact that the work activity, the repetitive bending and
14 stooping over a period of ten or twelve or seven or nine years whatever the
15 situation is, has brought about the injury. Well, you have to go and you
16 have to get every single employer that the guy has ever worked for. You
17 have to go and get every single carrier for that employer during the period
18 that the guy worked. Now, you have two problems built into that problem,
19 and that is first of all up until recently there was no way for sure that we
20 could make sure that farm labor contractors were reporting all the actual
21 earnings that a guy would make when he was in the field. The only way that we
22 have that's really a good way of checking employment is going back and
23 getting social security records. Well, if the guy never reported social
24 security, if the employer never reports the social security to social
25 security what a man earned, we have no way of knowing his employment history
26 let alone his earnings history. Even assuming that we get the social
27 security records, where do we go to get the information about coverage.
28 Well, we used to be able to go to CIRB, which is the California Inspection

1 and Rating Bureau, which is a quasi-state organization which is set up to
2 determine a lot of other things including ratings, but also supplies
3 information covering referable to coverage. But it didn't come into
4 existence until 1957. So you see the problem going back prior to 1957.
5 Since that time it's a very expensive process to use CIRB. It's \$5.00 per
6 year per employer to get coverage information. If you have a migrant worker
7 who has worked for fifteen employers in the course of one year, how much does
8 that cost, and if you miss the year that he worked for that employer, you
9 lose your five bucks and you've got to go back to ground zero and start all
10 over again. So I suggest that there are a lot of economic factors which
11 would preclude your getting any good evidence as to what effect a short-
12 handled hoe has upon back injuries, but I would also suggest that there's
13 a lot of good information as to what effect repetitive bending and stooping
14 activities have on back injuries post 1961.

15 Lastly, I would suggest that the cost factor would-- which I overheard
16 the gentleman from one of the growers mention-- is an illusory factor, and
17 that is because of the following: Let's assume that we have a resident of
18 the State of California that has a back injury like the councilman who
19 spoke before, and let's assume for a moment that there is workmens compensation
20 coverage. Number one, the premium to the grower is going to increase, perhaps
21 not very greatly, but it will increase and that will be a cost factor that
22 will be passed on. Secondly, the cost to society will be greatly increased
23 because I will tell you in my own experience there are very, very few people
24 who do stoop labor, whether it's farm work type or whether it's day labor
25 type, whether they're black or chicano or anybody else who have a major back
26 injury, who are able to go back to the same kind of work that they were doing
27 before, and if they don't have either youth on their side or a great deal of
28 motivation because of some other factors that are built into it, they end up

1 being on the welfare rolls and, therefore, being a tax to society generally.
2 And I would suggest that I would rather pay that increased price on a per
3 item basis, paying a dime or a dollar more if necessary on a head of cabbage,
4 than pay that same amount of money that I'm going to have to pay through my
5 property tax, and watch the government bureaucracy get involved in it, and
6 not know how much is going to be siphoned off to pay off a lot of other people.
7 Thank you. Are there any questions that I can answer?

8 THE BOARD: Do I gather that you represent applicants generally?

9 MR. RUCKA: I represent applicants exclusively except unlawfully uninsured
10 employers.

11 THE BOARD: In your experience approximately how many cases have you had
12 in which back problems were the central issue?

13 MR. RUCKA: That would be a difficult question for me to answer.

14 THE BOARD: Just approximate.

15 MR. RUCKA: I would say between forty and fifty percent. I would suggest
16 that there was a recent study put out by the Division of Industrial Accidents,
17 Roy Bell, the Chairman, has put it out relative to back injuries, and in that,
18 as I recall, there's a comment that over forty percent of the litigated cases
19 before the Appeals Board involve back injuries. And I would say that that's
20 probably true with my practice. I think I probably settle a number of back
21 cases that would never go to trial, so I don't know if that's figured in the
22 figure.

23 THE BOARD: But would you say you've had one-hundred, two-hundred,
24 five-hundred?

25 MR. RUCKA: In raw numbers I would say that in almost eight years of
26 practice I probably have handled between 2,500 and 3,000 cases of which, I
27 would say, roughly speaking between 1,000 and 1,500 have involved back injuries
28 of one sort or another.

1 THE BOARD: And what would be your batting percentage?

2 MR. RUCKA: Winning and losing. You really want me to admit it in front
3 of the public.

4 THE BOARD: Sure.

5 MR. RUCKA: Well, I would say that probably in the high seventies. You
6 know, there's an old adage that isn't only true to me but to most lawyers,
7 and I imagine it's true for most doctors, you try to settle your losers and
8 win your winners, and with doctors you try to weed out those that are going
9 to give you problems in your practice at the very outset. So I think that
10 kind of covers up a lot of the holes that maybe shouldn't be seventy percent.

11 THE BOARD: Is that cover up called burying mistakes?

12 MR. RUCKA: Yeah, that's about it.

13 MR. _____: I would like to ask the gentleman, you've made several
14 assumptions. If I hear what you're really saying correctly, you are guessing
15 that there are a whole lot of people with back problems that are not getting
16 any help because of the difficulty of even proving the thing. Is that an
17 assumption you were-- I was hearing.

18 MR. RUCKA: Yeah, I would go with one modification. They are getting
19 help, but they're not getting help from the agencies that were directly
20 designed to help them. That is, they're getting general welfare. They're
21 getting some other kind of assistance, but they're not going through the
22 workmens compensation scheme to get it. I think that the lower down on the
23 scale you go economically and educationally speaking, the greater the
24 percentages. I won't say that it grows by geometric progression. I certainly
25 would say that it grows by arithmetic progression.

26 MR. _____: Do you think the cases you won, your client really won.
27 I mean he's still got a bad back, so whatever he got really isn't enough.

28 MR. RUCKA: That's right, and I think that's really a good point because

1 we launch into a whole concept of what is adequate compensation when you
2 talk about that. And I tell my clients when they walk into the office that
3 first of all you've got an inadequate system. Workmens compensation is
4 never going to adequately compensate for what you've lost in terms of your
5 earnings ability. Take a person who is out of work for a year, and assuming
6 that he can return to the same kind of employment, even assuming that he gets
7 a permanent disability rating of some good value, he's lost in earnings a
8 tremendous amount plus what he may have lost in terms of his own family life.
9 Before I practiced here I practiced up in the Bay Area, and at one time at
10 the outset of my practice, when I guess I was somewhat naive, I used to try
11 to keep records of the amount of marital problems and ultimately bankruptcy
12 that would also pass through the office that would seem to be generated, I
13 don't say were because I'm not a statistician, I'm not a sociologist to be
14 able to test, but seemed to be generated out of industrial accident cases.
15 And I'll tell you from the practice of law standpoint it was pretty good.
16 We were able to employ an attorney to handle it, but from the standpoint of
17 human suffering it was pretty terrific also.

18 MR. WHITE: Any other questions? Thank you, Mr. Rucka, very much.

19 MR. ROGER TEIG: My name is Roger Teig, T-E-I-G. I'm manager of Pan
20 American Underwriters here in Salinas, and we insure approximately forty
21 percent of the produce labor force in the Salinas Valley, and have insured
22 them for over ten years. I have been in this office for seven years and I
23 can testify that we have had no laminectomies, no permanent disabilities
24 from a short hoe crew. Mr. Rucka's testimony on workmens compensation in
25 general was very interesting and enlightening, but it did not refer to the
26 agricultural. I believe Mr. Rucka has only been in the Salinas Valley for
27 about five months, and handling workmens compensation for agriculture for the
28 last five months. Is that true?

1 MR. RUCKA: No, that's not true.

2 MR. TEIG: How long has it been, Mike?

3 MR. RUCKA: The question is how long have I been in the Salinas Valley.
4 I've been in the Salinas Valley over five months. That part is correct. But
5 I've been handling agriculturally related cases from the inception of my
6 practice. I started off practicing in the Pleasant Hill area, and if anybody
7 knows Contra Costa County, you'll know that until maybe three or four years
8 ago it was a predominantly rural county. The area around Byron is just replete
9 with all kinds of various farms, and that's also true for the San Joaquin
10 Valley. I have made many appearances in the San Joaquin Valley involving
11 agricultural cases. So I would say that my experience in agriculture, while
12 certainly does not make me an expert on the problem of the agricultural
13 laborer, I think when coupled with my experience generally in the field of
14 workmens compensation, show me several similarities which, I think, I can
15 base the statements that I've made upon.

16 MR. WHITE: Thank you, Mr. Rucka.

17 MR. TEIG: I believe the question here, however, is on the short hoe,
18 and I wanted that point clarified. That is the only thing that I wanted to
19 testify to this committee is that we have insured a large portion of the
20 agricultural labor force in this Valley, and have not had a laminectomy
21 directly related to a short hoe crew, or a short hoe worker.

22 MR. RUCKA: I would agree that there is probably no specific episode,
23 or specific application filed, or where the carriers picked up coverage on
24 a laminectomy which they have ascribed to the use of the short-handled hoe.
25 But I would also suggest that they've picked up a lot of laminectomies over
26 the past few years because of back injuries to farm workers. I know I have
27 had several cases with Mr. Teig's clients in which that's true. I think the
28 question really is the lack of specific evidence.

1 MR. WHITE: Well, I think as we were speaking before the meeting, this
2 is not a simple question. It's a very complex matter. Whether it's an
3 injury, or an accumulated series of events, this kind of thing is the whole
4 point of what we're trying to clarify.

5 MR. TEIG: I would also like to say that if there have been any surveys
6 made, we have not been contacted as to our experience in this area. So, I
7 appreciate the opportunity to testify before your commission.

8 MR. WHITE: Thank you, Mr. Teig. Questions?

9 THE BOARD: How many workers are you covering? Do you have any idea?

10 MR. TEIG: I would say during the harvest season we average in the
11 neighborhood of 20,000.

12 THE BOARD: And in the last seven years you say that there have been no
13 disability claims paid out?

14 MR. TEIG: No permanent disability claims specifically for the short hoe
15 injury.

16 THE BOARD: How many have you paid out for degenerative problems in the
17 back?

18 MR. TEIG: Well, it's hard to say. We have paid the majority of them
19 in the area of lifting. If a man is lifting, or a truck driver of this nature,
20 not in the hand labor force in the field.

21 THE BOARD: Confined to field workers, have you had a number of claims
22 for various back problems?

23 MR. TEIG: No, we have not.

24 MR. WHITE: Thank you, Mr. Teig, for coming up. All right, who's next--

25 MR. MERVYN O. BAILEY: My name is Mervyn Bailey. I've been associated
26 with the produce business in the Salinas Valley for ten years, and in the
27 produce business for thirty years. I have pulled beans before they ever had
28 bean cutters. I've topped beets. I've thinned lettuce. I've thinned beets.

1 I've picked strawberries. I've thinned apples. You name it and I've done
2 just about all.

3 As a youngster, I think I was probably eleven or twelve-years old, I
4 started out doing these things after school and summer vacations because we
5 had to find a job to make money. And in my experience throughout the State
6 of California, Arizona and Texas in the produce business, I cannot remember
7 one single case of compensation, or a physician, where we had a back injury
8 attributed to the short-handled hoe. My father ran a crew of Hindus in 1911
9 in the Salinas Valley in thinning and hoeing beets. Then Japanese. Then we
10 followed with the Philipinos. And then the Mexicans. The stoop labor, most
11 of them are small or more agile to handle it than the ordinary Anglo due to
12 their build and the fact that they seem to have a stronger body for the job.
13 We have these short-handled hoes here ever since I can remember. I've used it.
14 I've used the long-handled hoe. It's better to lean on than the short-handled
15 hoe, there's no question about that. The job cannot be done thoroughly with
16 the long-handled hoe with the exception of certain things. Cotton is one
17 where the long-handled hoe can be used due to the larger seed which can be
18 planted further apart, but still you can't get the weeds out around and the
19 doubles as we have it in most of our crops, our lettuce and so forth here,
20 as Mr. Grainger and Mr. Betz have brought up.

21 I know quite a number of people who have bad backs that never used a
22 short-handled hoe in their life. So, I don't know what the correlations of
23 the back injuries, as I told you in regards to compensation I've never had
24 one that I can ever remember. We do the best job, just about the best job,
25 that I've seen in the farming operations in the Salinas Valley with our
26 farming, with our thinning and with our hoeing. We are particular. Now, if
27 you are going to outlaw the short-handled hoe, then I wonder where the
28 situation is going to stop. They've gone in and told you about celery.

1 Celery has to be bent, you have to bend over to cut it and trim it. You
2 have to cut lettuce and trim it. The packer who packs the lettuce is down
3 picking up the lettuce. He bends over to put it into the carton. He bends
4 over to pick it up again. Everything that we do in that respect is bending
5 over and your back is under those conditions. As Mr. Grainger said, three
6 or four days, or four or five days, you're hurting. There's no question about
7 it. After a week your problems are over and everybody seems to get along
8 all right. So I would say, as far as I'm concerned, the knife that's used to
9 cut celery, or the knife that's used to cut broccoli or lettuce, is a very
10 dangerous weapon, a much more dangerous weapon than a short-handled hoe.
11 And that's proven by so many knifings of people and killing them. And where
12 are you going to stop. Is a butcher going to be able to use a knife. It's
13 a dangerous weapon. He doesn't hurt his back, but it's still a dangerous
14 weapon. We've had more people cut and hurt in that respect with compensation
15 claims than we ever had with the short-handled hoe. Thank you.

16 MR. WHITE: Thank you, Mr. Bailey. Are there any questions?

17 THE BOARD: You didn't mention your affiliation.

18 MR. BAILEY: Harden Farms of California.

19 THE BOARD: Are you the owner or operator?

20 MR. BAILEY: No, I'm working for them.

21 THE BOARD: In what capacity?

22 MR. BAILEY: I have about three or four hats to wear right now. One of
23 them is a field man and another one is quality control.

24 MR. WHITE: Thank you. Any other questions? Thank you, Mr. Bailey.
25 All right, sir.

26 MR. MANUEL OLIVAS: My name is Manuel Olivas. I'm a resident of Salinas,
27 California. I live at 1248 Tempico Avenue. I've been following the
28 commission's hearings on the short-handled hoe with great concern and a

1 particular interest. I brought the hoes so that-- I'm sure the commission
2 has already seen these hoes. I don't know if the commission understands that
3 there is two kinds of hoes that is used. These are old hoes. They haven't
4 been in operation in the field in many years. They're used around home for
5 gardening. The smaller hoe is used for weeding. It's not used for thinning.
6 It's narrower. It's easier to get around the plants and, therefore, you do
7 a better job with it. This is a poor version of the thinning hoe. The
8 thinning hoe is a little bit thicker from here and a lot longer. It comes
9 about this big, the purpose of it being so that it wears the blade out slowly
10 with the hitting of the rocks. The handles are about the same length.

11 I'd like to preface my statement by saying a few personal things that I
12 would like to make the commission aware of. I've heard the statements here
13 that has been given by several people, and I disagree with several of them.
14 My experience with the short-handled hoe has not been by observation, it's
15 been by pushing crews. It's been by working with it. I also have a back
16 injury and I'm thirty-one years old. I cannot do any heavy lifting or farm
17 work. My back was injured when I was nineteen. I stopped doing farm work
18 at that time. I have worked in this area for Bruce Church, Hanson, Toro
19 Farms, Breckticall, and several other labor contractors that have been in the
20 area that have come and gone since. My father when he came to this area was
21 fifty-years old. Fifty-years old. We got trucked over here like cattle in
22 an open truck from Arizona. He contracted himself to come up here to work
23 for a contractor, Johnny Cockus, at that particular time. We got housed into
24 a labor camp, and my father, being illiterate in english and only knowing his
25 native language of spanish, was unable to obtain any other kind of job other
26 than in the fields. So he went out at fifty-years old and started working.
27 He lasted exactly two and a half years. Two and a half years doing thinning.
28 Now, I've heard a lot of statements here about how faithful workers are,

1 and how they keep coming back year after year, but I haven't heard, however,
2 any statement from any worker, or grower, that has come before this commission
3 stipulating to the fact as to how long a worker has worked doing that
4 particular kind of work. I think the maximum length of time is about ten
5 years and then you're no good anymore. I would like to challenge any
6 individual, no matter what his health or physical condition is, to go out and
7 try to earn a living with a short-handled hoe. Sure, anytime. Now, if you're
8 going to earn a living with a short-handled hoe for a continual period of
9 time, you're not going to be able to do any other kind of work because you're
10 not going to be any good for it. But those are the statements that I wanted
11 to preface my other statements with.

12 The disability factor about-- the gentleman with the insurance company
13 saying that they haven't had any disability related to the short-handled hoe.
14 Well, if the commission is aware of the native chicano, or the Mexican that
15 comes from Mexico, he's very timid. He's unaware of the rules and regulations,
16 and the laws that are mandate, in this state or any other state for that
17 matter. Therefore, he doesn't realize that he's being hurt, or that his
18 back is getting messed up permanently. So subsequently the lack of disability
19 comes from not knowing that you have that right. Not knowing. Prior to
20 what I'm doing now, I'm currently a consultant for an educational firm, I
21 was a ranch manager. I was working for _____ Counties Development
22 Corporation. That's a non-profit corporation out of Aptos, California,
23 which deals primarily in developing economic development projects for low
24 income individuals, primarily Mexican-Americans. They came out into the
25 Salinas Valley and they've always had a concern for agriculture. They've
26 established two cooperatives, farm working cooperatives. One in Watsonville
27 with strawberries. The other one here in Salinas with row crops. I managed
28 a 112 acre ranch for thirteen months. I was in full charge of production,

1 application of pesticides, time lines, harvesting, etc., all that goes along
2 with running a ranch. Now, these families that I was administering numbered
3 eight. Eight families which had approximately about forty individuals. Now,
4 the intent of the co-op was to get these individuals to go into doing what
5 they know how to do best, and also reap the profits off of it. And believe
6 you me, farming is a very profitable business. Just to show you how profitable
7 it is, out of eighteen and a half acres of four-year strawberries, they were
8 supposed to have been just under the year before, the eight families grossed
9 profit, grossed not profit, I mean grossed in two and a half months of work
10 \$37,000. That comes out to about close to \$8,000 per family. That's not
11 bad for a few months work.

12 Anyway, if you're not aware, crop production is done in cycles. You have
13 to prepare the land, you have to do certain things to it, you apply the
14 chemicals, and you bring a company in to do the listing which is making the
15 beds. And then you come in with your position planner. A position planner
16 is not going to eliminate thinning. It's not going to eliminate weeding,
17 regardless of the statements you've heard here before, because it's a machine
18 that makes mistakes and it just doesn't do the job. You're always going to
19 have those doubles. Lettuce is the one crop that seems to be of concern here
20 in the Salinas Valley that is planted in long rows. The lettuce is grown
21 very closely together, very close, and it's thinned out between eight and
22 twelve inches depending on the individual's wishes. We had approximately
23 four and a half acres of variety lettuce, which deals in red cabbage, romain
24 lettuce, red leaf lettuce, and butter lettuce, and napa cabbage. We grew
25 this variety lettuce. The way that the parcels were cut up is you plant
26 it, the acres, then you assign X number of rows per family. Each family
27 worked their parcels. All the labor they did themselves. When we got
28 around to the thinning end of it, the families started to balk. They didn't

1 want to use the short-handled hoe, and a lot of them said well, look, that's
2 why we came in here you know, we're the owners of this place, we want to
3 work, but we don't want to do that. There was a couple, like the gentleman
4 in the back over there, that said ah, you guys don't want to do that, you're
5 chicken, it takes a man to go out and thin. We had a meeting. It's a
6 cooperative, it has a president, a board of directors. I had a meeting with
7 the co-op manager and the production manager. We sat around and talked about
8 it. So we decided that since nobody was trying it, to experiment with the
9 long-handled hoes. So we had a general meeting of the families and asked how
10 many of them wanted long-handled hoes and how many wanted short-handled hoes.
11 Well, it turned out that the majority of them wanted to try long-handled hoes.
12 We had an economist, economic expert, that went in there and told us
13 approximately how much we were either going to gain or lose in yield, which
14 was of great concern to the families because they were in it for the money.
15 We did all the research of how much it was going to cost, how much time it
16 was going to take, etc. So finally we said, okay, we're going to make long
17 hoes available to the ones that want them and short-handled hoes available to
18 the ones that wish to use the short-handled hoe. We went out and bought ten
19 hoes, ten long-handled hoes, and they brought in the short-handled ones.
20 It turned out that the-- in the beginning the individuals that had come from
21 Texas caught on to it immediately. There's only one difference. Instead of
22 bending over in the same row, you have to do it on the opposite way, you
23 switch over, you don't do it the same way you do with the short-handled hoe.
24 In the beginning, the ones that had never used the long-handled hoe, it was
25 kind of awkward and clumsy, and it took them some time to get used to it.
26 It took about a day and a half, I think; however, the short-handled hoe
27 individuals were really getting it on. I mean they were just pssstttt right
28 on down those rows, and they were laughing at the guys using the long-handled

1 hoes saying, ah, you're wasting your time. Late in the afternoon the guys
2 that had been yelling about, yeah, come on let's use the short-handled hoe,
3 were on their knees. As any one of these individuals can testify that have
4 come up before the commission, around the afternoon you take a drive up to
5 the Salinas fields, and you'll find out how many people are running around
6 on their knees. It gets hard. Now this was not by force, there was no
7 crew boss over them, this was on an individual basis.

8 So, anyway, we conducted the experiment. It took about a week, a week
9 and a half. By the end of that week, the individuals with the long-handled
10 hoe were just as good as the ones with the short-handled hoe. Granted you
11 still have doubles to pull off, and you still have to bend over to get those
12 doubles, but what you do have is a fresher individual at the end of the
13 afternoon. You have a better quality of work done than the guy with the
14 short-handled hoe. The guy with the short-handled hoe was so tired, this
15 thing gets so heavy, that after awhile you're just going on the gravitational
16 pull of the hoe itself. You're just letting it drop and it's coming down.
17 Now, as the gentleman that says that all I want to see is left dirty hands
18 can attest to, I'm sure, if you kind of follow these individuals that are
19 doing the thinning, in the afternoon you'll find that they're a little bit
20 more sloppy than they are in the morning, and they tend to leave bigger gaps
21 between the lettuces which causes less yield production. You're supposed
22 to leave it eight to twelve inches long. If you mess up and cut off the
23 twelve-inch line, you've got twenty-four. That means you've lost one head
24 of lettuce. You continually do this and eventually it adds up. Boy, it adds
25 up quick. The other thing that they did with the long-handled hoe was
26 broccoli. We had 9.5 acres of broccoli. Now, that was done completely with
27 the long-handled hoe. The individuals that thought they wanted to use a
28 short-handled hoe decided against it.