

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)
)
PUBLIC HEARING TO RECEIVE)
)
COMMENT ON WORKSITE ACCESS)
)

DOUBLE TREE BY HILTON
FRESNO CONVENTION CENTER
2233 VENTURA STREET
SALON C
FRESNO, CALIFORNIA

WEDNESDAY, SEPTEMBER 9, 2015

Reported By:
Jacqueline Denlinger

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William B. Gould, Chairman

Genevieve Shiroma

Cathryn Rivera-Hernandez

STAFF

Karen Snell, Counsel to the Agricultural Labor Relations Board

Eduardo Blanco, Senior Legal Advisor

PERSONS PRESENTING ORAL COMMENT

Rick Mines, Researcher

Barry Bedwell, California Fresh Fruit Association

Carmen Garza

Maureen Keffer, CRLA, Director of Indigenous Worker Project

Fausto Santos, CRLA, Outreach Worker

Harold McClarty, Farmer, HMC Farms

Ron Barsamian, Esq., Barsamian & Moody

Leoncio Vasquez, Director, Indigenous Community Group

Anthony Raimondo, Esq., Raimondo & Associates

Howard Sagaser, Esq.

Tal Cloud, Small Business Owner

Laura Brown, California Citrus Mutual

Irma Luna, ALRB Field Examiner

APPEARANCES (CONT.)PANEL MEMBERS: FARMWORKERS AND GERAWAN PETITIONER

Silvia Lopez, Gerawan Petitioner

Carlos Uribe

Rolando Padilla

Angel Lopez

Lucero Lopez

Eduardo Luna Torres

Angel Rincon

PANEL MEMBERS: UFW

Rafael Marquez Amaro

Agustin Rodriguez

Ana Rosa Romero

Jared Romero (phonetic)

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Ofelia Reyes

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P R O C E E D I N G S

1:09 p.m.

1
2
3 CHAIRMAN GOULD: All right. Good morning -- good
4 afternoon, and I'm the Chairman of the Agricultural Labor
5 Relations Board. And with me here are my colleagues, Board
6 Members Genevieve Shiroma and Cathryn Rivera-Hernandez, and
7 they have been with the Board prior to my appointment.

8 And I want to thank, in particular, my Senior
9 Legal Advisor Eduardo Blanco and my Counsel Karen Snell who
10 have worked so hard to put together this series of hearings
11 on this important matter involving access for the
12 Agricultural Labor Relations Board to advise farmer
13 workers, and perhaps supervisors, of the rights guaranteed
14 under the 1975 Agricultural Labor Relations Act and
15 procedures to be employed in that connection.

16 As usually, I'm grateful to Executive Secretary
17 Antonio Barbosa who is sitting at the back, really the, as
18 I say in my formal statement here, the heart, soul and
19 brains of the agency for three-and-a-half decades. And
20 he's coordinated these hearings -- he's just put his hands
21 up, he agrees with my assessment -- and that with his
22 normal extraordinary skill and dedication.

23 Now these hearings commencing here in Fresno,
24 continuing Salinas, Santa Maria, and we may schedule one
25 next month in Oxnard, as well, are designed to obtain full

1 public input on -- into this process, a process which, as
2 some of us already know, began with my newly created -- the
3 Board's newly created Ad HOC Labor Management Committee in
4 Sacramento on August 3 of this year. And I want to thank
5 the members of the Ad Hoc Committee for not only
6 participating on August 3, but getting the word out,
7 helping us getting the word out about these hearings, and
8 for appearing before the Board and presenting public
9 comment on this important subject.

10 These hearings focus upon the worker -- worker
11 education and access to promote such exclusively. And I
12 know that there are many -- and many of you here know that
13 there are many matter pending before the Board and the
14 courts relating to the ALRA. But these hearings are not
15 concerned with other matters. And any commentary about
16 them are and will be held to be out of order as not germane
17 to the proceedings.

18 However, on other matters that don't relate to
19 access and to worker education, they can always be raised
20 directly to our attention at any of our regularly noticed
21 public meetings held in Sacramento at any time.

22 To ensure that farm workers are able to fully
23 participate in this process we have made arrangements to
24 have Spanish, Mixtec, Triqui, and Hmong interpreters on
25 hand who are available to provide language assistance,

1 either in presentation or public comment to the Board, or
2 listening to the conduct of this hearing itself. The --
3 the interpreters will be, and one of them is right now, in
4 the back of the room and will offer simultaneous
5 interpreting as needed.

6 As I said on August 3 when we had our Ad Hoc
7 Committee meeting, and also in earlier testimony to the
8 legislature this year, this exercise flows directly from
9 the invitation extended by the Court of Appeal for the 4th
10 District in the important San Diego Nursery Company case to
11 the Board to engage in rulemaking regulation worker
12 education and access to private property. In San Diego
13 Nursery the focus was upon the program devised by the Board
14 in the '70s relating to the election machinery.

15 And these hearings -- through these hearings
16 we're trying revise -- revive consideration of the general
17 approach taken by our predecessors in San Diego Nursery.
18 But much has changed, obviously, from 1979 through 2015.
19 The focus of the Board at that time was on election
20 machinery. That's not our focus here.

21 Although there are some decertification petitions
22 pending before the Board, there are no representation
23 petitions polling for certification. None have been filed
24 since I became Chairman a year-and-a-half ago. Most of our
25 docket is unfair labor practice cases consisting of

1 protests by unorganized workers who are not calling for
2 union representation, but rather calling for changes in
3 their employment conditions. They have nothing whatsoever
4 to do with union representation. That in and of itself is
5 a big change from '79.

6 Now on this question of understanding of the law,
7 I'd be remiss if I didn't note, and the New York Times has
8 picked this up just a few days ago, the fact that the
9 public thinks of our statute and the National Labor
10 Relations Act as a -- as a labor management statute. And
11 the fact is that the bedrock of the statute is the right of
12 workers as workers to engage in concerted activities for a
13 number of objectives, including the right of workers to
14 protest and to seek reforms when they believe that they
15 have -- their wages are too low, or they believe that they
16 have inferior or unsatisfactory employment conditions.

17 I found that not only are workers in the private
18 sector covered by the National Labor Relations Act are
19 unaware of their right to protest, seek changes in
20 conditions of employment that are unsatisfactory, without
21 regard to union representation at all but that 80 years of
22 the distribution of manuals and literature by the
23 government and private parties, as well as remedial notices
24 for violations, don't seek to have answered the change,
25 this basic reality.

1 I and my colleagues welcome all input and advice
2 from all interested parties, laypeople, lawyers, farm
3 workers, growers, unions, and any others. And we
4 appreciate your willingness to participate in this
5 important process.

6 Witnesses will be called by Mr. Blanco and Ms.
7 Snell. If you haven't given your name to us, please do so
8 now. The Board Members may ask and I may ask questions of
9 witnesses. Those of you who wish to make a statement will
10 be allowed to do so. And we are -- we are -- I have
11 advised the Executive Secretary that we will release to the
12 public, as we have already released to the Ad Hoc
13 Committee, the -- a list of all people who have registered
14 as witnesses and those who will make statement -- who will
15 list themselves subsequently.

16 We request that you keep your comments brief so
17 that we can hear from everyone who would like to speak. If
18 you have additional comments, you're welcome to submit them
19 to our Executive Secretary Antonio Barbosa in writing any
20 time before October 15 -- any time before October 15.

21 After the Board completes this fact-finding
22 process we will hold a public meeting where proposed
23 regulations may be voted upon, and you'll have another
24 chance to express your views at that time. And if the
25 process goes forward, in writing, and perhaps in another

1 hearing subsequently.

2 So now let us begin. And I'll turn to Ms. Snell
3 to please call the first witness.

4 MS. SNELL: Thank you, Mr. Chairman.

5 For the first witness I'd call Richard Mines.

6 DR. MINES: Good afternoon.

7 MS. SNELL: Good afternoon, Mr. Mines.

8 Do you have a Ph.D. In Agricultural Economics
9 from U.C. Berkeley?

10 DR. MINES: I do.

11 MS. SNELL: Is a copy of your curriculum vitae
12 behind Tab 1 in the binder that has been provided to the
13 Board?

14 DR. MINES: I believe so.

15 MS. SNELL: And that's a true and accurate copy
16 of your -- your curriculum vitae?

17 DR. MINES: Yes, ma'am.

18 MS. SNELL: For the past 35 years have you --

19 DR. MINES: For the past 35 years?

20 MS. SNELL: Are you -- are you okay, Madame
21 Reporter?

22 For the past 35 years have you conducted survey
23 research among Mexican Farm Worker and other immigrants to
24 California?

25 DR. MINES: Yes, I have.

1 MS. SNELL: And the rest of the United States?

2 DR. MINES: And the rest of the United States.

3 MS. SNELL: Did you work for the U.S. Department
4 of Labor in the Policy Department between 1988 and 1999?

5 DR. MINES: Yeah. I think -- I think I might
6 have gone there in late '87, but until -- until July '99.

7 MS. SNELL: During that time did you design,
8 implement, and manage the Department of Labor's National
9 Agricultural Workers Survey?

10 DR. MINES: I did. I did from --

11 MS. SNELL: And is that known as NAWS?

12 DR. MINES: Yeah, NAWS. I got it off the ground
13 in October '88 and it's still going on today.

14 MS. SNELL: And do policymakers continue to rely
15 on NAWS in formulating policies pertaining to farm workers?

16 DR. MINES: They do. For example, they use it to
17 divide up the money, to allocate the money in many farm
18 workers programs and national programs like, you know, Head
19 Start and stuff like that.

20 MS. SNELL: Is each NAWS survey based on
21 interviews with an average of 2,500 agricultural workers
22 across the United States?

23 DR. MINES: Yes. You can see the
24 numbers on the NAWS website by year. And it varied between
25 1,500 and about 3,000 over the years, depending on budget.

1 MS. SNELL: All right. And has -- has NAWS data
2 been used to prepare reports about California farm workers
3 in particular?

4 DR. MINES: Yes, there's been a couple of
5 reports. There's a couple of reports during my time. I'm
6 not sure. I left for other endeavors in '99, but there's
7 always been reports since then on Southern California. But
8 there were two during my tenure there.

9 MS. SNELL: Based on recent data, recent NAWS
10 data, are approximately 63 percent of California farm
11 workers undocumented?

12 DR. MINES: Right. I haven't -- you know, I
13 didn't run those numbers. But Susan Gabbard, the director
14 of the survey for the company that does the survey, has
15 estimated that it's pretty stable for -- in recent years.
16 It hasn't changed much in recent years, but --

17 MS. SNELL: Please describe how farm workers
18 surveyed for NAWS are selected?

19 DR. MINES: Well, it's a complicated process,
20 proportional to size. First, you divide a country into 12,
21 you know, areas. Then within those areas you choose
22 counties -- you choose counties randomly, but with the ones
23 with more agriculture being -- being chosen. And then you
24 choose -- you make a list of farmers in the area and
25 contractors and you choose them randomly. And then you

1 go -- you make -- you make an arrangement with the -- with
2 the grower, the contractor, and you go to the field where
3 the people shape up. And you choose randomly from the
4 people that are -- that shape up in the field.

5 That's -- you know, you can read the, you know,
6 the methodology on the NAWS website, the details.

7 MS. SNELL: And does NAWS obtain access to the
8 work site to carry out the survey work?

9 DR. MINES: That's the -- we -- when we went to
10 design the survey we talked to a lot of statisticians, and
11 that's the only way we can reach all farm workers. To get
12 all the farm workers in the country on a universal list,
13 that's the only way to do it.

14 MS. SNELL: Is that the job site?

15 DR. MINES: At the job site. That's the only way
16 to get everybody. You know, you can do it by household,
17 you can do it by network, there's various ideas. But
18 that's the only way to get the full, you know, population,
19 the full universe, you know, assembled to sample.

20 MS. SNELL: Do most agricultural employers
21 voluntarily allow access?

22 DR. MINES: Yes, most -- most do. There's --
23 depending on the year there's a good minority that don't.
24 But it's, as I said, it's a minority. Most allow it. The
25 grower see it's in their interest, as well, to find out who

1 farm workers are out there, how many women, how many men,
2 you know, when they came to the country, how much they
3 earn. Everybody wants to know this data. So in general,
4 yeah, growers collaborate.

5 MS. SNELL: And have you run into problems
6 with -- with that access impeding productivity or any other
7 problems for employers?

8 DR. MINES: Well, the -- it -- there's -- if
9 you -- if growers down cooperate, then there's a danger
10 that might advise -- might enter into the data. But enough
11 have cooperated so that we have very good -- once we get
12 the cooperation of growers, then the workers, 95 percent --
13 there's a very high rate of response rate among workers.
14 The -- the interviewers are -- some have been there since
15 the beginning of the survey, you know, 25 years ago, 28
16 years ago. It's a very skilled, high-paid professional
17 interviewer. It's not like interviewers (inaudible).
18 These guys are pros. And they get -- once they get access
19 to workers they get the interview.

20 MS. SNELL: All right. And are they able to do
21 that without disrupting the -- the farm process?

22 DR. MINES: No, they don't -- there's -- there's
23 no disruption of the farm process.

24 MS. SNELL: Now would you say that it's essential
25 to the -- to NAWS work to get access to the work site?

1 DR. MINES: Well, it's impossible to take a
2 sample of the universal farm workers without access to the
3 work site. That's -- that's the way the methodology was
4 designed in 1988 and that's the way it's been going in the
5 28 or whatever number of years since then.

6 MS. SNELL: Could you do the work by mail?

7 DR. MINES: By mail? No. There's -- there's --
8 a very large minority of farm workers are semi-literate or
9 illiterate. And most of the rest of them don't -- would
10 not respond to a survey. In fact, people in general don't
11 respond to most surveys, but certainly not farm workers.

12 MS. SNELL: You mentioned an issue of literacy.
13 Can you tell us more about what you found in that regard?

14 DR. MINES: Well, there's -- traditionally farm
15 workers come from rural Mexico, and they've gone to an
16 average of about six years of school in rural Mexico.
17 Many -- a large portion have gone to no school or very few
18 years of school. And the schools in rural Mexico are not
19 that -- necessarily that great. In 1977 I put my son in a
20 village school in Zacatecas and they were just copying
21 letters off the board, and he was the best. Even though he
22 didn't know Spanish he was the best in the class because he
23 could copy letters off the board.

24 So the educational level is not very high
25 among -- among farm workers. And they're not a very --

1 they're not inclined to use written materials very much.

2 MS. SNELL: In your experience do most farm
3 workers have access to a computer?

4 DR. MINES: No, they -- very few have access to
5 computers. A lot of them have access to cell phones, but
6 not smart phones. So they don't -- they don't -- they
7 don't use it.

8 Is that right, Fausto, they don't really use
9 computers that much?

10 MS. SNELL: All right. And do -- well, strike
11 that.

12 Now, in -- in the 2000s, the late 2000s, did you
13 coauthor a study of California's Indigenous Farm Workers
14 that was published in 2010?

15 DR. MINES: Right. We did a survey which
16 occupied me probably full-time from 2006 to 2009 in which
17 we interviewed, in various stages, over 400 farm workers
18 in, you know, an hour-and-a-half long survey, all of whom
19 were indigenous speaking farm workers.

20

21 MS. SNELL: And why did you focus on that
22 population?

23 DR. MINES: I was approached by the -- by the
24 CRLA. And they wanted to know who these farm workers were
25 because there were so many, essentially a lot of the

1 portion of the population that they didn't have any -- they
2 had just started a program of -- of indigenous speaking
3 outreach workers and they wanted to know who they --
4 what -- who was the population and where were they and what
5 crops are they working, where do they common, what do they
6 earn?

7 And -- and so they -- since I had been doing
8 surveys since 1977, they approached me and I agreed to do
9 it. And we raised the money and -- from California down
10 that way, and we did it.

11 MS. SNELL: I'm going to show you what's behind
12 Tab 3 in binders I prepared for the Board. Is this a copy
13 of the report that you prepared?

14 DR. MINES: Right. It's also online at
15 Indigenousfarmerworkers.org if anybody wants to look at it.

16 MS. SNELL: Okay. And in 2010 did you estimate
17 there were approximately 700,000 Mexican farm workers in
18 California, and approximately 165,000 were indigenous farm
19 workers from southern Mexico?

20 DR. MINES: Well, there's an estimate, kind of an
21 ongoing estimate of 700,000 farm workers in California.
22 That includes all farm workers and about 95 percent of the
23 Mexicans. I estimate there's about 112,000 indigenous farm
24 workers and 40,000 family.

25 MS. SNELL: Okay.

1 DR. MINES: And you can see that in the
2 demographic section on the -- on the website.

3 MS. SNELL: Okay. And at the time of that survey
4 did you estimate that approximately 16 percent of
5 California's farm labor force was indigenous farm workers?

6 DR. MINES: Right. That's the best estimate we
7 could make. It's definitely -- it was definitely a
8 conservative estimate, you know, a minimum -- a minimum.
9 It may have been higher than that, but we estimated that at
10 least -- at least 16 percent, 120,000, were indigenous farm
11 workers, Mexican farm workers.

12 MS. SNELL: How did you define an indigenous farm
13 worker, Mexican farm worker?

14 DR. MINES: Well, whether somebody is indigenous
15 or not is up to them, you know, it's a self-identification
16 thing. But for the -- for the sake of the survey we only
17 did surveys in -- in nine villages. You know, our
18 methodology led us to nine villages which use the uso y
19 constumbres. That's -- indigenous villages have -- they
20 require their -- their inhabitants to take on certain
21 duties, work and catigos (phonetic) and jobs for the
22 community. If don't do it they can lose their home, they
23 can lose their -- their fields. And so all those villages
24 have that system and they all spoke it. It's the dominant
25 language in all the villages was an indigenous language.

1 So that's -- that's how we knew they're indigenous, for
2 that reason.

3 But, you know, I can't -- I can't say that person
4 is indigenous, that other person is not indigenous. That
5 person has to tell you. It's, you know, self-
6 identification.

7 MS. SNELL: Now you mentioned the different
8 native languages, and we'll have more testimony about that
9 later.

10 DR. MINES: Right.

11 MS. SNELL: But did you find that approximately
12 88 percent of the indigenous farm workers in California
13 speak either Mixteco, Xacoteco (phonetic) or Triqui?

14 DR. MINES: Right. There's -- it's about -- at
15 the time -- at the time we did the survey it was about 52
16 or 3 percent Mixteco, about 25 percent Xacoteco, and 10
17 percent Triqui. And then there's Shatino (phonetic) and
18 various other languages that -- you know, Cerupicha
19 (phonetic), you know, various other languages. So -- but
20 they're small groups. The majority are Mixteco speaking.

21 MS. SNELL: Do indigenous languages have a
22 written form?

23 DR. MINES: Yes, they do. There's poetry and so
24 forth. But the farm worker -- the indigenous farm
25 workers -- the overwhelming majority of indigenous farm

1 workers can't read their native language. Most of them can
2 read a little bit of Spanish, but they don't read in their
3 native language. They can speak it and understand it, but
4 they don't -- you know, there's a few scholars that study,
5 you know, the native language. But it's not -- the written
6 language is not an everyday occurrence. You can't send out
7 brochures in a native language and expect anybody to read
8 it, their version, nobody could read it, except for these
9 scholars that are not farm workers.

10 MS. SNELL: And did you find that if indigenous
11 farm workers speak Spanish they speak it as a second
12 language?

13 DR. MINES: Right. They all -- they all -- they
14 all speak it as a second language. There are quite a few
15 that speak Spanish well, but there are many of them that
16 don't speak it very well at all. So there's a spectrum of
17 people. In many of these remote villages, not very much
18 Spanish is spoken.

19 MS. SNELL: And would you say that those who
20 speak Spanish, not all of them can read or write Spanish?

21 DR. MINES: Right. There's -- Spanish literacy
22 or even Spanish speaking is -- not all farm workers -- all
23 indigenous farm workers can speak Spanish. And, you know,
24 most of them don't read well.

25 MS. SNELL: Now I just want to point out for the

1 Board that you have summarized your findings about the
2 educational level of indigenous farm workers on Page 36 of
3 your report.

4 So let me ask you more generally, what is your
5 understanding of the average number of years of education
6 of California's farm workers?

7 DR. MINES: California's farm workers are, you
8 know, predominantly Mexican, 95 percent. There's some
9 Salvadorians and Hondurans and others. Traditionally they
10 have an average education of about between five and six
11 years. And it's getting a little bit -- a little bit
12 higher in recent years, which gives us that Mexico is
13 improving. So as people come across the border they've
14 been to school more in Mexico. And -- but it's still
15 probably between six and seven right now, I would think.
16 And one has to remember that though the education system in
17 Mexico has improved, people that tend to go into farm work
18 tend to be from the remote, less -- remote areas where they
19 have -- they have less educational opportunities, both in
20 the number of years they go to school and in the quality of
21 the schools.

22 MS. SNELL: Now, in order to conduct the
23 interviews for the Indigenous Farm Workers Study, did you
24 hire interviewers who spoke indigenous languages?

25 DR. MINES: Yeah. We had a bunch of -- you know,

1 at one point we had 40 indigenous speakers in the early
2 stages of the survey when we -- when we were picking a
3 sample. All the interviewers -- I went along on many, many
4 interviews and heard a lot of Triqui and Mixtec and
5 Xacoteco and so forth, but I didn't understand anything
6 during interviews. The bilingual people explained to me in
7 Spanish afterwards what had, you know, transpired. All the
8 interviews were done in native languages.

9 MS. SNELL: And do you think you could have
10 communicated to the level necessary to conduct the survey
11 without having indigenous speakers do the interviews?

12 DR. MINES: I don't -- I don't think so, even
13 those that speak Spanish pretty well feel more -- if you
14 want to get information that's -- that's confidential and
15 reliable.

16 I just spent a year in Mexico a couple of years
17 ago that I spent interviewing Nawa (phonetic) speaking cane
18 cutters in Jalisco. And when I would be interviewing the
19 person, the Nawa speaker in broken Spanish, you don't
20 really -- he's not really relaxed. He doesn't really tell
21 you very much. Then you bring an Nawa speaker over and
22 they start talking and elaborating. It's not the same.

23 If you want -- if you want to get good
24 information from -- from indigenous speaking Mexican farm
25 workers, you've got to speak to them in their native

1 language.

2 MS. SNELL: And would you say the inverse in
3 terms of conveying more detailed information, is it
4 important to have a native speaker communicate with an
5 individual?

6 DR. MINES: Right. If -- if you go to like --
7 after we did the survey we went out to the community and
8 gave results to the community and have people talk in
9 Spanish. And then I'd, you know, invite somebody else to
10 explain it in Mixtec and Triqui. And the people just, you
11 know, they -- instead of listening, you know, a little, but
12 they start listening, they start laughing, they start, you
13 know, asking questions. It's -- you know, it's their --
14 it's their language, you know?

15 MS. SNELL: Now, I'd like --

16 DR. MINES: And --

17 MS. SNELL: Sorry. Were you done?

18 DR. MINES: I'm done.

19 MS. SNELL: Okay. I'd like to ask a few
20 questions about your findings.

21 First of all, did you reach any conclusions about
22 how indigenous farm workers fared compared to other farm
23 workers?

24 MS. SNELL: Yeah. Well, they're -- they're the
25 most recently arrived, and it's not surprising, and they're

1 a little bit -- and they're younger than -- than the
2 average farm workers, so it's not surprising that they earn
3 less. About two-thirds earn the minimum wage or less.

4 They are more prone to suffer -- when we do
5 measures of labor conditions they -- they actually suffer
6 from -- from poor labor conditions. For example, they pay
7 for rides more and they pay for equipment more. They pay
8 for housing more and -- and the like. They have -- they
9 have inferior housing. They have -- they own housing less.
10 They have fewer cars. On any measure you want to ask me
11 about, they're in a situation of relative poverty compared
12 to the Mestiso (phonetic) Mexican farm workers.

13 MS. SNELL: And as a result of, in part, their
14 undocumented status, is it hard to make contact with
15 indigenous farm workers?

16 DR. MINES: Yes. Well, the undocumented status
17 is not just indigenous, of course. There's probably a
18 majority of non-indigenous that are also undocumented. But
19 the indigenous people are very hard to approach. In order
20 to do the survey we had to go through, you know, a long
21 process of getting to know them. That's why we did it, we
22 focused on nine communities. We wanted to get the
23 confidence of those nine communities. And interviewers --
24 an interviewer or interviewers were assigned to one
25 community to get to know them.

1 The indigenous people in Mexico have been
2 discriminated against for 500 years. They don't trust non-
3 indigenous people and are very unlikely to -- to share
4 information or feel at ease with non-indigenous people.
5 Their experience is that whenever they have dealt with them
6 they've been cheated or tripped by non-indigenous people in
7 Mexico and the United States.

8 And so it's very important to consider that when
9 you consider how to approach them if you want to get their
10 confidence if you want to inform them about labor law.
11 And, of course, these are the people that know least about
12 labor law and about their collective bargaining rights.
13 And you're going to have to consider very carefully how to
14 do it, because these people do not trust outsiders.

15 MS. SNELL: All right. Now, speaking of
16 knowledge of legal rights, in the Indigenous Farm Workers
17 Study did you ask indigenous farm workers whether they had
18 heard about legal services that were available to them?

19 DR. MINES: Right. We asked them if they've
20 heard of legal services for them, and the majority hadn't.
21 I don't know the number right off, it's in the report, but
22 the majority hadn't heard. But we did ask them that
23 question.

24 MS. SNELL: And -- and, yes, my next question,
25 based on your research is it your conclusion that most

1 indigenous farm workers are unaware of their legal rights?

2 DR. MINES: Certainly. They -- where they --
3 where they come from in Mexico, the remote areas they come
4 from in Mexico, and this would be true of farm workers in
5 general, not just indigenous, they -- farm workers who have
6 come here recently, most of them have come here in the last
7 ten years. And -- and where they came from there wasn't
8 any -- there wasn't any -- there weren't any unions. There
9 wasn't an organization going on, labor organization going
10 on where they came from.

11 And here they haven't been exposed to any
12 organization. There hasn't been going -- anything going on
13 in recent years, you know, since they've come, and so they
14 haven't really had a chance to be exposed to a labor union
15 organization. And they -- and they -- and nobody has told
16 them about -- about their collective bargaining rights or
17 their -- for example, most of them in the NAWS don't even
18 know about, you know, a lot of them, it depends on the
19 year, but let's say half or more don't know about their
20 Workers' Comp rights, which is -- which is something which
21 they seek because they see people in their community hurt
22 all the time. They don't even know about that, that they
23 have a right to that.

24 So -- so it's certainly the -- the more difficult
25 thing about, you know -- you know, the labor standards, the

1 Federal Standards Act, minimum wage, overtime, and
2 collective bargaining rights, they don't -- most of them
3 are not going to be aware of that.

4 MS. SNELL: All right. And did you ask questions
5 about their knowledge of farm worker unions in particular
6 or --

7 DR. MINES: The NAWS -- the NAWS has. I didn't
8 ask that in the indigenous survey, but the NAWS has a
9 question about that. And most, like I just said, most have
10 not been exposed to union, so they don't know about it.
11 There's -- there's no unions out there, you know,
12 organizing most farm workers, it's just a small minority.
13 I'd have you look at the -- at the NAWS reports, but
14 certainly less than -- less than 15 percent answered the
15 question, yes, they know about it. And, in fact, if --
16 when you ask them if they've heard of Cesar Chavez they
17 say, "You mean Julio Cesar Chavez, the boxer?" They
18 haven't heard of the -- haven't heard of the labor leader
19 but they've heard of the boxer.

20 MS. SNELL: Now, are you familiar with the
21 Agricultural Labor Relations Act?

22 DR. MINES: To some extent, not like you are,
23 but --

24 MS. SNELL: Okay. As someone who has surveyed
25 many farm workers, do you believe farm workers know their

1 rights and responsibilities under the ALRA?

2 DR. MINES: I doubt that they've ever heard of
3 it. That -- I doubt the vast majority have ever heard of
4 it. I haven't -- but I haven't asked that question on, you
5 know, on a survey.

6 But, you know, in light of what I had just said
7 over the last two or three minutes, that they haven't heard
8 of Cesar Chavez. They haven't heard of the unions. Unions
9 had not been active and they haven't seen them. Where they
10 come from there's no unions. There's very little labor law
11 enforcement in the areas where they come from. I mean, the
12 Department of Labor in Mexico doesn't enforce labor law in
13 Mexico where they come from. So they just plain haven't
14 had a chance to learn about it.

15 MS. SNELL: As -- as you know from conversations
16 we've had, the ALRB is considering promulgating a rule that
17 would permit ALRB staff to visit agricultural work sites
18 for the purpose of educating farm workers and field
19 supervisors or foremen about the rights and
20 responsibilities provided by the ALRB, the act. Would you
21 support such a rule?

22 DR. MINES: Yeah, I would support it. I think
23 it's probably the only way to get access. Because as you
24 can see by the way I designed the Indigenous Farm Workers
25 Survey and by the way the NAWS is designed, if you -- if

1 you do household surveys to get access to farmers you have
2 to go through a very expensive process of finding out who
3 is in neighborhood. Because when you come to a door and
4 the person comes to the door, he's not going to identify
5 all the people that he's got, you know, living in a house
6 in violation of -- of housing, you know, standards, and the
7 people are going to be jumping over the back fences, you
8 know? And that's why the current population survey, the
9 consensus -- the U.S. Census doesn't find the bottom 20
10 percent of farm workers. They just don't show up in the
11 surveys.

12 And so, yes, I would say that I you want to get
13 access to -- to indigenous farm workers and farm workers at
14 the bottom that know the least about labor law, if you want
15 to get access to those people, then the workplace is the
16 only -- only option for you to -- to get access to those
17 people, to get -- to get access to the full universe of
18 those people, and especially those that are most in need of
19 it.

20 MS. SNELL: All right. Thank you.

21 And just -- I want to point out for the Board,
22 behind Tab 2 of the binder I've included a California Labor
23 Board study done -- published in 2005 based on data from
24 2001-2002. And this is the most recent comprehensive NAWS
25 study I was able to find.

1 Since some big changes have happened after --

2 DR. MINES: Right.

3 MS. SNELL: -- that was published, in particular
4 with the economic downturn, that -- that has rendered these
5 statistics somewhat questionable in some areas?

6 DR. MINES: Well, I don't think it renders them
7 as questionable, but I know they need to be updated. And
8 certainly the population is much more stable than it was
9 before the -- both the borders was slammed shut by the --
10 by the -- by the border patrol and the -- and Marcos
11 threatening farm workers coming, you know, coming across
12 the border. And so it's getting -- it's much more
13 difficult to cross the border. Many, many tens of
14 thousands of people still do it, but a lot fewer than
15 before.

16 So the population, for example, ten years ago,
17 maybe a third of a population was going back and forth from
18 Mexico every year of the California farm worker force. Now
19 it's probably ten percent, mostly the legals. And it's, you
20 know, very expensive and difficult and dangerous to go back
21 and forth.

22 MS. SNELL: And is -- the first 18 pages behind
23 Tab 2, I included some figures that you had directed me to
24 that were pulled together from more recent NAWS data by
25 someone that you -- that you have (inaudible)?

1 DR. MINES: The director of the survey, Susan
2 Gabbard, yeah.

3 MS. SNELL: And if the Board has questions about
4 that information, are you prepared to address them?

5 DR. MINES: Right. I mean, I, you know, I or
6 somebody else can analyze the public use tape of the NAWS
7 which has data up to 2012. So you can -- you can update
8 any -- you can cross tab that data any -- any which way for
9 whatever you want to know.

10 MS. SNELL: All right. I don't have any further
11 questions. Does the Board?

12 CHAIRMAN GOULD: Great. We'll turn to Member
13 Rivera-Hernandez first.

14 BOARD MEMBER RIVERA-HERNANDEZ: Dr. Mike -- I
15 don't -- is it on? Okay. Sorry.

16 Thank you for coming. I have some practical
17 questions --

18 DR. MINES: Sure.

19 BOARD MEMBER RIVERA-HERNANDEZ: -- about the
20 survey. And that was, when are the surveys done --

21 DR. MINES: In -- in ours?

22 BOARD MEMBER RIVERA-HERNANDEZ: -- practically,
23 the -- when you go and actually speak to the workers?

24 DR. MINES: Okay. The -- the National
25 Agricultural Workers Survey, the NAWS, which started in '88

1 and is going on still today, I haven't been there since
2 '99, so --

3 BOARD MEMBER RIVERA-HERNANDEZ: Yeah. I
4 understand. Thanks.

5 DR. MINES: -- but I -- my successor has been the
6 same person the whole time.

7 Anyway, there's -- there's three surveys a year
8 to catch the seasonality. And so you do surveys three
9 times a year, and so there's about 800, 600, 700, 800
10 people surveyed each cycle. There's been like 80-something
11 cycles since the beginning. And so you -- I think it's
12 probably pretty confusing, how do you -- how do you
13 actually get access to these people who are undocumented,
14 you know, in reports? But actually, you know, it's not
15 that hard to -- if you know the right jokes and the
16 right -- and the right expressions it's not hard to -- once
17 you get -- meet them and talk to them, they -- they -- it's
18 not that hard to -- to speak to them.

19 The hardest part is getting through the employer,
20 to get the employer's permission. And that's, like I say,
21 it's about -- I think it's about 75 or 80 percent of
22 employers collaborate. And then they'll tell you, those --
23 those employers that collaborate, and the NAWS goes out and
24 goes to the associations, you know, the Strawberry
25 Commission and the -- and the, you know, Farm Bureau and

1 other -- and other local farm organizations and tries --
2 tries to push the survey to get people to collaborate.

3 Once you go out to the field they're going to
4 say, where do the people shape up? You know, they go --
5 they get lunch here and in the morning they're here, and
6 you go out there. You see there's 20 people out there and
7 you know you have to do 5 surveys. You question them and
8 see -- you know, you choose -- you choose the five people
9 that you have to survey and you go say, can I talk to you,
10 either now or at your home or, you know, at church, or
11 wherever you want to meet. And that's -- that's really how
12 NAWS -- NAWS does it. It seems difficult, but having done
13 it many, many times I didn't find it that difficult to do.

14 BOARD MEMBER RIVERA-HERNANDEZ: Okay. And so you
15 essentially -- you go out and you schedule a time, and then
16 you'd actually do the survey at --

17 DR. MINES: Yeah. The survey can take between 45
18 minutes and an hour depending -- an hour-and-a-half
19 depending on how big the family is --

20 BOARD MEMBER RIVERA-HERNANDEZ: Right.

21 DR. MINES: -- how long -- we do a one-year labor
22 history, you know, how many jobs a person has had. And,
23 you know, and also there's -- depending on the individual
24 there's health modules, there's educational modules. The
25 NAWS is paid for, not just by the Department of Labor, but

1 by -- when I was there I spent most of my time raising
2 money for, you know, for migrant Head Start, you know? The
3 FDA, the EPA, a lot of people want to have their questions
4 in NAWS. They want to know, you know -- you know, how it
5 effects their department.

6 BOARD MEMBER RIVERA-HERNANDEZ: And I was
7 wondering, to that -- to that point, because you're asking,
8 essentially, about employer compliance with pesticides,
9 Workers' Comp, the injuries.

10 DR. MINES: Right.

11 BOARD MEMBER RIVERA-HERNANDEZ: And when you have
12 the discussions with these employers, they are still
13 willing to let you come in --

14 DR. MINES: The employers are still willing to --

15 BOARD MEMBER RIVERA-HERNANDEZ: -- to raise
16 these --

17 DR. MINES: The information -- what we tell them
18 and what we do is that information is actually secure. You
19 know, the individual grower, you could not find that -- his
20 name in the data. You know, even by county in the public
21 use tape it's not -- it's not identifiable by county. And
22 most certainly, depending on the type of the data, the data
23 is very carefully -- you know, a panel of the Department of
24 Labor and other agencies of the federal government made
25 sure that the public use tape does -- does not allow

1 identification of anybody.

2 BOARD MEMBER RIVERA-HERNANDEZ: So in order to
3 access -- in order to gain the data, essentially, if an
4 employer isn't complying, nothing is done with the
5 information; correct?

6 DR. MINES: No. There's no -- no other -- no
7 other agency, including the Department of Labor, has access
8 to that data.

9 BOARD MEMBER RIVERA-HERNANDEZ: Okay.

10 DR. MINES: It's -- yeah, it's difficult. I
11 mean, it's -- not only in those other -- other things that
12 are even more disturbing as one sees out there than -- than
13 labor abuse.

14 BOARD MEMBER RIVERA-HERNANDEZ: Yeah. Yeah.
15 Thank you.

16 MS. SNELL: Just a follow-up. Do you do the
17 interviews at a particular time of day or a particular part
18 of the workday?

19 DR. MINES: Most -- most surveys are done at
20 night and on weekends, especially Sundays.

21 MS. SNELL: I'm talking specifically about when
22 you go.

23 DR. MINES: Oh, no, no. You go wherever the
24 employer allows you access. And so it's normally --

25 MS. SNELL: And how about --

1 DR. MINES: -- normally in the morning or the --
2 the shape up in the morning where, you know, people -- the
3 cars come into the field and the -- and the workers are
4 milling around you before they work, that's normally
5 when -- when it happens. But it could happen -- you know,
6 I don't know whether Susan has ever taken statistics on
7 that, but that's just my impression.

8 MS. SNELL: So it's before work begins?

9 DR. MINES: Correct.

10 MS. SNELL: Okay.

11 DR. MINES: When most -- most of the -- the
12 selection would occur for the National Agricultural Workers
13 Survey. That's not true of the other surveys that, you
14 know -- you know, I've done about 20 or 25 surveys over my
15 lifetime and each -- each survey is different.

16 CHAIRMAN GOULD: Did you want --

17 BOARD MEMBER SHIROMA: Yes. Oops. Thank you.
18 Thank you.

19 Buenos dias, everyone. Thank you for spending
20 time with us. Thank you to the Chair for providing the --
21 this forum for a very -- a very meaningful discussion.

22 Mr. Mines, thank you. I am an admirer of your
23 work and of the NAWS work. And I think it's tremendous
24 that we have data going back to 1998, again to see the
25 trends to help policymakers --

1 DR. MINES: Right.

2 BOARD MEMBER SHIROMA: -- make a well-informed
3 decision.

4 My question is: Do you have an approximate
5 percentage of how many -- you said most interviews end up
6 being done at night or on the weekends after prearranging
7 at the work site to talk with somebody. So -- so that
8 means very few or a smaller percentage of interviews are
9 actually done at the work site or rather the logistic --

10 DR. MINES: Yeah. A minority -- a minority are
11 done at the work site because it's -- it's, you know, lunch
12 hour or it's after work at the -- you know, but the -- but
13 the NAWS does not interfere with the, you know, flow of
14 work.

15 BOARD MEMBER SHIROMA: Sure.

16 DR. MINES: So if the -- you know, the foreman is
17 also there. You know, so if they've got to go to work,
18 they've got to go to work. Then, you know, you have to
19 meet the person later. Like I said, Sunday is -- Sunday is
20 a favorite time, you know, because that's when they're
21 washing their clothes.

22 BOARD MEMBER SHIROMA: Can multi-task, do the
23 interview and do the washing of clothes.

24 Yeah, we were on a tour recently where we were
25 talking with a farm worker and he very, very politely told

1 us, you know, I really would like to answer your questions,
2 however, the employer is providing a bonus if I finish, you
3 know, X number of bags, etcetera. So we said --

4 DR. MINES: Right.

5 BOARD MEMBER SHIROMA: -- sorry. We don't want
6 to interfere with somebody being able to --

7 DR. MINES: Right.

8 BOARD MEMBER SHIROMA: -- earn their money.

9 And with the indigenous farm workers, in terms of
10 garnering an interview, do they ever say, gee, I've got to
11 check with my community leader first before I agree to an
12 interview or --

13 DR. MINES: You mean from their own community?

14 BOARD MEMBER SHIROMA: Yeah. Yeah.

15 DR. MINES: We came across that mostly in the --
16 in the Jamaican and -- excuse me, the Haitian community.
17 There was a lot of (inaudible) in the Haitian community in
18 Florida. We came across getting -- having to get
19 permission from them.

20 But I think you raise -- in terms of what the
21 objective of this -- of this rule is, I think you would
22 be -- it would behoove you to -- to pay attention to that
23 question. Because I think it's -- the -- the people -- the
24 indigenous people and Mexican farm workers in general, but
25 in particular the indigenous people, have a very closed

1 society. And we actually, for the -- for the indigenous
2 farm workers, I and two or three other people, including
3 Fausto sitting there, went -- went to -- to Oaxaca and
4 Guerrero and Michoacán and asked for permission of the
5 community leaders, you know, from the village if we could
6 do the survey.

7 I think that going to the work site is to
8 identify the networks that you have to get confidence with
9 them in order to spread the word about the -- about their
10 rights. And then you might have to go somewhere else to --
11 to have, you know, somebody speak, hopefully in their own
12 language, explain their rights to them.

13 But you have to identify -- the first thing we
14 did with the indigenous farm workers survey is we -- we
15 went out and identified 350 networks of people, village
16 networks. That's the first -- that was the first step so
17 we could get access. And that might be something that
18 you -- you could consider doing this, is figuring out, not
19 only for indigenous but in general, farm workers, where do
20 they come? What's their village?

21 We want to get the confidence that -- you know,
22 one of the ways -- you say, how do get the confidence for
23 an interview? I say, "You're from, you know, oh, you're
24 from Michoacán, you know, (inaudible)." So you -- you get
25 them to think you really know where they come from and you

1 understand, you know, what their life is like.

2 BOARD MEMBER SHIROMA: Thank you.

3 CHAIRMAN GOULD: If I could just follow up on
4 part of what Ms. Shiroma asked. She pointed out that we
5 ran into this farm worker who said, you know, I'd like to
6 talk to you but I've get to get -- their paying me a
7 bonus --

8 DR. MINES: Yeah, right.

9 CHAIRMAN GOULD: -- and I got to get the work
10 done.

11 DR. MINES: Make some money, yeah.

12 CHAIRMAN GOULD: So we wondered whether you
13 encountered -- I mean, to some extent that overlaps with
14 this other point about having the confidence of the person.

15 But -- but as a practical matter, do you run up
16 against the problem of -- of finding this non-working time,
17 you know, given the fact that people are being paid in many
18 instances --

19 DR. MINES: Right.

20 CHAIRMAN GOULD: -- by the piece, so to speak?

21 DR. MINES: Right. They're being paid by the
22 piece. And peak season when they work -- when they're
23 working ten hours a day, and sometimes seven days a week,
24 it is hard to find the time, that's true. So in certain
25 situations you might want to, you know, know what the

1 peak -- the peak of the season is and you want to -- you
2 want to, you know, get to talk to those workers a little
3 bit before the peak or a little bit after the peak just,
4 you know, as they're coming to the work site as their
5 leaving, you know, the work areas. So --

6 CHAIRMAN GOULD: But did you encounter this
7 problem in --

8 DR. MINES: Yes, I did.

9 CHAIRMAN GOULD: -- your research?

10 DR. MINES: Yeah. I have encountered the
11 problem. But I tried to -- to be sensitive to -- to that.
12 And I would -- I would never stop anybody from -- from
13 trying to make some money.

14 CHAIRMAN GOULD: For sure.

15 DR. MINES: Yeah. In fact, in one of the studies
16 I did in 1980 I picked along with the workers. I picked
17 lemons along with them. I said, "If I fill up half your
18 bin will you sit down with me for half-an-hour." And then
19 that's how got access to them the next day. I was a
20 little -- a little bit younger then.

21 CHAIRMAN GOULD: Now, you earlier spoke about the
22 extent to which workers are knowledgeable about the
23 Agricultural Labor Relations Act.

24 I mean, putting aside the whole question of
25 unions and organizing, did you -- do you have any knowledge

1 about the extent to which they know that if they protest
2 about a low wage or what they think are inferior working
3 conditions and the employer retaliates against them that
4 they're -- that that's against the law, that that's
5 protected activity? Do you -- do you come across any
6 knowledge of farm workers about that basic concept that's
7 contained in the Agricultural Labor Relations Act?

8 DR. MINES: Not -- there are -- there are, you
9 know, lines across which the foreman can't walk before
10 people lose their temper and, you know, want a better wage,
11 but I don't think it's based on their knowledge of ALRA.
12 It think it's just based on their -- on their anger point
13 and what they need to tell their wives that they're making,
14 you know?

15 So, you know, I don't think there's really -- I
16 don't think there's a lot of information out there about
17 the ALRA.

18 CHAIRMAN GOULD: Thank you.

19 Well, Mr. Mines, we want to thank you very much.

20 BOARD MEMBER RIVERA-HERNANDEZ: I'm sorry --

21 CHAIRMAN GOULD: Oh.

22 BOARD MEMBER RIVERA-HERNANDEZ: -- could I ask
23 one -- just one last question?

24 Given -- and again, thank you for making the trip
25 out here, and your vast experience.

1 Given what you know we're trying to accomplish
2 with this -- this reg, and is there any piece of advice
3 and/or caution that you haven't shared already that you
4 think would be beneficial for us to know?

5 DR. MINES: I'll just -- I'll just repeat myself.
6 Here you have -- in California you have a Mexican industry
7 that has a very thin veneer or angle on, you know,
8 management on top. But the -- 90 percent of the people
9 involved in the industry are first-language Spanish or
10 indigenous languages. These are -- these are people that
11 identify with their network more than collective -- you
12 know, a collective idea of, you know, unions or anything
13 other type of -- they -- they're in a mutual reciprocal --
14 the way they survive is within their network, exchange
15 favors within the network.

16 So what you want to do is you want to identify
17 those networks, the farm workers, there's not that many,
18 you know, just a couple thousand of those networks out
19 there, you want to identify those networks and get within
20 those networks to try to get the people together network by
21 network and -- and present the material to them about
22 their -- their rights. And you'll have a lot more success
23 than any other way.

24 BOARD MEMBER RIVERA-HERNANDEZ: Thank you.

25 CHAIRMAN GOULD: Thank you very much, Mr. Mines.

1 The -- next we'll turn to Mr. Barry Bedwell with
2 the California Fresh Fruit Association. And I believe Mr.
3 Bedwell has advised the Board that he's going to share some
4 of this time with Ms. Carmen Garza.

5 MR. BEDWELL: Thank you very much.

6 CHAIRMAN GOULD: Thank you.

7 MR. BEDWELL: With the Board's permission I'd
8 like to introduce Carmen Garza who has been a good friend
9 for over a decade. She has a fantastic history of working
10 in the agricultural industry as a farm worker in numerous
11 capacities. And she drove up today from Delano. And I'd
12 like to yield at least a portion of my time to give you
13 some very valid points.

14 CHAIRMAN GOULD: And I think I met Ms. Garza, did
15 I not --

16 MS. GARZA: Yes, we've met.

17 CHAIRMAN GOULD: -- in Sacramento. Thank you.

18 MS. GARZA: Yes, we did.

19 CHAIRMAN GOULD: Thank you.

20 MS. GARZA: Yes, we did meet. After all this
21 information that this gentleman gave just before me, I feel
22 like where have I been all this time? My goodness. But
23 I'll tell you, I started working in the California fields
24 in 1960. I was 13 years old at the time. It was not
25 against the law for underage people to work at that time.

1 But I don't remember hearing anything about farm workers'
2 rights or issues, other than those we discussed among
3 ourselves in the fields.

4 At that time we didn't have cell phones, internet
5 or social media. There was limited Spanish radio and
6 television that provided one hour of Spanish radio per day
7 and one hour of Spanish television for a week. That was
8 back in my time. All they did was play a couple of
9 mariachi and a few commercials and the hour was gone, so
10 there was no time for anything else.

11 Later I learned that organizations and church
12 groups were holding meetings to figure out how to get
13 information to farm -- field workers. But because of the
14 communication challenges, different groups decided to get
15 help from college students who in those days were
16 interested in what they call social justice. We just knew
17 them as hippies at that time. That was a different time.

18 Life is much different now in 2015. There are
19 many ways people learn of opportunities and rights today.
20 There are more than ten Spanish radio stations in my area,
21 and there are five, or I don't know how many, free public
22 television stations that broadcast in our area and are
23 all -- and all of them provide educational programs and
24 public service messages.

25 Today most workers have cell phones and computers

1 and communicate through texting and social media. Even I
2 can use a computer. And I have a smart phone, and I use
3 the internet for news. I use Facebook to communicate with
4 family and friends, and even send my messages through --
5 through text.

6 Farm workers go to work to work. Having the ALRB
7 or any other state or federal agencies would disrupt the
8 work. That's the way I feel.

9 Two good examples of how information is so
10 accessible to field workers in Spanish is the recent Heat
11 Illness Prevention Regulation issued by Cal/OSHA and the
12 Affordable Care Act. Both of these laws have a critical
13 impact to the lives of farm workers.

14 Cal/OSHA's Heat Illness Regulations were
15 implemented and communicated throughout the state without
16 Cal/OSHA needing to visit the fields to educate workers and
17 supervisors.

18 Thousands of field workers learned about and got
19 insurance for the first time last year under the Affordable
20 Care Act. Information was provided on television, radio,
21 and the internet. It was all achieved throughout the
22 entire country without any agency needing to go to the
23 fields to educate workers about the rights under the act.

24 Why doesn't the ALRB take a lesson from those
25 examples and use the same methods to get the message out to

1 the workers? It might even be more beneficial to the
2 workers.

3 Your proposal to visit agricultural workers
4 doesn't make sense since farm workers have the same
5 opportunities to receive information as everyone else. The
6 thing to remember is that we're not back in the old age
7 anymore. I know we're farm workers. But even -- even in
8 Mexico in the little towns that the gentleman was talking
9 about, even there they have telephones and television and
10 radio. So it's something to consider. Thank you.

11 MR. BARBOSA: Well, I want to follow up with
12 Carmen's comments and really get to the focus on the issue.
13 I think as we talked at the Ad Hoc Committee in Sacramento
14 earlier in the month I think we all heard that there really
15 wasn't any kind of opposition or overly considered about
16 education. I think we all agree that the farm workers have
17 a right to understand the Agricultural Labor Relations Act
18 and the concerted rights that are protected under that act.

19 I think where we're -- we're finding conflict,
20 quite frankly, is the focus as it shifts to how to best
21 educate. And, of course, as soon as we get into the issue
22 of access we're going to have contentiousness in many, many
23 ways. Let me just point out some of the concerns that I've
24 heard.

25 First of all, and you're probably going to hear

1 later today from some legal experts. I'm not going to
2 pretend I'm a lawyer. But you're -- I'm giving you a heads
3 up, you're going to hear about statutory authority and can
4 this be done. I'm not -- that's not my concern right now.
5 My concern is how to help accomplish the goal of education,
6 at the same time really accomplish the goal of preventing
7 disruption in the workplace, and at the bottom line not
8 following the wishes of the employees. So you're going to
9 hear legal arguments.

10 The other thing that you just heard is that
11 things have changed so much. I have been amazed at the use
12 of social media within the farm worker community. There
13 are communication networks out there. And I think the
14 gentleman, Dr. Mines before us, talked about networking. I
15 think that should be a clue to us to how to better
16 communicate and educate.

17 The other thing that we have to be concerned
18 about on access issues that have been just recently
19 demonstrated is over the issue of nonproductive time. And
20 certainly under an hourly rate, if you come in and you're
21 talking to people there's going to have to be compensation
22 for the workers. If people are under piece rate we find
23 that the current law says that there's going to have to be
24 compensation for nonproductive time. So that is a cost,
25 and absolute cost that is going to have to be borne by

1 employers under access grantance.

2 The other things that we hear is that many times
3 workers, as we all see with our own jobs, you like to get
4 to the job, you focus on getting it done, you want to get
5 out, and you want to go home and see your family. These
6 issues, really at times, may or may not belong in the
7 workplace, and that might not be the best place to educate
8 individuals.

9 And then the big issue, that I think we have to
10 be honest with ourselves and address. There's a concern
11 out there, first over access and the potential for bias in
12 the message. And we are at a particular point in time in
13 the history of the Agricultural Labor Act where,
14 unfortunately, there seems to be evidence of bias, not by
15 the Board, I will point out, but by ALRB staff in the
16 presentation of information and data. We can't ignore
17 that. And I have to tell you that there's a perception
18 that's prevalent within the community, not just employers
19 but employees, as well, that they aren't getting the
20 straight scoop from Board representatives. We have to
21 understand that. So to, at this point, move out to access
22 and use the Board as the educational instrument I think
23 would cause massive concern. We have to understand that.

24 And then also I think we -- we have to look at
25 the other examples that Carmen mentioned. Today, you know,

1 we've worked in conjunction with Cal/OSHA very hard, since
2 2005 when California became the first state to institute
3 the Heat Illness Prevention Regulations. We stood up with
4 the governor and said, yes, we need to do something. We
5 need to better educate. We set seminars in motion. We
6 helped put together information such as this, which I want
7 to leave with you. I'm sure you have copies. But, for
8 instance, here are videos in six different languages, six
9 different languages, Spanish, English, information that can
10 be passed out, posters.

11 This is the kind of approach that I think demands
12 that we look at first, in terms of education. To jump
13 simply to the access issue, I believe we're going to lose
14 focus on our true intent, and that's education. Because
15 the issue itself of the access will become so contentious.

16 So when I'm up here to I think I want to keep an
17 open mind in terms of how we can work together on
18 education. But the message has to be clear that at this
19 point in time the access, I believe, will be
20 counterproductive as trying to push forth as a solution for
21 education.

22 So I think if we move forward and talk about
23 education and that focus you can have willing
24 collaborators. I think if we focus on access there's going
25 to be tenacious opposition.

1 Thank you.

2 CHAIRMAN GOULD: You know, if I can just ask,
3 while I appreciate both what you and Ms. Garza have had to
4 say, and I want to say how much I enjoyed meeting Ms. Garza
5 in Sacramento awhile back, and it's good -- it's good to
6 see you again, I -- you know, some of the things you say
7 you're -- you remind me, Barry, of a program that I was
8 involved in for a large multi-national company that was --
9 had decided to educate -- attempt to educate its workers
10 about the rights -- rights under the National Labor
11 Relations Act.

12 And one of the things they did, you mentioned
13 videos, was that videos were put together by -- actually by
14 myself because I was appointed by this company as an
15 independent monitor. And every employee was required to,
16 as part of the training program, was required to -- and
17 safety program, was required to listen to and observe and
18 listen to these -- these videos. I don't know that there
19 was an opportunity for follow-up questions at the time.

20 Would you advocate something like that?

21 MR. BEDWELL: I think we have to keep an open
22 mind. The key to any of these -- these courses is
23 reasonableness and balance. I think we have a confidence
24 crisis right now with many folks and how do we really
25 reinstall that confidence?

1 I think in terms of education, I'll give you a
2 quick example. For instance, our association, the
3 California Fresh Fruit Association, receives market access
4 promotion funds, MAP funds from the federal government. As
5 part of that process we have to go through, for our board
6 that makes decisions having to with hiring, diversity
7 training.

8 I was sent something recently, like eight modules
9 of information to go through on diversity training. I
10 looked at that. And if you looked at the timing involved
11 it probably could take 50, 60 hours. And there was a lot
12 of repetition. There was a lot of things. I'm just
13 pointing out that as we get to the heart of this issue I
14 think we need input from all points of view to make sure
15 that it's balanced and reasonable. Part of the thing we
16 can do with written material and videos and so forth is
17 ease people's concern about bias.

18 And so, yeah, I -- in looking at educational
19 sources, as far as requirements let's keep in mind that
20 we -- we want to accomplish our goal. But what I always
21 hear is that California and the cumulative impact of
22 regulations; right? Remember, we have to compete in a
23 worldwide market. So within reason I'm saying, sure, put
24 it on the table. If we're -- if we're hitting a wall, and
25 I think we are with the access issue, and we say what are

1 other ways that we can educate, let's look at those. Let's
2 see what can be balanced and reasonable. I certainly
3 wouldn't close the door on that.

4 CHAIRMAN GOULD: So you would advocate videos
5 during the say safety or training program as part of the
6 employee --

7 MR. BEDWELL: Again, within certain periods.
8 That's a general statement. I have to be careful about
9 endorsing concepts that we don't know the details on. The
10 devil is always going to be in the detail. But I'd say,
11 look, if the goal is education let's figure out how to
12 accomplish that goal. Let's not focus in on a means that
13 is causing so much controversy.

14 CHAIRMAN GOULD: I don't know if my colleagues
15 have any questions here, as well.

16 BOARD MEMBER RIVERA-HERNANDEZ: Barry, the
17 employers currently pay for the employees to, what, do the
18 training for pesticide training, the required training; is
19 that accurate?

20 MR. BEDWELL: Yeah. I mean, you're really
21 talking about non -- you mean the nonproductive time issue
22 and compensation?

23 BOARD MEMBER RIVERA-HERNANDEZ: Yes.

24 MR. BEDWELL: Absolutely. I mean, we're -- we're
25 going through a historic change in the way nonproductive

1 time is being interpreted. Of course, a lot of this came
2 out the court case Blufer (phonetic) which was denied
3 review before the California Supreme Court, which set into
4 motion the payment of nonproductive time under piece rate.
5 And as you may or may not know, there is a bill currently
6 pending that is going through much, much discussion in
7 Sacramento these last two days about how to address some of
8 the liability issues under that court decision.

9 So clearly employers in California have a whole
10 different world to look at in terms of nonproductive time,
11 particularly as it pertains to piece rate moving forward.

12 BOARD MEMBER RIVERA-HERNANDEZ: And -- and
13 forgive me for not knowing the answer to this, but how much
14 time are we talking about? How much time does an employer
15 have to pay per employee for the current training that's
16 required?

17 MR. BEDWELL: Well, it depends on how long that
18 training is.

19 BOARD MEMBER RIVERA-HERNANDEZ: But what's the
20 shortest amount of time that --

21 MR. BEDWELL: I don't know.

22 BOARD MEMBER RIVERA-HERNANDEZ: -- legal training
23 can be done in?

24 MR. BEDWELL: Well, what is the shortest amount
25 of time? What would it be?

1 UNIDENTIFIED MALE: We -- I'm sorry. We do
2 training. And to answer your question, it goes anywhere
3 (inaudible) meeting generally 15 to 30 minutes --

4 BOARD MEMBER RIVERA-HERNANDEZ: Okay.

5 UNIDENTIFIED MALE: -- each. Of if you have 30
6 employees, that's a considerable sum of money.

7 BOARD MEMBER RIVERA-HERNANDEZ: Okay. I just
8 wanted to make sure I had an idea of what we were talking
9 about.

10 MR. BEDWELL: Yeah.

11 BOARD MEMBER RIVERA-HERNANDEZ: Okay.

12 CHAIRMAN GOULD: Another question we have is the
13 OSHA. Doesn't OSHA have the right to have access to your
14 property for the purpose of inspection?

15 MR. BEDWELL: For inspection, yes. But that's --

16 CHAIRMAN GOULD: No, but -- no, but not in regard
17 to the alleged violation of the code. Don't they have a
18 right to have access to talk to employees?

19 MR. BEDWELL: To talk to employees, I'm not so
20 sure. I'm not going to give you a definite answer because
21 I'm, again, not an attorney (inaudible). For just talking
22 to employees? I'm not sure why they would be there just
23 talking to employees, I don't. I don't. I think they've
24 looked at education differently.

25 BOARD MEMBER RIVERA-HERNANDEZ: Thank you.

1 MR. BLANCO: So for the record, can you tell us
2 more about the association that represent?

3 MR. BEDWELL: Sure. The association?

4 MR. BLANCO: Who are the members, how many --

5 MR. BEDWELL: Fair enough.

6 MR. BLANCO: -- etcetera?

7 MR. BEDWELL: Yeah. The California Fresh Fruit
8 Association for 78 years was known as the California Grape
9 and Tree Fruit League. We're an association primarily of
10 grower-packer-shippers that has membership all the way from
11 Coachella Valley in the south up to Lake County in the
12 north. We are an organization that was formed way back in
13 1936 on a merger between the Northern California Grower and
14 Shippers Protected League and the Southern California Grape
15 Growers. Our job is to be the primary public policy
16 representative for the grapes, berries such as --
17 blueberries, I should say, not strawberries, blueberries,
18 but all 13 permanent fresh fruit crops. Pretty much
19 everything in the state with the exception of citrus and
20 avocados.

21 MR. BLANCO: And the kind of work done by farm
22 workers, is that work paid by the piece or hourly or --

23 MR. BEDWELL: All -- all combinations of the
24 above. I think you'll find within our membership you'll --
25 you'll see a combination of rates. Depending upon the

1 particular commodity, one form may be more predominant than
2 the other.

3 But I think that what you'll find is that
4 historically our members are vertically integrated family
5 operations that deal with packing -- excuse me, growing,
6 packing, and shipping product.

7 MR. BLANCO: Do you think there would be an
8 interest among your members to voluntarily let staff come
9 on and educate?

10 MR. BEDWELL: I'm glad you brought up that point,
11 because that was another point I should have made.

12 If we ever got into the access issue and access
13 was granted my concern would be that employees' perception
14 over why did the ALRB pick my employer? Why did he come by
15 here? Did my employer do something wrong? And even if we
16 say it was done randomly I'm concerned, again, that
17 somebody says, ah-ha, something's going on at that place
18 because I saw the ALRB show up over there. They're trying
19 to educate people. So I think people would jump unfairly
20 to conclusions.

21 So the idea of volunteering I think would be very
22 concerning for folks in saying, well, what would -- how
23 would my employees, how would other employees view it if I
24 have people educating my workers and my neighbor does not?

25 You know, I would just like to point out that

1 we've been very successful in the education issues on heat
2 illness. I mean, every late winter or early spring, for
3 instance, we have, as an example, out in Easton here a --
4 and many associations get together, Manual Cunha with the
5 Nisei Farmers League has been instrumental in helping put
6 together, as well as other organizations, educational
7 sessions for farm workers, for supervisors, for farm labor
8 contractors. And I think we've gotten great traction. And
9 we look at those statistics. We are very concerned about
10 protecting workers health.

11 We have a tightening labor supply in this state.
12 We're involved with labor intensive crops. Anybody that
13 tells you that a good grower doesn't appreciate his
14 workforce I don't think understands the situation. I'm not
15 saying there's -- there's no people out there. And there's
16 always exceptions to the rule. But in this world it is so
17 different than 40 years ago. It is so different in terms
18 of the needs and what we have, our relationships with our
19 employers and their employees. I think we need to take a
20 fresh look at this and make sure that when we talk about
21 these issues we aren't tainted by past history.

22 CHAIRMAN GOULD: So could you tell us just a
23 little bit more about these heat conferences that are held?
24 How are they held and how are they conducted?

25 MR. BEDWELL: We do it in conjunction with

1 Cal/OSHA and, you know, the come out. We'll have
2 presentations in both Spanish --

3 CHAIRMAN GOULD: Come out where? Where will they
4 come out?

5 MR. BEDWELL: Well, this would be a hall. This
6 is, for instance, a hall. This is the -- I may be wrong,
7 it's the Portuguese Hall I think in Easton, a big, big
8 hall. You can over 1,000 people. And I'm not saying that
9 you're going to start out with 1,000 here on trying to
10 educate about rights and the laws.

11 But the point is under the right circumstance you
12 can do education that disseminates. Get the right people
13 out there, understand what is being taught, and information
14 will flow. It will flow.

15 CHAIRMAN GOULD: How are those -- well, do
16 notices go to a number of farm workers about these -- about
17 these meetings?

18 MR. BEDWELL: It will go through the employer
19 network, the farm labor contractor network, and as well as
20 Cal/OSHA itself advertising, certainly, to anyone who is in
21 touch with that. I'm amazed to think that people -- and
22 the comment was made that they didn't understand the worker
23 committee, you know, situation. I would have to get a
24 sense that's a very, very small amount out there.

25 I just think it would be extremely premature to

1 jump to access without exploring other effective means of
2 education.

3 BOARD MEMBER SHIROMA: One question. One follow-
4 on question, Barry.

5 So you talked about -- someone said 15 to 30
6 minutes, it depends, on nonproductive time training for
7 workers. Now --

8 UNIDENTIFIED MALE: No, I didn't say
9 nonproductive.

10 BOARD MEMBER SHIROMA: Okay. All right. Good.

11 UNIDENTIFIED MALE: I said it's 15 to 30 minutes
12 mandated OSHA safety training.

13 BOARD MEMBER SHIROMA: Okay. Mandated --

14 UNIDENTIFIED MALE: So it's mandated --

15 BOARD MEMBER SHIROMA: Required by law?

16 UNIDENTIFIED MALE: So it's (inaudible) in the
17 sense that they are earning.

18 BOARD MEMBER SHIROMA: Thank you for that --

19 UNIDENTIFIED MALE: (Inaudible.)

20 BOARD MEMBER SHIROMA: Thank you for that
21 clarification. I hope the court reporter caught that.
22 Yes. Yes, indeed.

23 So for supervisors, the supervisors who are out
24 in the field, is there a required training for them,
25 whether it's Cal/OSHA or --

1 MR. BEDWELL: Sure.

2 BOARD MEMBER SHIROMA: -- what have you?

3 MR. BEDWELL: Absolutely. If you'd like the
4 detail under the Heat Illness Prevention Regulations, and
5 particularly the update that we have just recently gone
6 through that set new trigger points for temperature and
7 shade up, the amount and so forth, the buddy system, what
8 happens above 95 degrees, I think if you looked at the
9 awareness level in 2005 on heat illness prevention and what
10 could be done and where we are today, I think it's light
11 years. I think it's absolutely light years.

12 So the question is, yeah, how do you -- how do
13 you understand where you are in terms of knowledge out
14 there about the act, number one? And then determine the
15 best means to make sure that you increase that knowledge.

16 BOARD MEMBER SHIROMA: Thank you.

17 MR. BEDWELL: Thank you.

18 MR. BLANCO: I actually have some questions --

19 CHAIRMAN GOULD: Okay. All right.

20 MR. BLANCO: -- more questions for you in the
21 discussion of heat stress brought up. But first I want to
22 ask you another question about your membership.

23 Do -- are most of the -- your grower-members hire
24 their employees through a farm labor contract or direct
25 hire?

1 MR. BEDWELL: Well, that's -- again, it depends
2 upon the commodity and the area of the state. You'll see
3 various trends on that. I would -- I would say that on the
4 whole that a majority utilize farm labor contractors. I
5 think particularly when you're talking about seasonal
6 picking, then multiple pickings at times, the use of farm
7 labor contractors is essential. And people, therefore, are
8 kept more steadily employed during these times of
9 fluctuations and variations and picking. But, yeah,
10 it's -- it's very much used.

11 MR. BLANCO: And in respect to heat stress, so
12 (inaudible) whether you know or not, or maybe you do know,
13 it's section 3395 of Title 8, is that the section that
14 deals with the preventive -- prevention --

15 MR. BEDWELL: I would need to have the authority.
16 I'm really not good at memorizing these sections.

17 MR. BLANCO: I just wanted to see if you did know
18 so we're on the same page with that.

19 But as I understand it the -- the regulation
20 requires -- puts the responsibility on the employer to --
21 to ensure that both supervisor and employees get training
22 on the -- on heat -- heat illness prevention.

23 MR. BEDWELL: Under heat illness prevention.

24 MR. BLANCO: Is that correct?

25 MR. BEDWELL: That's correct, yes.

1 MR. BLANCO: And -- and with respect to that kind
2 of training, I guess (inaudible) that video that you had
3 with you or --

4 MR. BEDWELL: Well, I think this is just one of
5 the tools that is being used to make people aware,
6 particular in the symptoms of heat illness.

7 MR. BLANCO: Do you know what other kind of
8 training that the -- the Cal/OSHA is requiring for the Heat
9 Illness Prevention Program?

10 MR. BEDWELL: Well, there -- there has to be a
11 written program for heat illness prevention. And that is
12 one of the things that obviously is checked when Cal/OSHA
13 goes out. So everyone has to have a written program and
14 evidence of educating their workers.

15 CHAIRMAN GOULD: What -- I guess what we are
16 interested in, and maybe --

17 MR. BEDWELL: Yeah.

18 CHAIRMAN GOULD: -- maybe we should pursue this
19 with others, as well, what is that evidence? What does
20 that evidence consist of? What -- how do you show Cal/OSHA
21 that you are communicating directly with employees about
22 this?

23 MR. BEDWELL: I think there's documentation of
24 these sessions and so forth that they have. And they'll --
25 they'll certainly go out and ask employees, as well, to

1 confirm, to say, you know, have you had the training?

2 CHAIRMAN GOULD: You say OSHA?

3 MR. BEDWELL: Cal/OSHA will, sir.

4 CHAIRMAN GOULD: How will they do that?

5 MR. BEDWELL: I think they -- they -- when they
6 go out and they're conducting an inspection for the Heat
7 Illness Prevention Regulations they'll -- they'll go out
8 and talk to employees and bring it up, sure, as part of it.
9 But understand, I don't want to say that we're comparing
10 exactly apples and apples here. What I wanted to point out
11 is the educational efforts under heat illness, and not
12 necessarily the requirements.

13 I want to stress, the importance of education has
14 to do with collaboration. I think the doctor mentioned
15 that before. And it's important to understand and get all
16 parties behind education. I think when you put in a
17 controversial issue it's self-defeat.

18 CHAIRMAN GOULD: And just to -- and I'm not --
19 you were asked this in a different way. I don't want to
20 hold you too long here but --

21 MR. BEDWELL: Well, no, it's fine. I know there
22 are others who want to talk, too, so --

23 CHAIRMAN GOULD: I know. And you were asked
24 about the idea of employers voluntarily agreeing, as Dr.
25 Mines indicated was the case with his work. And, I mean,

1 would -- would a program of access under which employers
2 voluntarily could agree to access be acceptable to you?

3 MR. BEDWELL: Well, I think there's a basic
4 difference between a survey where you're asking questions
5 and gathering information and an educational process where
6 you're trying to communicate the extent of someone's rights.

7 CHAIRMAN GOULD: YES.

8 MR. BEDWELL: I think the latter has all of the
9 potential for bias if you're not careful. The first is
10 probably more black and white, asking questions, getting
11 information. It's data. The second is much more
12 subjective in nature as you're trying to communicate. And
13 that's why I think what we're looking for is evidence to
14 make sure that there is balance and reason and proper
15 communication.

16 CHAIRMAN GOULD: Thanks very much.

17 MR. BEDWELL: Thank you.

18 CHAIRMAN GOULD: Thanks. Thank you. And --

19 MS. SNELL: Our next witness is Maureen Keffer.

20 MS. KEFFER: Good afternoon.

21 MS. SNELL: Good afternoon, Ms. Keffer.

22 How are you employed?

23 MS. KEFFER: I'm the Director of the Indigenous
24 Program, formally called the Indigenous Farm Worker Program
25 and California Rural Legal Assistance.

1 MS. SNELL: And is true and correct copy of your
2 curriculum vitae -- does a clear and correct copy of your
3 curriculum vitae appear at Tab 6 of the Board's binder?

4 MS. KEFFER: it appears that it does, yes.

5 MS. SNELL: Did you coordinate a human rights
6 education program to benefit indigenous youth in Oaxaca,
7 Mexico in 2004 and 2005?

8 MS. KEFFER: I did. That's correct.

9 MS. SNELL: And did you become the director of
10 the CRLA Indigenous Program approximately two years ago?

11 MS. KEFFER: Yes, that's right.

12 MS. SNELL: And in between those two jobs did you
13 graduate from (inaudible)?

14 MS. KEFFER: I did, in 2011.

15 MS. SNELL: How long has CRLA had an Indigenous
16 Farm Worker Program?

17 MS. KEFFER: We have had an Indigenous Farm
18 Worker Program since about 1993, so the past 22 years or
19 so.

20 MS. SNELL: Why did the program start?

21 MS. KEFFER: The program began, and I think Dr.
22 Mines alluded to this in his testimony, the program began
23 because CRLA has always employed community outreach workers
24 to do our workers' rights community outreach and education.
25 And the majority of those have historically been former

1 farm workers themselves, Spanish speakers who -- who
2 conduct outreach to farm workers communities.

3 What we started finding in the late '80s and
4 early '90s was that these outreach workers were
5 encountering farm workers in the fields, not necessarily
6 specific in the fields, but were encountering farm workers
7 who didn't speak Spanish who they couldn't communicate
8 effectively with. And at the same time there were some
9 researchers who were beginning to uncover the fact that
10 the -- the demographics of the farm worker population were
11 changing in California. And so CRLA's executive director
12 with some researchers to -- to conduct some initial
13 investigation about this changing farm worker demographic
14 and realized we needed to change our community outreach
15 worker population to better meet the needs and to be better
16 be able to communicate effectively with indigenous farm
17 workers with this new population that we were seeing.

18 And so in 1993 we hired our first indigenous
19 language-speaking community outreach workers. And that was
20 the beginning of the Indigenous Farm Worker Program.

21 MS. SNELL: And what does your job as director of
22 the indigenous programs entail?

23 MS. KEFFER: So I'm an attorney, and so I
24 coordinate the -- the legal work of the program. And I
25 also supervise a staff. We currently have four indigenous

1 community outreach workers working out of four different
2 offices around the state. And so I supervise their
3 outreach and education to the indigenous farm worker
4 population. And I also co-counsel on farm worker rights'
5 cases and representing indigenous community members and
6 indigenous clients in conjunction with other attorneys at
7 other CRLA offices.

8 MS. SNELL: Now, behind Tab 8 of the Board's
9 binders there's a document, the Indigenous Program. Is
10 that a description, an accurate description of your
11 program?

12 MS. KEFFER: It is, yes. I believe that at the
13 time it was written it indicated we had five indigenous
14 community workers. But our staff has, unfortunately, had
15 to be reduced to four.

16 MS. SNELL: Okay. And what languages does your
17 four indigenous outreach workers speak?

18 MS. KEFFER: We have one Triqui speaker and three
19 Mixteco speakers who speak different variants of Mixteco
20 among them.

21 MS. SNELL: Have you encountered challenges in
22 conducting outreach to the indigenous community?

23 MS. KEFFER: Yes. I personally have certainly
24 encountered challenges because I am not indigenous, because
25 I don't speak an indigenous language, and because even

1 though I'm fluent in Spanish, that still poses tremendous
2 challenges just in terms of basic communication. Because
3 as Dr. Mines mentioned, there are many, many indigenous
4 farm workers who are not necessary fluent in Spanish or who
5 are not fluent in Spanish at all. There's also the -- the
6 problem of trust and being an outsider, being looked at as
7 a foreigner and, you know, not having the same level of in-
8 group insider confidence and trust that -- that somebody
9 from, you know, from a community, from a neighboring
10 community might have. So -- so that certainly presents
11 challenges.

12 There are logistical challenges, too, in
13 connecting outreach to farm workers generally, and
14 indigenous farm workers in particular, just in terms of
15 the -- the really disbursed nature of -- of farm labor and
16 farm worker housing. You know, CRLA over the years has
17 invested tremendous amounts of money and resources, staff
18 time, in trying to reach farm workers where they are and
19 trying to find them and trying to set up community
20 education and outreach meetings. And so -- so that
21 certainly poses a challenge in terms of budget.

22 MS. SNELL: And is CRLA able to go to the job
23 sites to -- to conduct outreach?

24 MS. KEFFER: No. We -- there -- there are no
25 laws that treat us any differently than any other

1 individual who would probably be accused of trespass if
2 they were going onto private farm property.

3 MS. SNELL: What methods have you found
4 successful for outreach to indigenous farm workers?

5 MS. KEFFER: The -- the most effective outreach
6 that I have observed in my time at CRLA has been in-person
7 community meetings, generally workshops involving one or
8 more CRLA community outreach workers, sometimes an attorney
9 in addition to that. But always the community outreach
10 worker is key because they are the -- the more direct link
11 to the farm worker community.

12 With indigenous farm workers the -- the outreach
13 and the education is always conducted in the indigenous
14 language that people speak. So if we are doing a
15 presentation for a group of Mixteco speakers, then one of
16 our Mixteco-speaking community workers is the one who is
17 conducting the presentation. It's generally an interactive
18 discussion, practice-based kind of training. And we've
19 been working for several years on developing a training
20 methodology that is, you know, based on evidence and based
21 on best practices in terms of adult learning and adult
22 education. But that -- that almost always involves in-
23 person workshops.

24 MS. SNELL: In your experience do most indigenous
25 farm workers have access to a computer?

1 MS. KEFFER: My experience is that probably not.
2 I can't say for sure because I haven't been in the houses
3 of most indigenous farm workers. But I would say certainly
4 that the ones that I have been in, I've never seen a
5 computer. I think that there may be potential for access
6 in public libraries and places like that. But I certainly
7 never used a computer to communicate with any of my clients
8 or with the indigenous farm worker population. It has not
9 seemed to be an effective tool or an effective option for
10 reaching indigenous farm workers.

11 MS. SNELL: What about smart phones, is that an
12 effective tool for reaching farm workers that you
13 experienced?

14 MS. KEFFER: Again, I haven't, no. I have not
15 seen many indigenous farm workers with smart phones. Most
16 do have cell phones but not smart phones.

17 MS. SNELL: Now how about reading ability of
18 Spanish or English, what have you found in that part?

19 MS. KEFFER: Very, very few can read and write
20 English. And only a small number are -- are what I would
21 consider literate enough in Spanish to be able, for
22 example, to understand a retainer agreement that we might
23 have a client sign. So in the vast majority of cases where
24 we're representing an indigenous language speaker we will
25 have one of our indigenous language speaking community

1 workers or a telephone interpreter or an interpreter from
2 the community do site translation of a document.

3 So that means actually taking the written
4 document in Spanish and orally converting it into the
5 indigenous language so that even though there may be some
6 level of comprehension of the written Spanish and the --
7 the written document may help with ultimate comprehension,
8 the -- the support of having the oral language
9 interpretation into Mixteco or Triqui is what actually
10 enables us to have the confidence that they're
11 understanding the -- the message we're communicating.

12 MS. SNELL: Now, you mentioned that some or
13 many -- perhaps many indigenous speak some Spanish. How
14 did you decide the level of efficiency in speaking Spanish
15 among the indigenous farm workers you worked with?

16 MS. KEFFER: Well, as I said, it does vary and
17 there's a range. But there's an academic who -- who I
18 respect very much, Dr. Gaspar Rivera Salgado from UCLA.
19 And he often uses the term "market-level Spanish." And I
20 think many other academics use that term, as well, in
21 referring to the level of Spanish spoken by many indigenous
22 language speakers.

23 So it's often the case that in these rural
24 villages, indigenous villages, you'll have different
25 variants of Mixteco or Triqui or other indigenous languages

1 that are spoken. And perhaps a Mixteco village borders on
2 a Triqui village. And the reason that most people would be
3 speaking Spanish is when they're going to the market and
4 they're having interactions with people who are speakers
5 primarily of another indigenous language and so their
6 common language is Spanish, but it's at a level to conduct
7 basic transactions in the market. It's not a level for
8 understanding things and expressing things like what are
9 your rights or more complicated ideas.

10 MS. SNELL: In your work can you rely on
11 communication by the U.S. Mail?

12 MS. KEFFER: We try, but we can't rely on it
13 exclusively. We struggle mightily to maintain contact with
14 many of our clients via the mail. Even though we have a
15 clause in our retainer agreement that says you must keep us
16 updated on your mailing address, you know, we -- we
17 struggle with returned mail more often than I -- than I
18 would like to say. Our clients are very often changing
19 addresses or don't have a reliable mailing address. And so
20 we often find ourselves going to knock on the door of their
21 house or call their friend or call their neighbor to try to
22 track them down.

23 MS. SNELL: What about radio, can you rely on
24 radio to do your outreach work?

25 MS. KEFFER: We certainly use it as a tool, but I

1 would not say that we can rely on it exclusively. We -- we
2 definitely have worked in the past and continue to work
3 with Spanish-language radio outlets and with indigenous-
4 language radio outlets. There are no currently large-scale
5 indigenous language radio outlets, but some like Radio de
6 Lingua has a program once a week that's in Mixteco, sort of
7 like the -- the farm worker who -- who spoke earlier, the
8 way that Spanish-language radio was, you know, 20 or 30 or
9 40 years ago, you know, an hour a week, that's how Mixteco-
10 language radio is now or Triqui-language radio.

11 So -- so access is pretty limited in terms of the
12 amount of air time that's just available to indigenous
13 language speakers and indigenous language listeners, radio
14 listeners. We do find it to be a good thing to augment our
15 in-person trainings, but we certainly can't rely on it.

16 MS. SNELL: And what about videos, is that
17 something that you rely on?

18 MS. KEFFER: We have never relied on videos. We
19 are working to develop videos. But the -- they are very
20 much part of a plan, a larger training curriculum.
21 Certainly just -- and we have many copies of these Cal/OSHA
22 DVDs. There are some that have been put out by DPR and
23 other, you know, pesticide education videos that have been
24 translated into indigenous languages, and these are
25 wonderful resources. But short of having a copy to

1 distribute to every indigenous-language speaker that we
2 encounter and knowing that they have access to a DVD
3 player, it doesn't end up being that effective without
4 having the additional component of an in-person training
5 where our staff can present the video and then field
6 questions afterwards, etcetera.

7 There's also the issue of -- of language
8 variation. And so we find that, you know, if -- if this
9 heat stress video is in six different languages you could
10 have six different versions just of Mixteco and -- and
11 maybe not cover them all. So -- so the cost can be
12 prohibitive to -- to rely solely on a technological
13 solution.

14 MS. SNELL: Are you familiar with the
15 Agricultural Labor Relations Act?

16 MS. KEFFER: Yes, I am.

17 MS. SNELL: Does CRLA educate workers about their
18 rights under the ARLA?

19 MS. KEFFER: We do so in a very peripheral way.
20 CRLA has a set of priorities for our advocacy and for our
21 workers rights' education. And the ALRA is not necessarily
22 one of those priorities. It comes up a lot in the context
23 of talking about other rights that workers have.

24 So, for example, very often when a community
25 outreach worker is doing a training around workplace

1 violence, or around sexual harassment or discrimination, or
2 workplace health and safety, you know, the -- the
3 recommendation might be made or the information might be
4 shared with the worker that you will be much more protected
5 under not just anti-discrimination law, but under the ALRA
6 if instead of complaining just on your own you complain as
7 part of a group or on behalf of a group. You bring other
8 people to the foreman to speak together about the problems
9 that you're observing in the workplace.

10 So it certainly comes into play at times in our
11 outreach, but it's not one of the main focuses of our
12 outreach.

13 MS. SNELL: Are there legal restrictions on what
14 CRLA can do with respect to educating that comes to
15 (inaudible)?

16 MS. KEFFER: We do receive a large portion of our
17 funding from the Federal Legal Services Corporation. And
18 that comes with a set of regulations and restrictions
19 around the kind of advocacy we can engage in and the kind
20 of education of workers we can engage in. There are no
21 restrictions specifically on the content of our worker
22 education regarding the right to form a union, or the right
23 to -- to collective bargain, or the right to engage in
24 concerted activity.

25 But in terms of priorities, we have chosen not to

1 allocate our resources towards those, in part because some
2 of the other restrictions that we have to abide by involve
3 restrictions against organizing, restrictions against
4 engaging in any kind of labor or related activities very
5 specifically. And we would rather not tow that line as an
6 advocacy organization and get ourselves in hot water with
7 the regulators.

8 MS. SNELL: Have you filed or advised any worker
9 to file a charge with the ALRB?

10 MS. KEFFER: I have never filed a charge with the
11 ALRB, but I have had clients or applications for CRLA
12 services in the past who I have referred to the ALRB to
13 file charges.

14 MS. SNELL: And do you know what has become of
15 those charges?

16 MS. KEFFER: I don't, no.

17 MS. SNELL: In your experience are indigenous
18 farm workers afraid of the government or reluctant to -- to
19 contact the government?

20 MS. KEFFER: Yes. CRLA is not a government
21 agency. However, we are often confused with a government
22 agency when -- when doing community outreach or when
23 working with individual clients. And so we often suffer
24 from the mistrust or the misperception, the mistrust that
25 comes from that misperception, I should say.

1 My experience generally with indigenous farm
2 workers and working with indigenous communities in Mexico
3 is that historically indigenous communities have been
4 exploited by government, both in Mexico and in the United
5 States.

6 As Dr. Mines mentioned, there has been a lot of
7 dishonesty. There's been a lot of negative outcomes that
8 have resulted from indigenous communities and indigenous
9 peoples' interactions with their governments in Mexico and,
10 you know, with authorities and government agencies here in
11 the United States. Just from the basic of, well, I don't
12 understand the language that you're speaking and you don't
13 understand the language that I'm speaking, so why is there
14 going to be a real baseline level of trust, all the way up
15 to, you know, witnessing abuses and real exploitation by
16 government agencies.

17 So that's definitely contributed to a lot of
18 caution on the part of indigenous community members that
19 I've been in contact with, you know, proceeding very slowly
20 and very cautiously, and with a pretty high degree of
21 mistrust when it comes to interacting with anybody who is
22 even perceived as being a government agency or official.

23 MS. SNELL: We were talking about some of the
24 restrictions that you faced as a result of your planning
25 situation. Are there restrictions with regard to

1 representing undocumented people?

2 MS. KEFFER: Yes, there are. We are only
3 permitted to represent people with certain categories of
4 legal status. So we -- we can represent U.S. Citizens. We
5 can represent LPRs, Lawful Permanent Residents. And we can
6 also represent certain individuals who are eligible for
7 certain kinds of visa status like, UT, Wawanesa. And that
8 does not prevent us, however, from providing broad legal
9 community outreach and education regardless of their
10 status. We can also provide referrals to other agencies.
11 So it's not that someone who is undocumented is not allowed
12 to walk through our office doors.

13 MS. SNELL: Do you believe there is a need for
14 farm worker education regarding rights protected by the
15 ALRA?

16 MS. KEFFER: I do, absolutely.

17 MS. SNELL: Why?

18 MS. KEFFER: I believe that there is a need for
19 more farm worker education about their rights, period,
20 under any law. I believe that there are far more farm
21 workers with far less knowledge of their rights than ten
22 CRLAs could ever cover the need for.

23 I also believe, just from countless encounters
24 with clients and community members, and certainly
25 supervising folks like our indigenous community worker

1 staff, that time and again people come into our office with
2 legal issues that they have no even identified as legal
3 issues, that, you know, they will be describing one problem
4 that they've suffered in the workplace, and in the course
5 of interviewing them about that problem three or four
6 additional related or unrelated legal violations will come
7 up. And often times those violations may have to do with
8 rights protected under the ALRA. And that's why often
9 times I have referred clients to the -- the ALRB because,
10 you know, therein lies the expertise in those kinds of
11 issues and the -- and the possibility for enforcing those
12 rights.

13 So I absolutely think that there is a need for
14 more worker education.

15 MS. SNELL: Now, in addition to your -- well, as
16 part of your work with the Indigenous Program, did you
17 testify in 2012 before the Judicial Council of California's
18 Joint Working Group for California's Language Access Plan
19 regarding the language needs of California's indigenous
20 farm workers population?

21 MS. KEFFER: I did. It's a mouthful of a Joint
22 Working Group, but I did, yes.

23 MS. SNELL: And was the Chief Justice of
24 California (inaudible)?

25 MS. KEFFER: She -- yes, she was. It's actually

1 no longer operating. It's successor is now, I believe, the
2 Implementation Task Force for California's Language Access
3 Plan.

4 MS. SNELL: All right. And behind Tab 7 of the
5 Board's binders do we have a copy of the testimony you
6 offered to that (inaudible)?

7 MS. KEFFER: Yes. It's there, and also available
8 on the Judicial Council website.

9 MS. SNELL: What were your recommendations for
10 (inaudible) Language Access Plan?

11 MS. KEFFER: So my first recommendation was that
12 the Judicial Council and that individual courts should look
13 at data beyond the U.S. Census in determining language
14 needs of the populations in their service area.

15 One thing that didn't really come up in -- in Dr.
16 Mines' discussion, rather thorough discussion of farm
17 worker demographics in California and nationwide is the
18 fact that there has to be this other independent source of
19 data and information that is NAWS and that are these other
20 independent surveys and studies that he's conducted over
21 the years because the census which is supposed to provide
22 us with this data is just inadequate in that sense. It's
23 inadequate at capturing information about farm workers
24 because they are such a unique and transitory population
25 that's really hard to reach. And it's especially

1 inadequate when it comes to capturing information about
2 indigenous farm workers who are the most -- the most sort
3 of vulnerable and marginalized and transitory of the farm
4 worker population.

5 In addition, the census is not very good at
6 capturing smaller language groups. So the census doesn't
7 provide data on individual indigenous languages. The way
8 that indigenous languages of Mexico are captured in U.S. --
9 U.S. Census and American Community Survey data is in these
10 really large language families, which are basically the
11 equivalent of like all Indo-European languages being under
12 one umbrella. So Mixteco and Triqui and Nawa and all of
13 these languages which are completely unrelated are lumped
14 together, so you get no real data about numbers of actual
15 language speakers.

16 So that was the first recommendation, to look at
17 sources like the Indigenous Farm Workers Study, like NAWS,
18 like other sources of data from community organizations to
19 figure out what the language needs of the population are.

20 The second was to provide training to court staff
21 and to judges on cultural sensitivity, on understanding the
22 cultural backgrounds and the socioeconomic backgrounds of
23 farm workers and of indigenous language speakers. And also
24 training on how to identify when someone is an indigenous-
25 language speaker and what they language they speak, how to

1 identify the right interpreter. And then finally, to
2 provide more resources for recruitment and training of
3 indigenous-language interpreters for the courts.

4 MS. SNELL: The Agricultural Labor Relations
5 Board is considering adopting a regulation that would allow
6 ALRB staff access to job sites to educate farm workers
7 about their rights under the ALRA. Do you think this
8 would -- do you support such a regulation?

9 MS. KEFFER: I do support such a regulation, in
10 particular if it comes in conjunction with efforts on
11 behalf of the ALRB to employ additional indigenous
12 language speakers to conduct this in-person outreach, to
13 work with interpreters when actual ALRB bilingual or
14 trilingual staff are not available. Because I think that
15 the effectiveness of in-person work site worker education
16 is only going to be ensured if the people who are receiving
17 the information speak and understand the same language as
18 the people who are giving the information.

19 MS. SNELL: Thank you.

20 I don't have any further questions (inaudible).

21 CHAIRMAN GOULD: Member Shiroma?

22 BOARD MEMBER SHIROMA: Sure. Thank you.

23 Thank you very -- that was very insightful.

24 Thank you.

25 Just a question about when farm workers are in

1 this country for a period of time you have multi-
2 generational families. And are some of the children who
3 are elementary school, high school, so forth, an integral
4 part of the communication scheme in terms of helping
5 parents understand the --

6 MS. KEFFER: They are.

7 BOARD MEMBER SHIROMA: -- complexities of living
8 here in California?

9 MS. KEFFER: Yes, children can become an integral
10 part of the communication scheme, which is really
11 problematic. Because relying on children as interpreters
12 and cultural brokers, you know, while often it's the only
13 solution available it's not necessarily an effective
14 solution. You know, think about the kid who interprets for
15 her parents at her own parent-teacher conference, you know?
16 And think about kids trying to convey really complicated or
17 sophisticated information, or even not necessarily
18 complicated or sophisticated but just information about
19 things that they're not familiar with like workplace
20 policies and procedures and practices and things like that.

21 So it's -- it's problematic that they play such a
22 critical role. And it's also very often against the law
23 because many of these institutions and agencies, like the
24 courts and schools and doctors' offices and hospitals and
25 legal service providers like us, if they're receiving

1 government funding they need to be providing language
2 services. They need to be providing access in the language
3 of -- of the people that they're serving.

4 BOARD MEMBER SHIROMA: I definitely hear you on
5 that. Thank you.

6 BOARD MEMBER RIVERA-HERNANDEZ: Thank you so much
7 for being here. Do you also work with non-indigenous farm
8 workers?

9 MS. KEFFER: Yes. The vast majority of my
10 clients are indigenous farm workers. But I have worked at
11 CRLA in other capacities in the past, and some of my
12 clients now are not indigenous.

13 BOARD MEMBER RIVERA-HERNANDEZ: I was wondering
14 in regards to the questions about the technology, computers
15 and smart phones. Is there a vast difference there or is
16 it about the same? I know I'm asking you to be very
17 general.

18 MS. KEFFER: Yeah. That's -- that's hard to say.
19 I think if there is a group of farm workers who is more
20 likely to have smart phones, it's certainly going to be a
21 non-indigenous group of farm workers. But I would have a
22 really hard time generalizing and saying that by and large
23 non-indigenous farm workers do have access, whereas
24 indigenous don't. I don't feel comfortable making --
25 making a judgment there.

1 BOARD MEMBER RIVERA-HERNANDEZ: And are there any
2 other comments that you'd like to make in regards to the
3 indigenous community or the proposed regulation that you
4 haven't already provided?

5 MS. KEFFER: I don't think so. I appreciate the
6 opportunity to talk with you, and I think the questions
7 were thorough.

8 BOARD MEMBER RIVERA-HERNANDEZ: Thank you.

9 CHAIRMAN GOULD: I don't have any questions.
10 Thank you very much for you testimony and your time. Mr.
11 Blanco does, though, I think.

12 MR. BLANCO: I'm assuming that if indigenous farm
13 workers had social media access, computers, smart phones,
14 and for texting, that you would use those methods to
15 connect with them?

16 MS. KEFFER: Yes. And the interesting thing is
17 that the way that we are beginning to use computers and
18 social media and smart phone and these kind of things is
19 with non-farm worker indigenous youth, so basically
20 children of indigenous farm workers who are trying to
21 engage with around other issues, education rights, things
22 like that.

23 We have seen social media be effective. We have
24 a community outreach worker here in Fresno who is
25 organizing an Indigenous Youth Conference and uses Facebook

1 and uses, you know, crowd-funding sites to raise money for
2 that and to reach out to other indigenous youth. But we
3 have not seen that among their parents' generation and
4 don't think it would be effective in reaching their
5 parents' generation.

6 MR. BLANCO: And what's -- has CRLA done any
7 studies or do you have any information about -- regarding
8 the average income of indigenous farm workers?

9 MS. KEFFER: I actually think that some of that
10 information, particularly as compared to the income of non-
11 indigenous or Mestizo farm workers, is available in -- in
12 Dr. Mines' Indigenous Farm Workers Study. I don't know it
13 off the top of my head, but I do know that there is a
14 tremendous disparity in income, and also income mobility.

15 One of the really notable things in that study
16 showed that the income of indigenous farm workers increases
17 over time at a rate far, far lower, far, far slower than
18 their non-indigenous counterparts. So basically their --
19 their working conditions and their income and their lives
20 improve a lot less than your average farm worker the longer
21 they're here in the United States.

22 MR. BLANCO: What -- what about -- why I was
23 asking about income here, I have a smart phone and that
24 smart phone costs a lot of money. And with that access
25 plan I have to have -- in order to use that smart phone

1 with respect to data, YouTube, whatever, that also costs a
2 lot of money.

3 MS. KEFFER: Yes.

4 MR. BLANCO: And I'm wondering if that is within
5 the wherewithal of indigenous farm workers or native farm
6 workers, as a matter of fact, to be able to afford that
7 type of phone and plan?

8 MS. KEFFER: I would suspect that a very
9 important reason why those of us who work with indigenous
10 farm workers and farm workers in general don't tend to see
11 many farm workers with smart phones is -- is the cost. I
12 think it's absolutely out of reach for many, many farm
13 workers.

14 MR. BLANCO: And just a concept of the fear of
15 government, do you have any suggestions for us as to how to
16 get around that? I know you've mentioned having folks who
17 were speaking the same language to be able to communicate
18 that; correct? Do you have any other ideas to how we --
19 how we deal with that?

20 MS. KEFFER: Well, I think the suggestion of
21 using networks is an interesting one. I think that, you
22 know, understanding in a particular crop or in a particular
23 area, not only that these farm workers speak Mixteco, but
24 that this group of farm workers who works in strawberries
25 in Santa Maria, there's a huge number of them who are from

1 San Juan Mixotec (phonetic). So we're not just going to
2 find someone who speaks Mixteco from that region, but maybe
3 even from that town or a neighboring town who is connected
4 to their social and community networks in some way.

5 The same thing, you know, in Greenfield the --
6 the workers in the peas in Greenfield are largely Triqui
7 speakers. And so you want to make sure you're having --
8 you have somebody who is from similar networks. And I
9 think making those kind of intelligent decisions about who
10 you are using to conduct outreach and to make the
11 connections can be really helpful.

12 MR. BLANCO: And finally, so you mentioned that
13 in talking to the workers about the problems that they may
14 have that they've come to you about, about them complaining
15 as a group, which under our act is called protected
16 concerted activity. And you would think that most workers
17 don't understand that concept? I mean, that's not
18 something that automatically suggests to them that if they
19 do so they receive protection?

20 MS. KEFFER: Yeah. That -- that is not something
21 that I find is intuitively understood by the farm workers
22 that I have come into contact with, the people who I
23 interview because of problems in the workplace, or the
24 people who I have worked with in just conducting general
25 community education and outreach. There isn't a presumed

1 understanding that you're more protected if you complain in
2 a group.

3 CHAIRMAN GOULD: What the significance of being
4 protected is?

5 MS. KEFFER: No. I mean, retaliation is a really
6 interesting concept that we have to unpack for workers a
7 lot.

8 CHAIRMAN GOULD: All workers.

9 MS. KEFFER: Yeah. Absolutely. So with the --
10 the farm workers community, whether it's indigenous or non-
11 indigenous, when we are doing a presentation or a worker
12 outreach session about discrimination of heat stress or
13 workplace health and safety, an important component is
14 always explaining, you know, when you exercise your rights
15 you are protected from employer retaliation. You know, the
16 law says that your employer can not take adverse actions
17 against you if you have spoken out about a danger in the
18 workplace, etcetera.

19 But that concept of retaliation is one that has
20 to be explained in some detail, in my experience. It's not
21 something that's automatically, you know, understood that,
22 well, they're not allowed to discriminate against me. But
23 if I complain about discrimination I didn't know that that,
24 you know, taking actions against me would be illegal.

25 And so I think that maps really well onto what

1 the protections of the ALRA are and the fact that workers
2 don't intuitively understand that if they complain in a
3 group they are protected against retaliation for that kind
4 of complaint, etcetera.

5 CHAIRMAN GOULD: Finally, I note that you studied
6 at Stanford Law School during the years that I've taught
7 there. But I think until today we have not met.

8 MS. KEFFER: We have not had the pleasure until
9 today.

10 CHAIRMAN GOULD: I bet you if I had met Ms. Garza
11 I'd remember you. Thank you very much for your -- for your
12 testimony.

13 MS. KEFFER: Thank you.

14 CHAIRMAN GOULD: It was a pleasure to meet you.

15 MS. SNELL: Thank you very much.

16 We have one more witness scheduled for this
17 session. I know we're -- we've gone a little longer.
18 Shall we go ahead and --

19 CHAIRMAN GOULD: Yes. Yes.

20 MS. SNELL: Okay. So the next witness I'd like
21 to call is Fausto Santos.

22 And while Mr. Santos is coming forward, I just
23 wanted to draw the Board's attention to materials from an
24 expert witness who is unavailable to be here. His
25 curriculum -- this is Dr. Seth Holmes. He's a Ph.D. and an

1 M.D. His CV appears behind Tab 4. And a statement that
2 he's written pertaining to the issues we're addressing here
3 today is behind Tab 5.

4 I spoke with Dr. Holmes and thought that he had a
5 lot to offer. And then he went off to Berlin for a year to
6 work on his thesis or his -- his next article. And he is
7 now in the outback of Spain. But if the Board would like
8 to hear from him by Skype, that might be possible at a
9 future hearing.

10 CHAIRMAN GOULD: Thank you.

11 MS. SNELL: Good afternoon, Mr. Santos.

12 MR. SANTOS: Good afternoon, and thank you for h
13 having me hear. (Speaking Mixteco.)

14 MS. SNELL: Mr. Santos, I understand that English
15 is not your first language. Are you comfortable testifying
16 today in English?

17 MR. SANTOS: Yes.

18 MS. SNELL: Okay. Thank you. Where are you
19 from?

20 MR. SANTOS: I am from San Juan Mixotec from the
21 state of Oaxaca in Mexico.

22 MS. SNELL: And what languages do you speak?

23 MR. SANTOS: I speak Mixteco Acto (phonetic),
24 Mixteco Baco (phonetic), Spanish. And now I practicing my
25 English.

1 MS. SNELL: And doing very well.

2 MR. SANTOS: Thank you.

3 MS. SNELL: Are you currently employed?

4 MR. SANTOS: Yes.

5 MS. SNELL: Where do you work?

6 MR. SANTOS: I'm working with California Rural
7 Legal Assistance with the Indigenous Program.

8 MS. SNELL: Are you a community outreach worker?

9 MR. SANTOS: Yes.

10 MS. SNELL: And do you conduct community outreach
11 to the Mixteco community?

12 MR. SANTOS: Yes, that is my primary job since I
13 started working with CRLA in 1999.

14 MS. SNELL: Okay. Okay. Good. And at one time
15 were you a farm worker?

16 MR. SANTOS: Well, since I was a child. I
17 started working in the field when I was 13 years old, and I
18 continued working until I was hired by the CRLA.

19 MS. SNELL: And have you continued with your
20 education through your adult life?

21 MR. SANTOS: Yes. I started going to school when
22 I started working with CRLA when I was 38 years old.

23 MS. SNELL: What is the highest level you have
24 completed at this time?

25 MR. SANTOS: I finished college with an bachelors

1 (inaudible) art in Bakersfield College.

2 MS. SNELL: And what -- how old were you when you
3 first came to the U.S.?

4 MR. SANTOS: I was 18 years old.

5 MS. SNELL: Okay. Now, can you describe what you
6 do as an outreach worker?

7 MR. SANTOS: What I do with CRLA is conducting
8 training for the indigenous workers. I go to the places
9 where they are living and then I talk to the leader of that
10 community or I talk to the person in charge over there and
11 telling them about the services that we provide at CRLA,
12 what services we have, what problems we have. Then ask
13 them if they would like to hear us talking about those
14 programs. And eventually if that person says that's fine,
15 and then we go to provide training to -- to them.

16 MS. SNELL: Okay. And have you provided training
17 to them on a number of different topics?

18 MR. SANTOS: Yes. Usually we talk about Labor
19 Law, pesticides, access language, education, housing. It
20 depends what people wants to hear, what is most important
21 to them at that time.

22 MS. SNELL: You mentioned Labor Law. What type
23 of training do you provide in that regard?

24 MR. SANTOS: About wages primarily, about minimum
25 wage, their work time, overtime, paystubs, and heat stress,

1 everything about that related to the Labor Law.

2 MS. SNELL: Do you talk about the right to engage
3 in collective bargaining?

4 MR. SANTOS: Yes, we do that. We tell them that
5 they have the right to organize and have a union or go to
6 talk to the employer by group. We usually do that.

7 MS. SNELL: Okay. And do you talk to them about
8 their rights under the Agricultural Labor Relations Act?

9 MR. SANTOS: To be honest, I didn't know much
10 about ALRB. So I usually do not mention that to them.

11 MS. SNELL: What are the primary farm crops your
12 clients work for?

13 MR. SANTOS: They're working -- in the area where
14 I live in Bakersfield they work in the grapes primarily.
15 Then after the grapes they go to harvest oranges,
16 nectarines, lemons, vegetables.

17 MS. SNELL: Do you work in the Bakersfield area?

18 MR. SANTOS: Yes, I do.

19 MS. SNELL: What approaches do you use to conduct
20 outreach?

21 MR. SANTOS: Well, I go to talk to the person or
22 to the leader of that community about the services that we
23 provide and how important these issues -- these issues are
24 meant to be for them, how this is going to benefit them if
25 they know the law, if they know what's going on. And if

1 the person sees or realize that it is important to them,
2 then they allow access to go and give the training.

3 MS. SNELL: Over the past ten years how many
4 indigenous farm workers have you had contact with, would
5 you estimate?

6 MR. SANTOS: I don't know. I'm not sure. But
7 (inaudible).

8 MS. SNELL: And I forgot to mention this, but did
9 you participate in the Indigenous Farm Workers Study that
10 Dr. Mines mentioned earlier?

11 MR. SANTOS: Yes. I was one of the indigenous
12 persons who traveled with him to Mexico. And I was the
13 main person who was with him and introduced him to the
14 (inaudible) or to the (inaudible) community. And what I
15 did was talk to the leaders about the survey and how
16 important it's going to be for them and for (inaudible) the
17 United States. And after I convince them about (inaudible)
18 they allowed us to go and talk to the people in the
19 community. And sometimes they are the one who carry the
20 microphone to the people that -- to the community to come
21 to the city hall and hear Rick Mines about what he's going
22 to do. And that was very easy for us and for him because
23 eventually when we convinced the -- the leader, he himself
24 told the people to come for a meeting.

25 MS. SNELL: Okay. And is this what you did in

1 Mexico?

2 MR. SANTOS: Yes. And here, as well.

3 MS. SNELL: Okay. And when you introduced people
4 for the study here, what geographic area were you working?

5 MR. SANTOS: I was working in the Taft area and
6 south of Lamont.

7 MS. SNELL: How long did the interviews you did
8 for the Indigenous Farm Workers Study take?

9 MR. SANTOS: By hours or by the days? You mean
10 by the hours or by days?

11 MS. SNELL: Yeah.

12 MR. SANTOS: That depends. Some -- some
13 people -- some person needs more time than others.
14 Sometimes it takes 15 minutes, 30 minutes, 45 minutes.
15 That depends because sometimes they want to hear about what
16 happened in Mexico, who we met in Mexico, who are the
17 families. Sometimes they want to see pictures. So that
18 depends with each person.

19 MS. SNELL: Okay. Now during the survey did you
20 ask such questions that were provided to you by Dr. Mines?

21 MR. SANTOS: Yes. Dr. Mines gave me a list of
22 questions to ask them. And then I were marking, you know,
23 each questions, yes or no.

24 MS. SNELL: Okay. (Inaudible.) Now did you
25 sometimes approach people at the job sites in order to do

1 these interviews?

2 MR. SANTOS: No, I don't. The only times that I
3 go inside the field and talk to the employers is when I see
4 the -- something wrong, if they don't have a shade, if they
5 don't have water or a toilet or something is wrong, then I
6 go to talk to the employer directly, but not to the
7 workers.

8 MS. SNELL: Why?

9 MR. SANTOS: Because when I was working in the
10 field when I was a child, usually if we talked to the
11 foreman and workers the employer usually ask us what they
12 ask you, what did you say? And sometimes we had to lie to
13 them that it was like nothing to care about. Because if we
14 say the truth about the work condition, about the shade or
15 the water, usually the employers take a retaliation against
16 us or they put us on the black list they call, they put our
17 names on the list. And little by little they laid us off
18 or they talk to the employers to not let us to work because
19 we are -- we are very politic, that is how they call the
20 workers when they talk about themselves, that this person
21 is very politic and you shouldn't allow him to work with
22 you because you're going to get in trouble.

23 MS. SNELL: With regard to the outreach work that
24 you do, do you think you could do effective outreach work
25 by using the U.S. Mail?

1 MR. SANTOS: I don't think so because farm
2 workers are usually, I believe, from one place or another
3 place. And they usually use say friends, (inaudible) or
4 the compadres. And when they (inaudible) go back and ask
5 for that.

6 MS. SNELL: And in your experience, how many of
7 the clients that you've dealt with have access to a
8 computer?

9 MR. SANTOS: Not one of them.

10 MS. SNELL: Not one of them?

11 MR. SANTOS: Not one of them. Because, first of
12 all, they speak Mixteco or other indigenous language and
13 they don't know how to use the computer. And as so usually
14 they have very low education. They don't know how to read
15 in Spanish or English and they are very afraid to use the
16 computers.

17 MS. SNELL: What about the radio, do you think
18 you could do your job effectively by doing radio
19 broadcasts?

20 MR. SANTOS: Well, I think that we can work with
21 the radio if they provide us time where we can give
22 information in the Mixteco language or in another language.
23 But if they don't allow us, that's going to be very
24 difficult.

25 MS. SNELL: And how -- what is your

1 understanding, do most indigenous people listen to the
2 radio -- radio programs?

3 MR. SANTOS: Yes. For example, Radio de Lingua
4 on Sundays, they give us four hours. And that's -- that's
5 four hours many, many people, probably about 1,000 of them
6 listen to Radio de Lingua because that's the only time that
7 people can feel free to speak in their own language and to
8 hear their traditional music and get information and
9 everything.

10 MS. SNELL: Do you feel it's important to
11 compliment the radio broadcast with your person -- persons
12 outreach?

13 MR. SANTOS: Yes.

14 MS. SNELL: Why is that?

15 MR. SANTOS: Because of the language. If the
16 people feel comfortable when somebody's talking their
17 language, they are going to listen to them more.

18 MS. SNELL: And when you're talking about legal
19 rights is it important for people to be able to ask you
20 questions?

21 MR. SANTOS: Yes.

22 MS. SNELL: In the course of your work have you
23 observed union activity?

24 MR. SANTOS: No.

25 MS. SNELL: Have you observed any organizing of

1 any --

2 MR. SANTOS: No.

3 MS. SNELL: Based -- well, strike that.

4 Now, you've heard today that the Agricultural
5 Labor Relations Board is considering adopting a regulation
6 that would allow ALRB staff access to work sites to educate
7 farm workers about their rights under the ALRA. Would you
8 support such a regulation?

9 MR. SANTOS: Of course, because if some workers
10 from the Board goes to that workplace and provide training
11 and tell their workers about their right, the workers are
12 going to feel important. They are going to feel that they
13 have the same right as people who speak Spanish. Because
14 what happens in the workplace in the field is that all the
15 information that goes to them is in Spanish or English.
16 And the people who does not speak Spanish or English and
17 they speak only Mixteco or their indigenous language, they
18 feel alone, they feel that they are aside from the others
19 because they're not understanding what's going on. They
20 are not understanding, also, what information is given to
21 them in general. Probably they're thinking that the
22 information is only for people who understand Spanish or
23 English.

24 But if someone goes and talks to them in general
25 and give them information in their own language, they're

1 going to feel part of the group and they're going to feel
2 that finally the government are protecting them.

3 MS. SNELL: I don't have any further questions.

4 CHAIRMAN GOULD: Do you have any questions up
5 here?

6 BOARD MEMBER SHIROMA: Well, let's see. I want
7 to say thank you, Mr. Santos. Thank you very much for your
8 work and your insights and the efforts that you make on
9 behalf of the indigenous community.

10 MR. SANTOS: You're welcome.

11 BOARD MEMBER SHIROMA: Thank you. I just wanted
12 to share that in my own family my stepson's grandfather
13 came from Mexico. He was a full-blooded indigenous Indian,
14 in his case, the story goes Ayaki (phonetic). And he was a
15 farm worker. And so my stepson's family did the migratory
16 trail of farm workers from Texas to California. And it's a
17 very proud -- a very proud heritage, so I do thank you.

18 MR. SANTOS: Thank you.

19 BOARD MEMBER RIVERA-HERNANDEZ: No. Just thank
20 you for your testimony.

21 MR. BLANCO: I do have a couple of questions.
22 With respect to farm labor contractors, are there any who
23 are Mixteco?

24 MR. SANTOS: Yes. There are some farm labor
25 contractors that are Mixteco. But they said they do not

1 provide information in the Mixteco language because the
2 supervisors, the foremen, they are Spanish speakers, so
3 they don't know Mixteco.

4 MR. BLANCO: That's it.

5 CHAIRMAN GOULD: Okay. Thank you very much, sir.
6 We appreciate it.

7 And we're going to now take a break until -- we
8 have -- we have said 4:30, but I think that given the fact
9 that we're running a little bit behind we'll reconvene at
10 4:45. Thank you.

11 (Off the record at 3:26 p.m.)

12 (On the record at 4:52 p.m.)

13 CHAIRMAN GOULD: Let's reconvene. If we can
14 quiet down, I'm told that a problem earlier on is that not
15 all the interpreters could hear us as clearly as they
16 wanted to or should be. So, we're going to try to speak
17 more slowly, and carefully and loudly.

18 The first witness we're going to turn to, on our
19 list, is Harold McClarty of HMC Farms.

20 Thank you very much, Mr. McClarty, for taking
21 your valuable time to come here this morning.

22 MR. MC CLARTY: Thank you.

23 CHAIRMAN GOULD: And you may say anything on the
24 concept of worker education and access that you would like
25 to say. I know that you were --

1 MR. MC CLARTY: I --

2 CHAIRMAN GOULD: I know you very well, so I know
3 you are not a shrinking violet.

4 MR. MC CLARTY: No, I'm not a shrinking violet.
5 Just a little bit of background. I'm a farmer in Fresno
6 and Tulare Counties, and I farm stone fruit and grapes. We
7 have a lot of workers.

8 You know, I sat through some of the early morning
9 session or the early afternoon session, and all I have to
10 say was, you know, we -- we would not be successful in our
11 operations without the workers. They are as valuable to us
12 as anything we do. And I have to say that mistreatment or
13 anything like that is just beyond our comprehension. We do
14 whatever we can to ensure that we have a good workforce
15 because we're a labor-intensive company. You know, the
16 stone fruit is picked five or six times and it just takes a
17 lot of work.

18 A couple of the things that I would -- just my
19 observations, we do a lot of training. You know, we tell
20 them of safety, about whether it be the shade, and all of
21 those kinds of things. And I think, you know, at that
22 point in time let's educate everybody as to all of their
23 rights.

24 I mean, let's make sure it's done. I mean, at
25 that point in time we post everything, we do everything.

1 There's an option to doing it at that point in time, at
2 least that's what I'm looking at from my observation and my
3 operations.

4 And I only speak for my operation because I can't
5 speak for anybody else. But we believe, without question,
6 that education of the worker and making sure that they know
7 their rights, and making sure that their grievances are
8 heard.

9 First, before they go to you guys, we'd like to
10 take care of any problems we might have. And so, you know,
11 we know that there is -- you can't have success with an
12 unhappy workforce. I don't know what more to say than
13 that. I just kind of apologize for not having anything
14 prepared or anything. But if there's any questions about
15 our operation, please ask.

16 CHAIRMAN GOULD: Well, I guess on thing, and my
17 colleagues may have some questions as well, one thing that
18 occurs to me is what your view of -- you have considerable
19 experience. You are a very successful man. You're a very
20 practical man. And you have -- I wonder what your view is
21 of the ideas that have been discussed here this morning.

22 Now, what about the idea of worker education via
23 the ALRB, or some other entity? What about the idea of
24 access to company property to express that point of view?
25 Whether that information -- what about the idea of, for

1 instance, we were talking this morning about videos, and
2 what about making those part of a training program? What
3 about the --

4 MR. MC CLARTY: Yeah, those --

5 CHAIRMAN GOULD: What about the above or some of
6 the above?

7 MR. MC CLARTY: Not all of the --

8 CHAIRMAN GOULD: Or other ideas you might have.

9 MR. MC CLARTY: I think a video that explains it,
10 you know, visually, to some extent. We don't -- Spanish is
11 definitely the predominant language and all of our people
12 speak Spanish. And, you know, we communicate in Spanish.

13 Interestingly, like my son-in-law, you know, when
14 he was learning Spanish it was, okay, you speak to me in
15 English, I speak to you in Spanish, and we'll both -- we'll
16 both become better educated.

17 And that's -- the only reason I bring it up is
18 it's kind of the -- it's kind of the relationship we try to
19 have with workers.

20 The problem with the ALRB, and I don't mean to
21 say this in any way disrespectful or whatever, we need to
22 get past the bad blood. I mean, perceived or not, there's
23 -- and not necessarily with the Board, but with what has
24 happened in the past with some of the people that I deal
25 with, and I live with. It's just it has been perceived, or

1 reality, or whatever it is. Reality becomes -- perception
2 becomes reality after a while.

3 But back to the question of education, yes,
4 anything that we can do to educate the workers. They need
5 to know their rights.

6 I think that -- I think Carmen said it. You
7 know, 25, 35, or 40 years ago, I mean there was a -- there
8 was a big disparity between education, and rights, and
9 everything else.

10 And education today, it's you can -- when you go
11 out in the field, you know that people, a great majority of
12 the people know their rights. I think they absolutely need
13 to have a vehicle by which they understand that they have
14 their -- they have rights, you know, regardless of whether
15 they're here legally or not. I mean, they have rights and
16 they cannot be mistreated and that's important.

17 If there's a way that we can incorporate that
18 message, can I say neutrally, if I'm being taken the
19 correct way, I think it's one of -- I don't know of anybody
20 that doesn't want to educate their workers as to their
21 rights. I mean, you just can't do it. I mean, you don't
22 want to do it. Does that make sense?

23 CHAIRMAN GOULD: Yeah, I think Mr. Barsamian, you
24 know, at our August 3 meeting, and he'll be speaking here
25 shortly, said that, you know, it dependent very much on who

1 was doing the work for the ALRB.

2 Not speaking of getting past the past, that we
3 not mix this up with prosecutorial investigations and the
4 like, that we not mix this up with, you know, legal
5 problems that may be coming before the Board, but that we
6 have a worker education group that is separate and apart
7 from, you know, the investigations and the controversies
8 that have existed in the past. He can -- he can speak to
9 this when he speaks.

10 But this is the gist of some of the things that I
11 took from his remarks on August 3. And I wondered what you
12 thought about the --

13 MR. MC CLARTY: You can come on my ranch any time
14 you want, okay. I have found you to be the most fair
15 person I have ever been around. And I say that with
16 sincerity, I really do.

17 And what you're trying to do, and the Board I
18 hope is following suit, is to -- the workers are what we're
19 all about, okay. I would like to see both fringes go away
20 because they've got -- there's an economic incentive on
21 both ends. Let's focus on the workers. And whatever's
22 best for the workers, okay, I give up on there, okay.

23 Does that make sense? I mean, this fighting that
24 we have got going on between one end and the other end is
25 not -- I don't think it's healthy for the worker, either.

1 That's just me. I'm not going to step on myself, either.

2 CHAIRMAN GOULD: No, you make a lot of sense to
3 me.

4 Do you have any questions?

5 BOARD MEMBER SHIROMA: Just thank you. Thank
6 you, Harold, for coming this evening.

7 BOARD MEMBER RIVERA-HERNANDEZ: Thank you for
8 coming. I want to know who currently does the training
9 that you're required to do? Is that done in-house or do
10 you have a contract with somebody that comes out and does
11 that?

12 MR. MC CLARTY: Yes and yes. We do it in-house,
13 but we also have hired people to come out and do it.
14 Because, you know, the laws, they change all of the time.
15 So, we have to make sure that we're current, that we're
16 being -- that what they're being told is correct. We have
17 videos, we have, you know, the TV, we do the whole thing.

18 Interesting little story. I had Washington D.C.
19 people come out and somebody said, do you let them pick?
20 And I said, no, no, I don't want to do that. But they did,
21 anyhow, they came out. And it took them half an hour to
22 figure out how to do a ladder. I mean, it was really
23 dangerous. They were there. They scared me.

24 But we can't let anybody do anything. And so we
25 have -- we have what I call professionals, they're hired to

1 do this. You know, they speak the languages. Some of the
2 languages, not all of them. And then we will do a -- we
3 can, and we follow along and do it ourselves because we can
4 look at our crew that we've known for years and if somebody
5 looks a little confused, we're there to explain.

6 Because we send all of our people, also, to be
7 educated. I mean it's that -- it's you need to do that,
8 yes.

9 BOARD MEMBER RIVERA-HERNANDEZ: Thank you.

10 CHAIRMAN GOULD: Well, I don't have anything,
11 except sort of retreading territory we've already been on.
12 You know, I'm just interested in your ideas of actual
13 access by ALRB staff. You mentioned that other government
14 entities have access to private property and --

15 MR. MC CLARTY: Well, we -- let's say, take OSHA.
16 You have a situation where OSHA will come out and they'll
17 look at everything, and they'll allow you the opportunity
18 to correct something without -- you know,
19 you -- I don't know. You don't have any idea how many
20 times we've tried to cooperate with the government and it
21 really bites us.

22 And I'm talking about my friends down in
23 Bakersfield, here or there, where they'll come over and
24 they'll try to correct something and all of the sudden,
25 whether it be the Air Regulation Board that you're not

1 supposed to have -- okay, well, don't come out and find
2 these cups that are waiting here because they've been
3 waiting here too long, or whatever. And then I've seen,
4 you know, they're -- I hope you understand that piece of
5 it.

6 I hope, I hope when this is all said and done,
7 and we're through with this, that we can build some mutual
8 trust between us so that no one says I don't want the ALRB
9 on my -- you know, or on my ranch for whatever reason
10 because they've got an ulterior motive. That's what I want
11 to get out of this.

12 If it's there for workers and for workers'
13 rights, and stuff like that, you know, I think it's part of
14 what we do.

15 And I hope I've answered it. I'm trying not to
16 be political, I'm not a political --

17 CHAIRMAN GOULD: I know that. And well, gosh, I
18 very much appreciate the time. I know you're a very busy
19 man and I am a great admirer of yours, and I wish I was
20 half as smart as you are. And I really appreciate the fact
21 that you would take the time and trouble to come out and
22 talk to us about this. And I'm most grateful.

23 MR. MC CLARTY: Thank you. Thank you, guys, very
24 much. Thank you.

25 CHAIRMAN GOULD: Next we'll turn to Ron

1 Barsamian, Esquire, Counselor.

2 MR. BARSAMIAN: And a whole host of other things.

3 CHAIRMAN GOULD: Yes.

4 MR. BARSAMIAN: Thank you, Mr. Chairman, Members
5 of the Board. I'll be submitting written -- a written
6 statement later on.

7 And because of that, I don't want to spend a lot
8 of time talking about the legality of such a regulation or
9 its basis. I'd rather have that in a written form.

10 But suffice it to say there's going to be some
11 "Myrtle" (phonetic) stuff to come, from whichever side is
12 looking at this.

13 What I'd rather do is get down to the pragmatic
14 and practical situation that we're confronted with here.
15 And, hopefully, by some of the things I bring up you take
16 them as issues that have to be resolved. Things that may
17 not have been foreseen when the concept was come up with.

18 First of all, though, I read your written
19 statement that was issued earlier today and I just want to
20 add to your comments about Mr. Barbosa. And this may be,
21 you know, one of the last times we all get together here.
22 And, yes, he has been the heart and soul of this agency as
23 long as I've been doing it, certainly.

24 And I think all sides will tell you that when it
25 comes down to the administrative issues, he's very well

1 respected by all sides.

2 CHAIRMAN GOULD: And we're very lucky to have
3 him.

4 MR. BARSAMIAN: Very lucky. I'll bring up the
5 issue that we brought up in Sacramento, and I think it
6 caught some of the folks by surprise. And that's the
7 nonproductive time issue.

8 Whether or not this is a State Agency that's
9 coming in to talk with workers, work is going to be
10 stopped. And this is only going to arise when it's a piece
11 rate situation.

12 If we stop a crew to talk to anybody, ALRB even,
13 it doesn't matter which agency it is, that's going to be
14 nonproductive time. Labor Commissioner, Julie Su, has
15 interpreted the Bluebird decision, the Supreme Court
16 decision or the Supreme Court denial of an appeal to state
17 that any and all time spent at the workplace has to be
18 compensated.

19 And if they're being paid piece rate, any time
20 not used in that productive activity for the piece rate has
21 to be compensated.

22 Now, I know the intent may have been that growers
23 wouldn't have to pay for this. It would be neutral in
24 terms of cost.

25 Well, first and foremost, it's not going to be

1 neutral in terms of costs for the farmworkers. They're
2 going to have to stop working. If they're not picking, or
3 harvesting, or doing whatever else they're doing out there,
4 it's not going to be cost neutral to them. They're going
5 to lose some money. Certainly, lose time.

6 For the growers, under the current state of laws
7 that's being interpreted by Commissioner Julie Su, we're
8 going to have to pay for that. It doesn't matter what the
9 intent is, we have to pay for it as growers.

10 And so that, of course, brings up all the other
11 issues. How are you going to select which grower you're
12 going to go visit? How are you going to decide what time
13 of the day to go out there? If it's during the worktime,
14 for instance. And if it's not during worktime, if the
15 intent or one of the intentions is to do it during what
16 I'll term "access periods" that we see under organizational
17 access during lunchtime, before and after work, well, I
18 really wouldn't want to be the union who has an NA filed,
19 that all of the sudden has their time taken up by the ALRB
20 coming in and taking their access period.

21 I think, also, some of the union representatives
22 would tell you that the before work and after work is not
23 really an effective time. Workers are coming in on
24 carpools. They have training in the morning for what to do
25 during the day. They have all kinds of things going on.

1 So, there's not a lot of time available for any kind of
2 discussions apart from that in the morning. Lunchtime --

3 CHAIRMAN GOULD: So, I'm sorry, I didn't mean to
4 interrupt you. But I wish that -- you've offered a number
5 of ideas and you've raised a number of issues and I'm
6 interested in your ideas about some of the issues that
7 you're raising here.

8 MR. BARSAMIAN: Oh, I will.

9 CHAIRMAN GOULD: Okay. All right, you're not a
10 shrinking violet, either.

11 MR. BARSAMIAN: I'm just throwing out stuff right
12 now.

13 The access period during lunch, a half-hour's not
14 going to be effective for what I think you have in mind. A
15 half-hour is just to get the people together and they're,
16 of course, eating.

17 I can't believe the ALRB's going to step up and
18 say we'll pay for it. Budget problems aside, you're
19 talking about a lot of money if you're talking about the
20 entire industry.

21 And just to go through a few of the other issues,
22 there is the issue that you already brought up that I
23 raised in Sacramento about who would take the access. You
24 left out one of my suggestions there and that was to have
25 Ed go out and do it.

1 But, yes, I spend a lot of time with this agency
2 and I've got to tell me it saddens me to see some of the
3 staff folks and the attorneys being put in a no-win
4 situation.

5 Now, I want to speak strongly about this. They
6 can't do two jobs at once. They can't do three jobs at
7 once, most certainly. But to expect them to be the
8 investigators and prosecutors, and at the same time go out
9 and be perceived by everybody else to be neutral when
10 they're conducting educational discussions that's not fair
11 to them. You've got some hard-working folks.

12 CHAIRMAN GOULD: Well, I think also you
13 suggested, and I don't know, I don't want to put words in
14 your mouth, but that there was a basic inconsistency
15 between these roles.

16 MR. BARSAMIAN: Yes. We've seen it just between
17 representational issues in unfair labor practices. If now
18 we step away even from representational situations, we're
19 going to pure education totally.

20 I'd like you to spend some time talking to some
21 of the folks, the old-timers, if you will, that worked at
22 OSHA when heat stress first came out. Their approach was
23 multi-faceted. They didn't rely on any one approach. They
24 had some very senior people, the most senior enforcement
25 person at the time, Bill Krusha (phonetic), spent hours

1 driving up and down this valley reaching out to special
2 interest groups on both sides. The Ag Association, CRLA,
3 everybody else. He put together a lot of community
4 meetings so that it wasn't during worktime. Provided for
5 language services for all languages. Didn't rely on just
6 video or print because some people the print doesn't mean
7 much to them, they don't have a written language. We have
8 to allow for that. You've made that very clear and I agree
9 with you.

10 But what they didn't have to do is really come
11 out and take any access time. When other agencies come out
12 to the field, they're there momentarily. They're there for
13 spot checks.

14 I conducted a situation involving OSHA just a
15 couple of weeks ago. They came out, they spent about 20
16 minutes talking to one crew to find out what they had to
17 say about heat stress and everything else. They checked
18 the posters. And then they were gone. But it took them 20
19 minutes just to casually talk to one crew. And that's
20 usually talking to small groups or one-on-one.

21 That is very difficult for me to perceive as a
22 viable situation for what you have in mind in terms of
23 trying to educate folks about the ALRB. That's not going
24 to take 20 minutes.

25 We have an example that took place in 2013, where

1 the ALRB was voluntarily allowed on to take access. And I
2 won't go into any more detail, other than to say with three
3 teams working, and this was a large company, with three
4 teams working it took them four days to get to crews that
5 were working. And that didn't include everybody. There
6 were some mechanic shops and other areas that weren't
7 covered. That's just one company.

8 So, just the efficiency or lack of efficiency in
9 such an approach, all by itself, is not going to work.

10 Now, I've heard some references to videos. There
11 could be printed materials. There could be community
12 outreach meetings. Again, I would point to OSHA, they
13 didn't rely on any one thing.

14 And while there may be those who say this isn't
15 true according to the way they read specifications,
16 obviously, it's become a much safer situation for workers.
17 Lack of guess, lack of situations that are valid reported
18 situations to OSHA concerning heat stress. It's worked.
19 Crews are stopped, now, at 12:00, 1:00, and they're not
20 made to work all day. If they want to finish early, and
21 that is especially true around piece rate.

22 Which means if you start taking time away during
23 the day, especially in the mornings, to conduct any kind of
24 access, the workday's already been shortened. Very few
25 people work past six or seven hours anymore. They don't

1 even bump up anywhere near overtime.

2 And weather like this is stopping them even
3 quicker because of the air quality. So, if you're taking a
4 half-hour or 45 minutes out of a crew's time in the
5 morning, you're taking away time that, number one, hurts
6 the workers, although they may be compensated one way or
7 the other.

8 But number two, it just means the work isn't
9 going to get done and we are dealing with perishable
10 products. You can't just leave stuff hanging around on
11 trees and vineyards for an extended length of time. They
12 have to be picked, they have to be put in cold storage.

13 That means there's another loss out there to the
14 growers if it's not picked, that I think needs to be very
15 seriously considered.

16 Which brings me to another issue which is how do
17 you select who's going to get the access? What triggers
18 it?

19 CHAIRMAN GOULD: Yeah.

20 MR. BARSAMIAN: Is it going to be random? Is the
21 random selection method going to be such that it's fair for
22 everybody?

23 And, I mean, we see that a lot in drug testing,
24 for instance, just talking about statistics and how you go
25 about doing a random selection.

1 But there's going to be a big difference between
2 very large companies, with huge harvesting crews, and a
3 dairy with five or six folks. Literally, it still may take
4 the same amount of time for ALRB personnel to drive out to
5 the location and talk. Are they going to spend their time
6 talking to three or four people or are they going to try
7 talking to crews of 50 or 60 people? Is that going to be
8 the basis for deciding who gets the access?

9 What perception is that going to leave with the
10 employees? Are they going to immediately presume that the
11 company they're working for is in trouble? We think they
12 will.

13 They see a lot of the other agencies coming
14 around from time to time. That's almost become normal.
15 But again, they're stopping for spot checks. They're not
16 stopping everybody from work. They're not taking up their
17 lunchtime. They're going out and checking the posters.
18 They're having very brief discussions. If an investigation
19 develops, they come back, conduct the formal investigation.

20 If all of the sudden the ALRB's coming out there,
21 and taking an extended period of time -- it takes me a
22 semester to teach this stuff at Fresno State. I don't know
23 how you're going to do it in a half-hour. And that's with
24 students that have to listen or I grade them accordingly.

25 So, I've got to wonder just how much information,

1 because I've heard from you and others that worked for the
2 ALRB at the time, especially in Davis, that there's a lot
3 of other subjects that you feel are important. So that
4 people understand that and engaging in concerted activity
5 can take into account exerting their rights because of
6 these other laws.

7 Well, where do you start and stop that? Are you
8 going to do full sexual harassment trainings at the same
9 time as safety trainings? It's sort of an ever-expanding
10 universe when you try to figure out what's going to be
11 talked about.

12 CHAIRMAN GOULD: Well, of course, in this area,
13 as you know, the question is not so much the substantive --

14 MR. BARSAMIAN: Right.

15 CHAIRMAN GOULD: -- issues and these other laws,
16 like sexual harassment, or even heat, or OSHA problems.
17 But, rather, what the workers perceive to be, what they
18 deem to be unfair.

19 It's not whether there's a sexual harassment
20 violation.

21 MR. BARSAMIAN: I understand that.

22 CHAIRMAN GOULD: So, I don't think -- I mean, I'm
23 very interested in --

24 MR. BARSAMIAN: But I'm taking into account that
25 even if you give them a very basic explanation of these

1 other laws, just so they know what you're talking about
2 when you're talking about concerted activity, for instance,
3 it's going to take some time.

4 CHAIRMAN GOULD: Yeah, but it's not predicated
5 upon law. It's predicated upon practices which the workers
6 deem to be, rightly or wrongly, unfair.

7 MR. BARSAMIAN: Uh-hum. Take that baby to the
8 hall.

9 CHAIRMAN GOULD: She's -- the baby is crying
10 about what you're saying, not what I'm --

11 MR. BARSAMIAN: Well, give me the baby and I can
12 put him to sleep.

13 CHAIRMAN GOULD: But on this business about how
14 you -- I'd really like to get it, to the extent that you
15 want to address this, what would be your recommendation to
16 us as to how we go about selecting a particular employee?
17 How do we select?

18 MR. BARSAMIAN: Oh, how to select? My thought is
19 access, I don't think it's going to work. I don't think
20 it's efficient enough for what you want to do. It may be
21 something that you want to utilize in unique situations.

22 Certainly, right now, the only right to access
23 the ALRB staff has -- I don't count investigations as
24 access, as that's an investigation. Is going to be the
25 noticing that occurs before a representational election.

1 And we see how long that takes. That takes a good half-
2 hour and that's just to tell them about the balloting
3 location, and what time, and come on out and vote.

4 What I would really, truly suggest is that you
5 form a focus group, smaller than the Ad Hoc Committee, so
6 that it can get work done, unless you leave Mr. Rosenthal
7 out of it and then you can get the work done, anyway.

8 To literally come up with several different
9 things that need to be done first. Access, to me, and I
10 invite the discussion about access, but it's merely one
11 means of communication. There's a lot more effective and
12 efficient means that I think need to be looked at first.

13 Then, if you're not reaching particular groups,
14 cultures, languages, go back and deal with that with a
15 different approach to them. Which might be access. Which
16 might be more time spent in their communities and call them
17 together.

18 But get a focus group together involving labor,
19 obviously, involving management, different industry
20 segments. Not just vegetables, not just fruits. But
21 wineries, dairies, all the other subgroups. Go through the
22 associations, if you will.

23 I mean, growers know all about organizing and
24 collective bargaining, if you will. Some of the
25 associations that you know about, such as Western Growers,

1 that was formed to represent growers against railroads.

2 So, they know all about collective bargaining rights.

3 That's not the issue. The issue is how do you
4 get the information there in an effective way, where nobody
5 gets hurt?

6 And I truly think that -- and I say this with all
7 due respect, I truly think that looking at just access,
8 you're barely skimming the top of the available
9 alternatives out there. And in my mind, the most
10 inefficient one there can be.

11 It's time of too much staff, you're not going to
12 get to everybody. You're going to have associated problems
13 depending on who's picked and why they're picked. How they
14 would be picked, I don't know. I think I would look more
15 at triggers than picking people at random so that people
16 know --

17 CHAIRMAN GOULD: What kind of triggers?

18 MR. BARSAMIAN: Well, certainly if unfair labor
19 practices are filed that might be one trigger, maybe NAs.

20 CHAIRMAN GOULD: But don't you kind of meet
21 yourself coming around the corner here? Because what we
22 want to do and I think what you're advising us to do is to
23 separate --

24 MR. BARSAMIAN: I know, I know.

25 CHAIRMAN GOULD: Is to separate this from a

1 situation where we're in litigation.

2 MR. BARSAMIAN: That's why I say access can't be
3 the solution to what you're looking for. I don't think
4 it's going to be efficient enough. You're going to be
5 choosing people at random and you may be missing the ones
6 that you need to talk to. The groups of employees you need
7 to talk to.

8 CHAIRMAN GOULD: But what about a mandatory
9 video?

10 MR. BARSAMIAN: I hadn't heard that before.
11 Evidently, somebody suggested that today. I think a video
12 would --

13 CHAIRMAN GOULD: No, nobody suggested it. I
14 simply asked the question. Barry mentioned the videos.

15 MR. BARSAMIAN: Right now, we use videos quite a
16 bit for sexual harassment training, safety trainings and
17 stuff. So, a lot of the larger companies have AB
18 capability to do that out in the field or in a meeting
19 location that's local. That can be part of the
20 orientation. To me, that makes more sense, it really does.

21 Number one, the interest groups can review the
22 video and they're going to get past any problems about
23 what's getting said or not said ahead of time.

24 But I still think the face-to-face idea you have
25 is good, especially for certain groups, indigenous groups.

1 But I think that needs to be done more through the
2 communities, just like the heat stress was. Not at the
3 worksite. People are trying to work.

4 And like I said, we keep talking about what's it
5 going to cost the growers. I've been talking about that
6 during my whole session here. But think about the cost to
7 the workers. They can't make up the time that they're
8 going to lose while they're having access taken.

9 They already don't appreciate a lot of folks
10 taking access during lunch and now they've got to have it
11 during work. And it's a shortened workday already. It's
12 just not the most efficient. It may be one of different,
13 many different ideas we have going out there. I don't
14 think you ought to look at just one idea.

15 It's going to take more than one approach.
16 Different segments are going to require more of something
17 than another segment will. And those are my remarks. And
18 I thank you for the time.

19 CHAIRMAN GOULD: Well, thank you. I'll turn to
20 my colleagues to see if they have any questions.

21 MR. BARSAMIAN: Are you afraid?

22 MR. BLANCO: So, you're talking about various
23 size of growers. So, can you give us a better picture for,
24 again the benefit of the record, when you talk about the
25 table grapes down in the Bakersfield area, what size grower

1 are we talking about?

2 MR. BARSAMIAN: Oh, on harvesting crews?

3 MR. BLANCO: Uh-huh.

4 MR. BARSAMIAN: Oh, you're talking anywhere from
5 70 to 800 folks to 1,500 to 2,000 real easy, and they're
6 spread out. That's the other thing about San Juaquin
7 versus other areas, it is spread out. So, if you're trying
8 to target one grower, you could be all the way out in
9 Maricopa, 50 miles away from everything else one day and
10 that's still talking people.

11 You know, what's your bang for the buck that
12 you're going to get out of doing that?

13 If you're talking about dairies, everybody's in
14 one little place and you've got very few people. But now,
15 you're only talking to very few people.

16 If you're talking about wineries, Napa and
17 Sonoma, it's not so spread out mileage-wise. It's spread
18 out because of the difficulty to get there because of the
19 roads.

20 So, each part, each area has its own unique
21 problems.

22 MR. BLANCO: And so an approach tailored, maybe
23 again, whatever the approaches the Board decides on should
24 probably take into consideration the kind of crop we're
25 talking about, right?

1 MR. BARSAMIAN: The crop and the geographic area.
2 I think those are the two important things that need to be
3 considered.

4 MR. BLANCO: And we've spent a lot of time today
5 talking about the OSHA, but there are other State agencies
6 that --

7 MR. BARSAMIAN: Yeah, there's just heat stress
8 with the one having done quickly --

9 MR. BLANCO: Right.

10 MR. BARSAMIAN: -- and they stepped up and they
11 did it.

12 MR. BLANCO: And Labor Commissioner does go
13 out -- they go out into the field as well.

14 MR. BARSAMIAN: They do the same spot checks.
15 What we literally get are cars pulling up to the side of
16 the field and folks from three or four agencies all get out
17 together.

18 MR. BLANCO: That would be the Labor Enforcement
19 Task Force.

20 MR. BARSAMIAN: You betcha. So, you've got EDD.
21 You've got OSHA and OSHA sometimes comes out by itself.
22 The Feds, the DOLs usually follow them around. But they
23 all come out together. They all go out and check and see
24 if their posters are up there for their own particular
25 agency. At least there's some efficiency in that.

1 But they don't have a lot of time to start
2 talking to a lot of workers.

3 MR. BLANCO: But is this where you get the -- I
4 mean, do growers get the impression that workers feel that
5 when these agencies show up that that means what you were
6 talking about in terms of --

7 MR. BARSAMIAN: Yes, we've heard that from
8 workers, absolutely. They don't know what's going on.

9 Many of the workers, for instance, if they're
10 asked what do you know about heat stress? Time, and time,
11 and time again they'll say I don't know anything. And then
12 we end up going through -- we get a complaint, we go
13 through the hearing, only to find out the worker had been
14 trained the day before but they were afraid to talk to
15 State officials.

16 So, I mean, you're not going to do that in a
17 quick drive-by, so to speak, talking to some worker for
18 five minutes. You obviously want to have a relationship
19 between the speaker and the folks that you're trying to
20 educate. You're not going to get that in five minutes.

21 CHAIRMAN GOULD: Okay, thank you. Thank you very
22 much.

23 MR. BARSAMIAN: You're very welcome. Thank you.

24 MR. BLANCO: And you will be -- you'll be
25 submitting your written comments, then, before October the

1 15th?

2 MR. BARSAMIAN: Absolutely.

3 MR. BLANCO: Okay, thank you.

4 CHAIRMAN GOULD: Thank you.

5 MR. BARSAMIAN: Thank you.

6 CHAIRMAN GOULD: All right, our next witness is
7 Leoncio Vasquez. Is he here?

8 MR. BLANCO: Yes, he's coming. Mr. Vasquez,
9 would you like an interpreter or would you like to testify
10 in English?

11 MR. VASQUEZ: I'll try today in English.

12 MR. BLANCO: Okay. But, I mean, we do have an
13 interpreter if you would like one.

14 MR. VASQUEZ: No, that's fine.

15 MR. BLANCO: Okay. Now, Mr. Vasquez, you're here
16 representing who?

17 MR. VASQUEZ: Well, my name is Leoncio Vasquez.
18 I'm the Executive Director of a National Center for the
19 Development of Indigenous Communities. We have four
20 offices providing assistance and support to the indigenous
21 population that are mostly farmworkers.

22 MR. BLANCO: Okay, and where are those offices
23 located?

24 MR. VASQUEZ: We're based here in Fresno. We
25 have a small office in Madera, Greenfield and Santa Maria.

1 MR. BLANCO: And what does your organization --
2 can you go further into what your organization does?

3 MR. VASQUEZ: Sure. So, probably, if I can read
4 is there that I've prepared now --

5 MR. BLANCO: Sure.

6 MR. VASQUEZ: -- that kind of explains what we
7 do. If I may?

8 MR. BLANCO: Sure.

9 MR. VASQUEZ: So, the Center -- the National
10 Center for Development for Helping Indigenous Communities
11 is a non-profit based in Fresno, with offices in Madera,
12 Greenfield and Santa Maria.

13 We assist over 5,000 indigenous families through
14 different programs relating to language, information and
15 education through different programs about our rights as
16 human beings, as workers, as immigrants to this country.

17 We also do cultural programs that somehow
18 maintain our traditions as indigenous communities. We take
19 into much consideration, working with this population,
20 having the same community providing that information in our
21 native language.

22 My office focuses its efforts on indigenous
23 families that are immigrants that we saw in the 1980s, and
24 throughout the 1990s and 2000s. We are new into this
25 country and very different from other Mexicans that have

1 been traditionally migrating to the north. Different in
2 terms of culture, language, in the way that we can see the
3 world.

4 Without having any knowledge of this difference,
5 before migrating, we were forced out of communities due to
6 various irresponsible acts of a government and, of course,
7 the powerful of the United States of America. Of just
8 moving their (indiscernible) -- of a Mexican Government, as
9 a child accepting our conditions that cannot be possible
10 without measuring any consequences for its citizens.

11 That is what happened with the passage of 1994
12 North American Free Trade Agreement, forcing millions of
13 farmers out of our communities to desperately search for
14 survival means.

15 We end up in Oxnard, Santa Maria, Salinas,
16 Watsonville, throughout the Central Valley and other cities
17 of the U.S., accepting any type of work, for any
18 conditions, and for any pay. Not knowing about our labor
19 rights because this concept does not exist in our culture.

20 In my own experience as a farmworker, just like
21 now in the picking, in the grape-picking season, working
22 from sunrise to sunset, over 100 degrees, earning a minimum
23 wage and too often below minimum wage, a lack of shades,
24 fresh water to drink, clean restrooms or any restroom at
25 all. Not having access to any information in our native

1 language or at least in Spanish about our labor rights.
2 Not being able to communicate with my coworkers and
3 organize ourselves so that the grower pays attention to our
4 needs and respects and will comply with the labor laws
5 pertaining to workers.

6 This is the condition that we cannot deny having
7 every single day, to every single farmworker out there.
8 For a strong work ethics that's not allowed us to complain.
9 We want to work and turn the land with our sweat and labor.

10 But a condition and the exploitation gets so
11 extreme that we end up having permanent injury at work,
12 without any benefit or even possible to navigate that
13 (indiscernible) system of work-injuring process.

14 But too often, just like in the case of a foreman
15 that I met, who wanted to protect his crew and the employer
16 inventing excuses to expel him out of his job.

17 Or, the case where an injured farmworker had to
18 deal directly with an employer, with the labor contractor
19 negotiating so that the farmworker does not file for
20 worker's compensation for his injury.

21 All this take place because farmworkers are not
22 aware of their labor rights.

23 As far as I'm concerned, history has shown us
24 over and over that employers, growers are so powerful in
25 every sense of the word, and they use that power against

1 farmworkers who, we clearly know that the farmworkers do
2 not have any political power. And too often, the system
3 ends up on the side of those in power.

4 We just get paid whatever they want, no matter
5 how many years we have worked with the same employer. When
6 trying to get a raise, we get all kinds of excuses and
7 intimidation for the more outspoken worker. That person
8 gets fired on the spot to show the rest of the workers that
9 the same thing will happen to them if they continue
10 demanding any improvement of work or their pay.

11 Indigenous farmworkers, besides having low level
12 of education, are not fluent in English. Are not fluent in
13 Spanish, let alone English. They're not able to access any
14 information online. Even though many have cell phones,
15 they do not have the knowledge to search for information
16 that will take them as farmworkers.

17 But even though they knew that it is impossible
18 to do something about it because there's no legal
19 assistance that can take any type of case and follow up
20 from beginning to end.

21 Available agencies, such as (indiscernible) legal
22 assistance has too many litigation in assisting farmworkers
23 in all the cases that they may have.

24 Other agencies, such as the ALRB, focuses on
25 various specific cases that in the end farmworkers get so

1 confused which case to take to what agency.

2 To end, it is -- I will say that it is definitely
3 necessary to have more protection for farmworkers and make
4 sure that employers comply with the laws, with the labor
5 laws.

6 Letting an employer know ahead of time about a
7 visit, an ALRB visit, does not make any sense. They fix
8 anything properly for a visit so that at the time of a
9 visit everything looks great. And a visit without the
10 knowledge of an employer makes sense to make sure that
11 everyone is protected.

12 But first, the harvest for fresh food are
13 protected. So, I'm in favor of what you are trying to do
14 just to have more protection for farmworkers and that they
15 really understand what's going on. And, specifically, for
16 the population that I represent, the indigenous communities
17 that, again, I mentioned that they are the new immigrants
18 to this community and lack a lot of information.

19 CHAIRMAN GOULD: Any questions?

20 BOARD MEMBER RIVERA-HERNANDEZ: How do the
21 workers find out about your organization?

22 MR. VASQUEZ: Through word of mouth, mostly. We
23 use La Promatora Moro, where members of our community, we,
24 through the programs that we have we let them know what we
25 do. We invite them to workshops, to meetings, to cultural

1 events. And we distribute information to them in their
2 native language, about what we do.

3 We use the service of Radio Bilingual, which has
4 a program for the Mixtec communities on Sundays, every
5 Sunday, and we communicate with them through that radio
6 station.

7 BOARD MEMBER RIVERA-HERNANDEZ: Thank you.

8 BOARD MEMBER SHIROMA: Thank you so much for your
9 presentation today. And earlier -- earlier we heard about
10 the cultural facilities within the indigenous community in
11 terms of the leadership.

12 I was just curious, are you considered one of the
13 leaders within the Oaxacan/Mixteco community in terms of
14 leadership of this group?

15 MR. VASQUEZ: If I'm a leader in the Mixteco
16 community?

17 BOARD MEMBER SHIROMA: Uh-hum.

18 MR. VASQUEZ: I would say so. I mean, I'm
19 working with an agency and it is a unique organization that
20 very few exist in the State of California, that focuses its
21 work on this population, taking into account the difference
22 of culture and language.

23 And as agency, we employ workers that speak their
24 native language in order to reach out to them.

25 BOARD MEMBER SHIROMA: Thank you very much.

1 Thank you.

2 MR. BLANCO: Just a couple of more questions.

3 So, you have a website?

4 MR. VASQUEZ: Yes, we have a website.

5 MR. BLANCO: And who is that website designed
6 for? Is it designed for Mixteco population or designed for
7 someone else?

8 MR. VASQUEZ: Well, I don't think it is designed
9 for our community. I know that's what we want to show.
10 But mostly, it is bilingual. What we try to do in
11 bilingual, it is in Spanish and English. But we want to
12 reach out to those who want to support this community.
13 Basically, that indigenous people are at the bottom of the
14 ladder. Meaning they earn less than everyone else. They
15 get exploited at work very often.

16 So, we want to design programs at least to let
17 them know what are the labor rights, in their own language,
18 so that they can organize themselves and try to fight this.
19 Because it is a reality that we cannot deny.

20 MR. BLANCO: And why is it -- why are you not
21 trying to reach Mixteco community through your website?

22 MR. VASQUEZ: Well, it's not written as a -- and
23 it's not written, even, in our own language. So,
24 basically, we have some there that are expensive to make,
25 that are in the different language. And, hopefully, we

1 think that the children of indigenous families, that are
2 born here, that are going to school, that are very savvy
3 with technology, hopefully, they have some computers at
4 home and they use it. They use the information that we
5 provide.

6 But we don't depend on the website to reach out
7 to our community.

8 MR. BLANCO: And is the community
9 technologically, I guess, competent to -- I mean, to use
10 the tools they would need to get to the website?

11 MR. VASQUEZ: As far as I know, and the
12 individuals that I've had in contact with, no, they don't
13 have access to technology. They don't have the means to
14 purchase a computer. They don't have internet access to
15 the places that they live. That's luxury that they cannot
16 afford.

17 They prefer to purchase a gallon of milk and
18 meals for the children, instead of having that type of
19 technology.

20 CHAIRMAN GOULD: Okay, I don't have any
21 questions. And I want to thank you very much for coming
22 here and taking your valuable time. You speak with great
23 authenticity and I'm grateful to you.

24 MR. VASQUEZ: Thank you. Thank you, all.

25 CHAIRMAN GOULD: Thank you.

1 I want to call, as our next witness, Anthony
2 Raimondo.

3 MR. RAIMONDO: Good afternoon.

4 CHAIRMAN GOULD: Good afternoon.

5 MR. RAIMONDO: Chairman Gould and the Honorable
6 Members of the Agricultural Labor Relations Board, than you
7 for the opportunity to be heard here today. I greatly
8 appreciate it.

9 My name's Anthony Raimondo. I'm a labor attorney
10 here, in Fresno. I specialize in representing agricultural
11 employers, primarily farm labor contractors and dairies.
12 But I represent some growers and some folks in other
13 industries.

14 I've practiced before the Agricultural Labor
15 Relations Board and the National Labor Relations Board for
16 almost 15 years, now. So, I have some experience with both
17 agencies and with labor relations law.

18 I had the good fortune as a young attorney to be
19 trained by Mr. Barsamian over here, and I think I gained a
20 wealth of knowledge from that. So, I certainly second his
21 statement about how complex and technical labor relations
22 law is, and how important it is to have qualified
23 practitioners in this area of law.

24 You've proposed to draft a regulation that would
25 allow ALRB agents to force their way on to employers'

1 property and compel workers to listen to an educational
2 presentation about how the agency can protect their rights.

3 I'm not aware of any State or Federal agency, any
4 government agency at all that has such a power or even
5 believes that it needs such a power.

6 We have agencies that have specific rights of
7 access for the purpose of ensuring compliance, as Mr.
8 Barsamian mentioned, with the Labor Commissioner and OSHA,
9 and other agencies. And we have agencies, which the ALRB
10 already has a right of entry for purpose of investigations
11 and enforcement.

12 But I've never heard of any agency that has tried
13 this type of step. And I wonder what's so special about
14 the ALRB and what's so special about agriculture that this
15 is so needed?

16 In my experience, agencies that want to engage in
17 outreach seek to work cooperatively to create opportunities
18 by working with employers, by working with community
19 agencies and organizations to do outreach in a multiplicity
20 of ways. Not by compelled regulatory trespassing.

21 This proposal is particularly disturbing to me in
22 light of what I've seen with the ALRB over the last few
23 years. For many years, we saw a great deal of stability at
24 the ALRB in terms of the staff, the attorneys, the
25 investigators and the Regional Directors.

1 A few years ago we had what was apparently a
2 purge of this agency and we saw a massive number of
3 virtually all of the experienced personnel at the ALRB gone
4 from their posts. Replaced by people who were very, very
5 inexperienced.

6 For reasons that have never been publicly
7 explained, the Agency saw fit to purge itself of its
8 institutional memory, its institutional experience, and its
9 institutional knowledge. I think that's a betrayal of many
10 of the young attorneys and staff that you've brought on
11 recently, who don't have anyone to learn from.

12 They don't have what I have. They don't have a
13 Ron Barsamian, or Howard Sagaser, or some of these other
14 folks out there who are more experienced. You have
15 untrained personal that you're proposing to educate workers
16 about their rights.

17 Chairman Gould, you were Chairman of the NLRB.
18 This is an agency that I practice in front of a lot and I
19 have great respect for. They conduct investigations and
20 all of their procedures are very consistent, very efficient
21 and very professional.

22 I butt heads with them a lot, but I've always
23 respected the training and qualifications of the folks that
24 investigate and prosecute cases at the NLRB.

25 You're aware that the NLRB has filed published

1 procedures and case-handling manuals, available to any
2 member of the public on the website, that create
3 consistency in their procedure and provide a guideline for
4 NLRB personnel to follow the law, pursue investigations and
5 enforce the law in a manner that's consistent.

6 The ALRB doesn't have that. The Regional
7 Director, at the National Labor Relations Board, is one of
8 the most significant positions in the entire agency. As
9 you know, this is a position that most -- more than any
10 other decision of the Board has day-to-day impact on
11 worker's rights by making decisions in real time. Whether
12 it's investigations or representational matters, that
13 directly impact workers' rights. These are critical
14 positions.

15 We have an ALRB Regional Director in Visalia, who
16 acknowledged under oath that before joining the ALRB in
17 2012, less than 10 percent of his experience was spent
18 practicing labor relations law.

19 We have a recently departed Regional Director in
20 Salinas with the same level of inexperience.

21 The Acting Regional Director in Salinas has the
22 same level of experience.

23 CHAIRMAN GOULD: I think that the proposal before
24 us does not propose or suggest that parties that are --
25 portions of the Board that have been involved in

1 adversarial proceedings, investigation and the like conduct
2 this kind of work.

3 The idea has been that -- and Mr. Barsamian said
4 it well, that worker education would have to be dealt with
5 separately. And I don't know that -- of course, I'm
6 interested in anything you have to say about the Board, and
7 the Regional Directors. And we have our meetings, which
8 you're welcome to attend and to come on.

9 But what we want to do here, in the interest of
10 time and efficiency, is to zero in on the proposals that
11 are before us.

12 MR. RAIMONDO: That's exactly what I'm talking
13 about, Mr. Chairman. My challenge to you would be who's
14 qualified to provide this education and training within
15 this Agency?

16 Before you come to someone else's house, before
17 you come to someone's ranch to educate workers, you need to
18 spend your time and resources cleaning up your own house.
19 The time that's being spent here, on these hearings, in
20 contemplating this regulation, the resources that are being
21 expended on this, if you really wanted to impact worker
22 rights and protect worker rights, you would be expending
23 those resources on developing case handling manuals,
24 bringing in experienced NLRB personnel to conduct training
25 on investigations, to conduct training on representational

1 issues, to correct this void of knowledge and void of
2 experience that exists in the Agency.

3 You're putting the cart before the horse. You're
4 asking an Agency that lacks internal institutional
5 expertise to conduct education that they're not qualified
6 to conduct.

7 Until you demonstrate that sort of expertise and
8 experience internally, I don't see how anyone in this
9 Agency is qualified to conduct these trainings.

10 You know, I've heard a lot of comments here today
11 and I've heard these comments a lot about how this sort of
12 thing is necessary in agriculture because of the
13 vulnerability of the farmworker. That farmworkers are
14 helpless. They're at risk. They don't know their rights
15 and they can't assert their rights.

16 I don't see this. I haven't seen it as a
17 representative of employers. When I represent clients,
18 I've seen cases where indigenous crews have walked out of
19 harvest, in the middle of Salinas, to demand a higher rate
20 and they've gotten that higher rate. With no help from a
21 union or any other organization because they organized
22 themselves and demanded better working conditions for
23 themselves.

24 In the last two years, I've been blessed to have
25 the opportunity to represent Silvia Lopez and the workers

1 who have organized themselves at Gerawan Farms. These
2 people are not afraid. They are not vulnerable. They know
3 their rights and they've been fighting for two years to
4 exercise those rights.

5 The greatest interference they have faced in
6 exercising their protected rights was the misinformation
7 and interference that they received from this Agency.

8 So, until those things are corrected, I don't
9 know how this Agency can sit there and look at these
10 workers in the eye, and tell them we're going to educate
11 you. They know their rights. They're waiting to have them
12 respected. They're waiting to have their votes counted,
13 for over two years.

14 So, it's preposterous, to me, to suggest --
15 frankly, I think it's insulting and I think it's
16 disrespectful, and I think it's downright unfair to
17 characterize these farmworkers as helpless victims.

18 What I have seen, in my interactions with
19 farmworkers, both as a representative of management and in
20 my opportunities to represent workers, themselves, are
21 people who are very strong, who are very independent, who
22 are perfectly capable of deciding the course of their own
23 lives and exercising their own rights.

24 I don't see this vulnerability that compels the
25 need for this. I see workers going to the EEOC, to the

1 DFEH, hiring private counsel from Los Angeles and San
2 Francisco to sue farm employers, walking off the jobs to
3 demand better working conditions.

4 I don't see these people who are afraid and
5 hiding in the shadows. I see people who are strong in many
6 ways, stronger than you and I.

7 Over the last two years, on many occasions I've
8 gotten very discouraged in my representation of Silvia
9 Lopez and I've thought about walking away from that case.
10 And at times when I didn't feel like I had enough energy to
11 take another step, it was their passion, and their
12 commitment, and their courage that inspired me to continue
13 and go forward.

14 So, I refuse to accept his tired trope as the
15 farmworker as a helpless victim. It needs to be retired.
16 And they need to be respected like any other human being,
17 that they are perfectly capable of taking care of
18 themselves.

19 (Applause)

20 CHAIRMAN GOULD: Are you finished?

21 MR. RAIMONDO: Yes.

22 CHAIRMAN GOULD: Okay. Are there any questions?

23 Thank you. Thank you very much.

24 MR. RAIMONDO: Thank you.

25 CHAIRMAN GOULD: Where's the next --

1 (Off-the-record discussion.)

2 MR. BLANCO: So, before we start with the next
3 panel, we have to do a little rearranging of the -- and
4 place some tables out here so they all can sit down.

5 CHAIRMAN GOULD: Oh, the tables.

6 MR. BLANCO: You guys can --

7 (Off-the-record discussion and reorganization of
8 room.)

9 CHAIRMAN GOULD: Okay, so for our next witnesses
10 we have Silvia Lopez, and Michael Bravo, Jose De La Rosa,
11 Carlos Uribe, Rolando Padilla and Angel Lopez. And so, and
12 I think all of you want to testify together. And so,
13 that's why this table is being set up the way it is.

14 (Pause in Proceeding.)

15 CHAIRMAN GOULD: Okay. All right, so can we
16 proceed? Would you like to proceed? My understanding is
17 you would like to appear as a group and so we're ready to
18 proceed, we're ready to hear from you.

19 (Interpreter Translating.)

20 MS. SILVIA LOPEZ: I would like to do it in
21 English.

22 CHAIRMAN GOULD: Surely, you may speak in
23 whatever language you want to speak. But now, how is she
24 going to --

25 MS. SNELL: She's going to speak in English and

1 that's --

2 CHAIRMAN GOULD: No, I know that. Okay, she's
3 going to -- okay.

4 MS. SILVIA LOPEZ: Good afternoon, everybody. My
5 name is Silvia Lopez and I'm a farmworker, 35 years as a
6 farmworker in the Central Valley.

7 I'm here today because I heard that the ALRB's
8 trying to go in the field and talk to workers. And for me,
9 that's not -- that's not correct. Because I believe,
10 myself personally, I have a very, very bad experience with
11 the ALRB. And I would like to let everybody know that
12 what's going, really, with the ALRB.

13 And I would like to talk a little bit about my
14 bad experience with the ALRB more than two years ago.

15 CHAIRMAN GOULD: Ms. Lopez, what we want to do,
16 both in the interest of time and relevancy, is to speak
17 about this rule before us.

18 If you have -- I know that you have appeared
19 before us in our public meetings and you are welcome at any
20 time to speak before us at our public meetings about your
21 complaints about the ALRB.

22 But what we want to do is focus upon this rule.
23 And you have said that this is a bad idea and we would like
24 to hear from you on this.

25 Because if everyone comes forward and recounts

1 the experiences that they have in a wide variety of areas,
2 we will be here for a very long time talking about what is
3 not relevant, in our view, to this proposed rule.

4 MS. SILVIA LOPEZ: Okay.

5 CHAIRMAN GOULD: So, if I could hear from you, I
6 welcome your --

7 MS. SILVIA LOPEZ: So, how many minutes do I have
8 to speak?

9 CHAIRMAN GOULD: Well, we've set aside here --
10 for the group we've set aside 25 minutes for the group.

11 MS. SILVIA LOPEZ: Okay. Okay, thank you. I
12 don't agree with the ALRB to go and visit the workers at
13 work because I don't want the ALRB to keep lying and
14 continue lying to the farmworkers.

15 We've from Mexico, and maybe we're Oaxacan, from
16 Indian Mexican, but we know how to defend ourselves.

17 And we know about our rights and we really
18 strong, and we're not intimidated on defending our rights.
19 And I believe that everyone who knows me, they know that
20 I'm not afraid to speak because I know my rights.

21 And I'm not just agreeing with the ALRB because I
22 know that the ALRB in Visalia, California, specific, they
23 agree with the union to shut our mouth and make us feel
24 stupid that we can't defend ourselves.

25 So, I just think that educate our workers is

1 very -- my coworkers, and educate us between us. I think
2 we're very, very smart to know our rights and defend our
3 rights. And we don't need help from any union. And we
4 don't want any union to force us with something that we
5 don't want.

6 Just to tell you that I have very bad experience
7 with the ALRB. For example, right now we just came in,
8 when we got here the security told us that in order to not
9 let the blue shirt come in this meeting. If you guys want
10 a space, go rent a space for you guys.

11 I think that we --

12 CHAIRMAN GOULD: Who told you what?

13 MS. SILVIA LOPEZ: The security.

14 CHAIRMAN GOULD: He told you what?

15 MS. SILVIA LOPEZ: He told me, Nancy --

16 CHAIRMAN GOULD: Nancy?

17 MS. SILVIA LOPEZ: I don't know who's Nancy.

18 CHAIRMAN GOULD: I don't know who Nancy is.

19 MS. SILVIA LOPEZ: I don't know who's Nancy.

20 MS. SNELL: Security.

21 MR. RAIMONDO: I can shed light on this, if you'd
22 like. What happened was a representative from the UFW told
23 security to bar these workers from the door and not allow
24 them to be at this public hearing.

25 CHAIRMAN GOULD: Okay.

1 MR. RAIMONDO: Thank you and we're grateful Mr.
2 Barbosa did intervene and did allow the workers access.

3 CHAIRMAN GOULD: Okay.

4 MR. RAIMONDO: But that's what happened.

5 CHAIRMAN GOULD: All right.

6 MS. SILVIA LOPEZ: So, if the UFW is here for the
7 worker or if the ALRB is here for the workers, so why they
8 trying to intimidate us like this, in this situation. We
9 came in and the security was pushing us back, we don't need
10 the blue shirts here. If you guys want a space, go rent
11 your own space. So, I think that everybody has to know
12 that, what happened outside.

13 So, the ALRB went to visit me at my work, like
14 two years ago, and they want to talk, they want to lie to
15 my coworkers. There were like 40 coworkers with me there
16 and they want to tell them a lie. And at the moment that I
17 realized that the ALRB's not here for the worker. They're
18 here for supporting the UFW. And we want to stop that. We
19 want something fair. We want justice. That's what we
20 want.

21 And I know that their purpose is to go out in the
22 field and help the UFW and I think that's not right.
23 That's all I'm going to say.

24 (Applause)

25 CHAIRMAN GOULD: Do other people want to say

1 anything?

2 MS. LUCERO LOPEZ: Hello, I'm Lucero Lopez and
3 I've been working at Gerawan since 2009. I have experience
4 from two parts, parties, the ALRB and the UFW.

5 The only thing that I see is that the ALRB
6 supports the UFW and I think that's not right. And I
7 believe that's not right because the ALRB's supposed to be
8 here for the farmworkers, only, not for an organization
9 that gets money for campaign of government, or other
10 politic things.

11 These, supposedly workers here, they are not
12 workers from Gerawan. They're just people that they paid
13 just to sit here. Why? Because I work there and I don't
14 know them and I don't recognize their face. And I don't
15 see them at the company, okay.

16 The dirty people, though, I'm not sure --

17 CHAIRMAN GOULD: We would be grateful if you
18 would keep your remarks to the proposed rule before us --

19 MS. LUCERO LOPEZ: Yes.

20 CHAIRMAN GOULD: -- rather than whoever happens
21 to be in the audience.

22 MS. LUCERO LOPEZ: But I want to let you know
23 that it's a lie, okay. It's a lie. And we need justice.
24 We don't want you guys to protect the UFW, like the ALRB
25 do, because that's not right. That's the main thing. And,

1 well, people are going to lose their jobs if the UFW comes
2 into our jobs. Right, because they're going to be taking
3 money away from our paycheck. And we don't need that. We
4 know how to defend our rights. We know how to talk. And
5 if we want more raise in our salary, we can talk to the
6 owner. Really, talk to Dan Gerawan and Mike. We can go
7 speak that we want more salary. We don't need the other
8 people to come and speak for us. And that's all my words
9 to say.

10 CHAIRMAN GOULD: Anyone else wish to speak here?

11 MR. TORRES: (Through Interpreter.) Thank you
12 all for giving me this opportunity and good afternoon. I
13 hope you guys could listen and understand.

14 CHAIRMAN GOULD: And your name is?

15 MR. TORRES: Eduardo Luna Torres. I apologize
16 for not answering my name before.

17 What I want to say, I want my rights to be
18 respected. I don't want nobody to represent me. Because
19 now, anybody doesn't like what they do, they leave. Like a
20 lot of people say that they're mistreated and that's a big
21 lie because they continue being in the same place. Nobody
22 tolerates that right now because we all know our rights.
23 And I don't let other people -- we don't let other people
24 get inside our minds to control us.

25 The truth, I would appreciate very much if you

1 could help us to that our rights could be validated.

2 That's all, thank you.

3 CHAIRMAN GOULD: Okay.

4 MR. RINCON: (Through Interpreter.) Good
5 afternoon, my name is Angel Rincon. I'm here because we're
6 tired of so much abuse. I feel like that I feel abuse,
7 humiliated because they don't take us into consideration.
8 They don't take any consideration of rights.

9 THE INTERPRETER: May the Interpreter clarify
10 something, please?

11 CHAIRMAN GOULD: Sure.

12 MR. TORRES: Mr. Cesar Chavez, he humiliated us.
13 I feel that he made us vote, he made us sign and they said
14 that all the signatures were false, mine and my coworkers.
15 That's why I feel humiliated.

16 CHAIRMAN GOULD: We have to focus on the proposed
17 rule, which is in front of us.

18 MR. TORRES: I just want to say that you guys
19 take us for granted that we respect our rights.

20 MR. BARBOSA: (Through Interpreter.) Okay, I am
21 Antonio Barbosa and I am --

22 CHAIRMAN GOULD: Executive Secretary.

23 MR. BARBOSA: I just want to explain something.
24 This meeting that's taking place here today, it has nothing
25 to do with unions. This has everything to do with

1 farmworkers.

2 (Applause.)

3 MR. BARBOSA: It has nothing to do with unions.
4 This has everything to do with workers that work in the
5 fields all over California, but they don't know their
6 rights.

7 You're very fortunate that maybe you work in this
8 area and a lot of you have testified that you know what
9 your rights are, and you guys know how to exercise these
10 rights. But that's not the subject of today.

11 MR. TORRES: There's no other time. When can we
12 be heard?

13 MR. BARBOSA: This time, we have. We have a
14 (inaudible) -- in Sacramento and you guys have to -- we
15 have a lot of witnesses present that the table wants to
16 consider. There's two positions, there's many positions.
17 There's a lot of people that are interested in talking to
18 the Board and telling them about their experiences. And
19 all that has to do with field workers, a lot of them are
20 indigenous, that they possibly don't know their rights.
21 And they live in the Fresno area, or from Salinas, Visalia
22 or Oxnard.

23 And I leave and I apologize for interrupting your
24 testimony, but that's not the matter beforehand and that
25 the attorneys are here to discuss.

1 (Applause.)

2 MR. TORRES: I hope that there is some time that
3 you guys can hear me and hear all the workers from Gerawan.
4 And for the first time, let us know our rights, and to
5 respect them. So I don't feel pressured and tired. Thank
6 you very much.

7 CHAIRMAN GOULD: Anyone else from --

8 MR. LOPEZ: (Through Interpreter.) Can I come
9 up?

10 CHAIRMAN GOULD: What is your name?

11 MR. LOPEZ: Angel Lopez.

12 CHAIRMAN GOULD: Oh, so we have you listed.

13 Good.

14 MR. LOPEZ: Good afternoon. I thank Mr. Barbosa
15 and the people that are sitting up here. My respect to
16 all my coworkers, also.

17 (Applause)

18 CHAIRMAN GOULD: Could you repeat what he said, I
19 don't know what he said?

20 THE INTERPRETER: He said wanted applause for Mr.
21 Barbosa, he deserves it.

22 CHAIRMAN GOULD: Oh.

23 MR. LOPEZ: (Inaudible) -- I have the pleasure of
24 knowing here and my respect to her, also. I don't want to
25 see, out in the field, anybody from the Labor Board. I

1 would like to see those people out in the fields, parking
2 on the -- I have my reasons to not talk about them because
3 the gentleman said this is not the case.

4 In my personal experience, in my life experience,
5 for some experience with my coworkers, I had a bad
6 experience with the Labor Commission. I'm a nice person,
7 I'm a peaceful person and a lot of people know me. The
8 people that know me know that I'm friendly, I make friends
9 and they like that about me.

10 And I want to say about the labor law that if
11 they're going to go visit, the first people I said, Mr.
12 Barbosa and the lady, I apologize I don't know your name.

13 CHAIRMAN GOULD: Which lady?

14 MR. LOPEZ: The Chinese --

15 (Laughter)

16 MR. LOPEZ: We would like to see them out in the
17 fields and not any other people. I would trust both of
18 them, if both of them would show up. But someone else, no.

19 We had a lot of bad experience with the labor
20 law. They did our case, we voted. They had to cover our
21 votes. I think that if they were going to count them, we
22 would feel comfortable with those that want the union and
23 those that don't want the union.

24 MR. BARBOSA: (Through Interpreter.) We cannot
25 talk about that. You guys had the -- you guys had the

1 opportunity, an opportunity that lasted over 105 days. And
2 every person that had an interest in testifying gave
3 testimony.

4 UNIDENTIFIED FEMALE: I apologize, may I --

5 MR. BARBOSA: (Speaking Spanish)

6 MR. LOPEZ: I apologize.

7 (Applause.)

8 MR. BARBOSA: (Speaking Spanish)

9 MR. LOPEZ: I have no problem with that.

10 CHAIRMAN GOULD: Okay, thank you. Muchas
11 gracias.

12 MR. LOPEZ: I want to thank everybody. Thank you
13 for listening. And I want to see both of them in the
14 fields pretty soon.

15 CHAIRMAN GOULD: Okay, well, thank you. I think
16 we've got -- used just about this -- we have one more
17 speaker, okay.

18 MS. CASTRO: (Through Interpreter.) My name is
19 Gisela Castro. I've been working with Gerawan for 19
20 years. The only thing that I want to ask, that justice be
21 made for us. I know we cannot talk about this case right
22 now, but we want justice. If they're going to go to the
23 fields, they can go like Angel said, Mr. Antonio and the
24 people at the table.

25 We're tired of so much humiliation. They haven't

1 respected us. They have humiliated us. We want justice,
2 whether it be for us or for the people who are present
3 here, I cannot say who. And I know we cannot talk about
4 Silas, either. But I have something important to say about
5 Silas. The president --

6 CHAIRMAN GOULD: Yes, but again, we want to stay
7 away from this case.

8 MS. CASTRO: Okay, that's fine. The only thing
9 that I'm asking and demanding is for justice to me made and
10 for us not to be ignored. No more humiliation for the
11 workers of Gerawan. Thank you.

12 CHAIRMAN GOULD: Thank you. All right, thank you
13 very much, all, for your participation.

14 (Applause.)

15 CHAIRMAN GOULD: We're turn to the --

16 (Off-the-record discussion.)

17 CHAIRMAN GOULD: We'll turn to the next witness
18 which is Mr. Howard Sagaser.

19 (Off-the-record discussion.)

20 CHAIRMAN GOULD: All right, let's go ahead. Mr.
21 Sagaser, please proceed.

22 MR. SAGASER: Good evening, Chairman Gould, other
23 Board Members.

24 I would like to echo, at the beginning, Mr.
25 Barsamian's comments about Antonio Barbosa. I've been

1 practicing before the Board since 1976 and I would say that
2 if we could have him cloned and have him throughout the
3 whole Agency, I think both sides would have great
4 confidence in the Agency.

5 So, I'm going to miss him because he's no
6 doubt -- I think --

7 CHAIRMAN GOULD: Well, he's not going anyplace.
8 He's right here with us and we don't have to miss him.

9 MR. SAGASER: Well, I keep hearing rumors --

10 CHAIRMAN GOULD: No, no, no. There's no validity
11 to any rumors. He's staying right here with us.

12 MR. SAGASER: Keep him as long as you can.

13 I think it's not really a rule that I'm going to
14 address, but I think more of an idea or a concept. And
15 I've submitted a legal paper there, which I think sets
16 forth a lot of the legal problems with the idea of having
17 this access.

18 And I would simply state that the conditions that
19 supported the emergency regulation in 1975, where the
20 California Supreme Court narrowly upheld access under those
21 conditions cannot be justified today.

22 What this Board is considering is an exercise of
23 police power. And I think when you're going to exercise
24 the police power it has to be justified by conditions and
25 in order to intrude upon constitutional rights.

1 And what we're talking about here is the
2 constitutional rights of the property owners to not have
3 outside interference with their property. And that's been
4 recognized by the various courts, the United States Supreme
5 Court, with CalOSHA coming onto private property without a
6 warrant, the Leckier(phonetic) decision.

7 We've cited all kinds of various cases. When
8 CalOSHA comes on, they make sure they get consent, no
9 unnecessary interference. And I think the U.S. Supreme
10 Court, in the Leckier decision make it very clear that
11 access would be only allowed under extreme situations that
12 would be justified on a case-by-case basis.

13 And I urge you to have your legal staff go back
14 and reread the access rule case. You'll see there is no
15 balancing against 1st Amendment rights against 5th because
16 it wouldn't be justified.

17 It was only justified as an exercise of police
18 power that existed at that time.

19 I'm not going to bore you with the details of the
20 legal because I think the paper speaks for itself and I
21 present it to you.

22 But one thing that you have to look at is if
23 you're going to exercise a police power, why is this
24 needed? Why, after 40 years? Why after 40 years, with the
25 San Diego Nursery case is there this need for education?

1 And why does this agency? As I pointed out in my
2 paper, there's over 500 Federal agencies and over 500 State
3 agencies that could make the same justification that
4 education, everybody is for education.

5 But we could have the Department of Fair and
6 Public Housing, EEOC saying it's very important to go out
7 and educate about their rights.

8 We could have the Registrar of Voters, the county
9 clerk making the same pitch. We can have nutritional.

10 So, I think that if you're going to embark upon
11 this course and actually come up with rules, I think the
12 first hurdle you're going to have is showing that there are
13 not alternative means of communication.

14 And I think this is the problem for justifying
15 even the union access rule. What are we talking about
16 that's changed in the landscape since 1975?

17 First off is the internet, and the website, cell
18 phones. None of those alternatives of communication
19 existed back then. But you've heard comments from the
20 various agencies here, who have testified, that they have
21 websites. The ALRB has their own website for education
22 purposes. You have pamphlets.

23 And the Department of Fair Employment and Housing
24 has been very effective in creating a pamphlet that's
25 handed out to the workers when they're hired, explaining

1 sexual harassment.

2 There's no reason the ALRB couldn't develop a
3 neutral pamphlet to be handed out, similar to the type of
4 pamphlet handed out by the other agencies. And it would be
5 neutral. It would be already -- we wouldn't be worried
6 about what's being said out there in these educational
7 seminars.

8 I echo Mr. Barsamian's comments about the
9 interference with production. Who's going to pay for this,
10 the cost on the employees? Can you reach them there? I
11 think through the social media, whether it be Facebook or
12 any of the other ones it would be good.

13 But I think what didn't exist is why not have
14 your people go on to various radio stations and talk about
15 their rights and do it.

16 In 1975, there's very few Spanish-speaking radio
17 stations. Well, what I presented to you today and printed
18 it off, there are over 150 Spanish-speaking radio stations
19 in California, alone.

20 CHAIRMAN GOULD: Excuse me just a second. We've
21 got to have a little bit of quiet back there because we're
22 in a formal proceeding.

23 If you want to have some conversations, you can
24 do it in the hallway out there.

25 Go ahead.

1 MR. SAGASER: I think that the same is for
2 television. In 1975, when your access rule was enacted
3 under emergency conditions, we didn't have the Spanish-
4 speaking television stations.

5 I'm going to tell you there's 50 plus Spanish-
6 speaking television stations in the United States. That
7 when you go onto the cable, or these various channels, you
8 have at least four major networks that are Spanish-
9 speaking.

10 So, really, to get the message out and educate
11 that there's so many alternative means that don't infringe
12 upon constitutional rights. Billboards. You know, I've
13 seen the billboards, going down the road, for both sides in
14 the Gerawan dispute. It's a very effective way to get
15 people's attention and directing them to website.

16 You know, you can consider outreach programs for
17 the schools, the adult education, doing it there. I think
18 the idea of having a video available for people that want
19 it, that's fine. You can make it voluntary basis for
20 people to show it.

21 But I think you have the UC Extension and their
22 abilities to engage in outreach.

23 And that's just kind of a quick sampling from
24 myself. So, I think that -- because once you get into the
25 legal inquiry, it's going to be if you're going to intrude

1 upon a private, constitutional property right, you have to
2 show that there's no other alternatives that are less
3 restrictive. And I don't think that the showing can be
4 made.

5 I think that, yes, there's a need for education.
6 I agree with Mr. Raimondo in that we have to look at who's
7 going to be doing the education, if you're not going to be
8 doing it through pamphlets or through means where it's
9 being controlled.

10 I think that it's been 40 years and I believe
11 that a lot of comments you're hearing here is because of
12 the lack of trust.

13 I think that in 40 years, I would think the
14 agency would have built more trust than it has. And I
15 think that's something, that as it goes forward -- and
16 that's why Antonio, I think he has built that trust.

17 I can tell you that I've had bad experiences when
18 it comes to worker education in the filed through the
19 remedy process. I had agents go out and flat out tell the
20 people that the company was bad and needed a union. So
21 much for your Labor Code Section 1145 and 1149, which talks
22 about going out and doing things in a neutral fashion.

23 So, I think a lot of the comments you're hearing
24 here are predicated on a lack of trust, a lack of
25 neutrality. And I think that if this Board weighs in to

1 the access and starts having agents go out and talking to
2 groups, you're going to get all kinds of complaints, maybe
3 civil rights violations.

4 But if you manage the content through radio ads,
5 through pamphlets, these other sources you're not going to
6 run those problems.

7 So, I will tell you that access, from a
8 (inaudible) stand point, isn't the solution. Mandatory
9 access on private property, from a legal stand point,
10 cannot be justified.

11 And I would urge this Board to look at the
12 alternative means and pursue those because I think
13 education of people, of their rights, is a lofty goal. But
14 it can't be done at the expense of constitutional rights.

15 And I'd be glad to answer any questions.

16 CHAIRMAN GOULD: So, I just wanted to -- I
17 haven't had a chance -- I've just gotten your paper here
18 and it will be part of our record.

19 But I wanted to make sure that you -- you're
20 saying that the 1976 ruling of the California Supreme Court
21 on access is -- would not be good law today, is that
22 correct?

23 MR. SAGASER: That's correct. It couldn't be
24 justified in any U.S. Supreme court, and Leckier has
25 already spoken on that. It's a very narrow decision. If

1 you go back and read it, it was four/three. And it's
2 saying that based on conditions that currently exist,
3 again, there's no alternative means of education.

4 And I think what you're hearing from me, and
5 everybody here, is that 40 years later the world has
6 changed. There are alternate means of communication. And
7 I'm sure I've overlooked a lot. But the message does get
8 out there.

9 And that's why I'm saying that even then the
10 California Supreme Court, in '75 and '76, the rules were
11 probably made in '75 and the decision was in '76, they
12 couldn't -- they didn't do a constitutional weighing of the
13 interests because it couldn't be justified even then. They
14 just said it's a proper exercise of police power on the
15 conditions that currently exist at that time.

16 We've since had, and I've cited in my paper, the
17 U.S. Supreme Court talking about the bill of rights
18 registration law, saying it was a valid law at the time it
19 was passed. There was a need. But in the year 2015, your
20 police power can no longer be justified.

21 It's not unlimited. And I think when you have
22 police power and it encroaches upon constitutional rights,
23 that's a very dangerous zone for the Board to enter.
24 Particularly when I think there's cheaper and better
25 alternative methods that you can reach a broader audience.

1 I think, you know, these stations, you've got the
2 public stations that are Spanish-speaking. So, you've got
3 a lot of people to go on and talk. A lot of these private
4 stations, I'm sure that allow your people to come on and
5 talk, and education. Your pamphlets, billboards, all of
6 those things, your website. So, I'm not going to continue
7 to repeat myself.

8 But, yes, that decision is very narrow.

9 CHAIRMAN GOULD: Any questions from my
10 colleagues?

11 BOARD MEMBER SHIROMA: No, thank you.

12 BOARD MEMBER RIVERA-HERNANDEZ: Thank you.

13 MR. SAGASER: Thank you.

14 CHAIRMAN GOULD: Thank you very much.

15 Okay. Now, all right, we go now to -- Antonio,
16 you've arranged for a UFW panel.

17 Okay, do you want to speak next? Is our
18 interpreter still here?

19 MR. BLANCO: Yes, she is.

20 CHAIRMAN GOULD: Okay. All right. So, how would
21 you like to proceed? Who would like to speak, first?

22 UNIDENTIFIED FEMALE: From the first person on
23 the left.

24 MR. MARQUEZ: (Through Interpreter.) Good
25 afternoon, everyone. My name is Rafael Marquez Amaro. I

1 am a fieldworker. I've been working for seven years in the
2 peach industry, table grapes, and raisin grapes, and
3 several -- many other jobs.

4 I want to thank you for giving me the space. I,
5 like the rest of the workers, know what needs there are in
6 the fields. That's why it's very important that you, as
7 agents, go to the fields to take the message to me and all
8 my coworkers. Because a lot of them don't know information
9 about their rights. A lot of us do know them, but a lot of
10 them don't.

11 That's why I'm asking that you, all of you, I'm
12 sorry, along with other agencies, go directly to our work
13 area. Thank you.

14 (Applause)

15 CHAIRMAN GOULD: Mr. Rodriguez.

16 MR. RODRIGUEZ: (Through Interpreter.) Good
17 afternoon. Thank you for receiving us in this place. I'm
18 here to support the proposal that you brought. It's very
19 important for the conditions to work in the fields to have
20 a change. This is our opportunity to let you all know that
21 it's important for you guys to show up in the fields, and
22 start checking more up close. It's not sufficient for the
23 companies to shows us the videos, or flyers, where they're
24 supposedly explaining our rights.

25 For me, it's more important that you guys send

1 out people to the crews to explain the rights that we have
2 as fieldworkers.

3 The farmers don't like, as I was listening a
4 while ago, they don't like to invest their money because
5 they're going to take time from the company and from the
6 labor law. But they're only protecting themselves.

7 That's why it's important to me and I support
8 your proposal. A lot of workers that haven't been here in
9 this country for that long, they speak different languages
10 and they don't know their rights. That's why it's
11 important that you guys check this up close and let us know
12 about our rights. And different languages, that there's
13 people that don't speak Spanish or any other language.
14 Because there's a lot of violations inside the fieldwork.
15 Thank you.

16 (Applause.)

17 CHAIRMAN GOULD: Next, Ana Rosa Romero.

18 MS. ROMERO: Good evening, everyone. My name is
19 Ana Rosa Romero. And I'm here to let you guys know that
20 it's a pretty good idea that you guys push the bills
21 because (inaudible) -- for whoever wants to put in a
22 complaint is we get off late from work and it's a long
23 drive. So, it's a good idea for you guys to go and make
24 sure like how everything -- you know, inform everyone about
25 their rights.

1 Because like my coworkers, most of them, they
2 don't know about their rights. So, it's a good idea for
3 you guys to do that. Thank you.

4 (Applause)

5 CHAIRMAN GOULD: Thank you. Jared Romero
6 (phonetic).

7 MR. ROMERO: (Through Interpreter.) Good
8 afternoon. With all due respect to you guys, I disagree
9 with the labor law. I'm here to support you because the
10 reality is, it is necessary to be present in the fields.
11 Why? Because the companies, they tell you certain things
12 about the law when there's a violation. The labor law
13 receives that, but doesn't receive the rest.

14 I've had a lot of experiences with young men that
15 have been hurt in the fields. I haven't got hurt. But it
16 hurts and you feel that. And that they do whatever
17 possible to fire them instead of giving them the right of
18 helping. You see this is many companies.

19 (Applause)

20 MR. ROMERO: And they've never done anything when
21 a worker was abled -- thank God that the law is for this
22 and they complied. Because it's always us that are damaged
23 because of the abuse of the -- the mistreatment of the
24 companies. We work with love because we have a family and
25 they depend on us.

1 (Applause)

2 MR. ROMERO: But the companies take advantage of
3 a Mexican worker that comes here.

4 THE INTERPRETER: And I apologize, I need to ask
5 him to repeat the last part.

6 MR. ROMERO: Of a Mexican worker that comes here
7 to try to better himself.

8 Another thing, I don't have words, but I feel
9 bad. I've been here in California for nine years and I
10 work every day to support my family. And I've seen this
11 type of violation. That's why I approve that you guys go.
12 And it's good for you guys to see this because --

13 (Applause)

14 MR. ROMERO: A lot of people have left these
15 fields hurt and they forget about the leg as if they were
16 some old tool and I --

17 (Applause)

18 CHAIRMAN GOULD: Esperanza Ruiz.

19 MS. RUIZ: (Through Interpreter.) Good
20 afternoon. My name is Esperanza Ruiz. And I thank you
21 very much for being present here, for listening to all the
22 fieldworkers that are here. There's some few, but there's
23 a lot, and some of them know their rights. But that's not
24 true because if they knew their rights, they would be here
25 to hear you guys and they would give other people that

1 information.

2 I have been a fieldworker for 15 years. And in
3 those 15 years I've seen a lot of things. I've seen some
4 improvements. Thanks to the agencies that are helping us,
5 the workers, this has happened.

6 But, nevertheless, there's always new people
7 coming every year that don't know their rights. So, it's
8 important for you guys to come and talk to them.

9 For example, I just learned about a year ago
10 about the rights that if there's two or more people that
11 they want to request a change for the company, if a
12 decision that's more complete, more strong. Now, I know.
13 And if I'm with my coworkers and there's something about a
14 salary, I try to talk to them to request a raise. I've
15 learned a lot of things that --

16 (Applause)

17 MS. RUIZ: -- they came and given us information.
18 Now, to make this stronger, you guys come along and see
19 with your own eyes everything that's going on that I --

20 (Applause)

21 MS. RUIZ: I thank you for your time and God
22 bless you. Thank you.

23 CHAIRMAN GOULD: And Ofelia Reyes, please.

24 MS. REYES: (Through Interpreter.) Good
25 afternoon. My name is Ofelia Reyes. What I've come to ask

1 that it's good that you guys go see the work in the field
2 so that I can see like my coworkers see it. Because it's
3 true, there's a lot of things that are out of control and
4 that there are mistakes. And what I'm asking, that there's
5 a lot of people that come from Mexico here and a lot of
6 those don't speak Spanish or English. So, they can know
7 their rights and it can be interpreted for the language of
8 Mixteco, Zapoteco and other languages.

9 Other languages, a lot of violence and they need
10 to know their rights. Because they don't know, they do
11 whatever their bosses or their brothers tell them, whatever
12 they want. So, that's what I'm asking for. And what I'm
13 asking for is that if you go to the fields, that you take
14 an interpreter so that you tell them and they know their
15 rights.

16 And it's necessary, that's why I plea to you, I
17 plea to you guys that it's necessary in the field. Thank
18 you very much.

19 (Applause.)

20 CHAIRMAN GOULD: Okay, thank you to everyone.
21 And we will go, next, to the next witness who is Mr. Tal
22 Cloud, who is identified as a small business owner.

23 MR. CLOUD: Thank you, Chairman Gould. My name
24 is Tal Cloud and I am a small business owner here in
25 Fresno. I'm also involved in political issues with my

1 group, Common Sense Information. And I take -- I really
2 don't take the side of anyone's part. I've been both ways.
3 I've been on the union's side and the other side.

4 I take positions that are more related to what I
5 feel right and what I feel are wrong.

6 So, I'm going to testify today about my concerns
7 about these regulations and how they would apply based on
8 the last 40 years of the ALRB's existence. And the fact
9 that today, after 40 years of existence, you think that you
10 have the skill sets to administer these regulations when
11 California's State Legislature has provided a number of
12 different areas where, you know, employees will know their
13 rights.

14 So, you're saying that your skill set as a Board,
15 as an organization will have more effect than what the
16 Legislature has had over the last 40 years because, in your
17 eyes, it's been a failure in terms of educating the
18 workers. Which I totally disagree with.

19 I think the workers now have more rights and they
20 understand their rights more now than they ever have.

21 But you're saying your organization can do this.
22 And if that's your mentality and that your organization has
23 the skill set to administer these new rules, and create new
24 rules, and go into the fields and educate the public, I
25 want to look at, you know, some of the way your

1 organization is set up in the event that these agents of
2 the ALRB will go then out in the field.

3 When I went today to look at your information of
4 the Board, I want to read something from your front page
5 about the Board.

6 It says, "The Administrative Law Judges who take
7 evidence and make initial recommendations in the form of
8 written decisions with respect to issues of fact or laws
9 raised by all parties."

10 Which I've written that off because in many of
11 the cases that I've read with the ALJ, representing your
12 organization, that has not been the case.

13 Specifically, let me read the --

14 CHAIRMAN GOULD: Well, Mr. Cloud --

15 MR. CLOUD: I think you're giving everybody a lot
16 of latitude.

17 CHAIRMAN GOULD: We have given everybody a lot of
18 latitude. But what I'd like you to do is --

19 MR. COULD: Well, I --

20 CHAIRMAN GOULD: You're supposed to focus on this
21 rule.

22 MR. CLOUD: Well, I am going to focus on this
23 rule and the way I'm --

24 CHAIRMAN GOULD: In regard to a wide variety of
25 cases that may --

1 MR. CLOUD: Well, this is specifically one.
2 Silas Shawver, who was an employee of yours --

3 CHAIRMAN GOULD: Come to our public meetings
4 where --

5 MR. CLOUD: I do. Silas Shawver, who was an
6 employee of yours, who theoretically could have had a
7 whistle blower complaint, and that you all chose not to
8 investigate, he -- when he was with the CRLA, he was not
9 truthful about his conversations. ALG confirmed that they
10 never filed the workers, that Shawver -- Shawver was the
11 one that made that story up.

12 My point is that you all want to put rules, and
13 you want people to come into the field and educate the
14 employees. Yet, your organization has failed with the
15 truth.

16 You, as an organization, you put a company
17 through a 105-day trial, yet the ALJ, the same ALJ that
18 worked on the Goven (phonetic) case, that didn't let the
19 truth get in the way of the UFW argument, in fact was cited
20 with not being truthful. In fact, the ALJ, he disregarded
21 the information of the untruthful witness in the case of
22 just believing what the employee says.

23 You say -- you say, after a 105-day trial, you've
24 chosen not to give a ruling. Now, how does your
25 organization have the ability to come out and --

1 CHAIRMAN GOULD: Mr. Cloud, we're focused on this
2 proposed ruling today.

3 MR. CLOUD: Right. But how does that, how does
4 that prepare -- if you go out into the field, whatever you
5 say, how can any of us have trust that what you are going
6 to do is right when you can't even follow your own rules to
7 give a ruling on a case that should have been decided.

8 Now, had this been a smaller farm that didn't
9 have the millions and millions of dollars to waste this
10 time at your court hearing, then it would be a different
11 story.

12 So, what I'm talking about today is that your
13 organization is not capable of doing it. And the lack of
14 poor leadership created by your predecessors and now it's
15 on your hands because you've eliminated some of the people,
16 you must deal with your own house, first.

17 Because your incompetence in directing your staff
18 to do what's right for all parties, not just the UFW, it
19 needs to change.

20 And we all know that you're not in business
21 without unions, you're not in business without complaints.

22 But when you have people, that you allow to work
23 for you, that aren't truthful, how then can you go into the
24 field and educate employees about their rights?

25 So, my concern about these -- these regulations

1 that you're putting forward is that you don't have the
2 mechanisms in place to allow truthful, honest people by the
3 fact that your Boards are filled with people who have UFW
4 connections and friendships, and they're not impartial.

5 So, until you, as an organization, can be
6 impartial about the way you disseminate information and
7 take information in, you shouldn't be, you know,
8 trespassing on people's fields.

9 So, that's my point today. And I'm sure it's not
10 something you want to hear, but I would suggest you get
11 your house in order before you try to go ruin other farms
12 and with misinformation. Because to date, you have not
13 been truthful and much of your information from employees
14 that work for your organization.

15 CHAIRMAN GOULD: Are you in agriculture, Mr.
16 Cloud?

17 MR. CLOUD: I'm in agricultural packaging. I
18 sell agricultural packaging throughout the Western United
19 States. I'm a family-owned company that started with \$100,
20 myself, my mother and my sister about 30 years ago. And
21 we've been in this valley, now, for 30 years. Again, we
22 sell from deep into Mexico to way north in Canada, Korea
23 and Hawaii.

24 So, I'm in the agricultural packaging business
25 and so I deal with people across all industries. And the

1 one thing that I know, there's not one farmer that I deal
2 with on a daily basis that wants anything negative to
3 happen to their employees. Because what's happening in
4 this country now is without our employees, we are nothing.
5 And without my employees, in my company, I am nothing.

6 And so I think the mentality that there's an
7 employer out there that wants to harm their employees
8 without giving information is wrong. Our employees are our
9 partners. And that's the way I think your Board needs to
10 look at employees.

11 CHAIRMAN GOULD: Any questions from my
12 colleagues?

13 BOARD MEMBER SHIROMA: Thank you.

14 BOARD MEMBER RIVERA-HERNANDEZ: No.

15 CHAIRMAN GOULD: Okay, thank you.

16 MR. CLOUD: Thank you.

17 CHAIRMAN GOULD: All right, the next --

18 MR. BLANCO: I think there's somebody else. We
19 have a potential addition that's not on the list.

20 CHAIRMAN GOULD: Okay.

21 MR. BLANCO: I don't know if she wants to come
22 forward. Ms. Brown, do you want to come forward? Ms.
23 Laura Brown.

24 MS. BROWN: Good evening. My name's Laura Brown.
25 I do government affairs for California Citrus Mutual. It's

1 a grower/trade association representing our State citrus
2 growers.

3 I'm going to try very hard, I know it's been a
4 long day. I think we call this a little bit of meeting
5 fatigue. I'm going to try very hard not to repeat any
6 sentiments that have already been expressed before me.

7 And I couldn't help thinking through the day
8 about missed opportunities in this process. I think that a
9 lot could have been done before this meeting happened and
10 the series that you're about to embark upon on the Central
11 Coast.

12 I think that there could have been outreach to
13 associations, such as ours, that could reach out to
14 employers and would have built a consensus in an effort of
15 good faith to find solutions to this, and to hear the
16 concerns and try to find common goals as far as how to go
17 forward.

18 I know that there are current laws, regulations
19 that growers are already complying with and they've been
20 enforcing these through their grower -- through their
21 employee handbooks, through meetings, through tailgates.

22 I know that issues, such as this, truly can't be
23 taken care of in a tailgate. These are very complex issues
24 and they need to be thoroughly understood by all of the
25 employees at any given company.

1 But efforts, such as this, are being undertaken.
2 And when we come into a situation like this, it's as if
3 we're already implying guilt. Not to say that every
4 employer is going to be perfect, but there are a lot of
5 employers out there that are doing their absolute best to
6 ensure that they're complying with the rules and
7 regulations, and their employees are being treated fairly
8 and justly.

9 Actually, in a prior life I used to work over on
10 the Central Coast, and I worked conducting adult education
11 for supervisors, for supervisors out in the fields. And we
12 would conduct interviews regarding how to retain employees.
13 Because the demand for labor in every aspect of agriculture
14 is so how.

15 And when you ask a farmer, what is their number
16 one challenge? It's a reliable workforce. If they're
17 going to have the amount of people that they need to
18 harvest a crop every day.

19 And so, they asked us to go out there and figure
20 out exactly what it is that they can do to keep their
21 employees in the field.

22 It saddens me to hear stories of people not being
23 paid the minimum wage. I think that's a huge surprise to
24 me. I don't think I've ever encountered that in my time
25 with agriculture. If anything, growers are doing whatever

1 they can to pay above minimum ways. And they're doing
2 incentive programs, healthcare. And they're trying to
3 think outside the box about what they can do to create a
4 positive working environment for their employees.

5 So, I truly don't like it when people come up
6 here and complain and they don't offer alternatives.

7 I really appreciated the suggestion of a focus
8 group. I think that that would be well worth your time as
9 far as how to go forward and how to create something that
10 would truly solve the problem.

11 I'd also like to see something along the lines of
12 a train the trainer program. Perhaps if ALRB could conduct
13 something along those lines.

14 It's very difficult for you to staff a training
15 program that can truly go out and reach every single
16 agricultural employer. But if you could create a program
17 in which ALRB could train trainers of the different
18 agricultural entities, and they can go forth and carry on
19 trainings at their level, and we see this carried out in
20 the heat prevention, pesticide safety. I think that's a
21 role that can surely be taken on.

22 And I think you also have to do it in a very
23 realistic way. You can't do a training with a room filled
24 with 800 people. Because your idea is you want them to
25 actually retain the information, want them to go share it

1 with their colleagues that weren't there. And I think it's
2 really got to take a look at how do you approach education?
3 How do you approach retention and information that's been
4 shared? And, therefore, compliance.

5 And so, these are issues that I would like to
6 propose. This has been -- I know this has been challenging
7 sometimes. It's a challenging subject to teach, as well.
8 But there's so many other avenues to go about this.

9 It's hard to go out into a field and asking for
10 someone's time, because time is so valuable. Especially
11 for a farmworker, especially for someone who's picking at
12 piece rate.

13 I know when I did that we would offer incentives,
14 such as an international phone card, and that was a way
15 they were okay taking a little bit of time out of their day
16 to answer some of our questions about their work
17 environment.

18 And, you know, things like that are -- we have to
19 think outside the box on something like this. We can't say
20 that we're just going to send regulators out there to start
21 meetings and to start informing employees because there are
22 a lot of questions as far as how you're going to choose
23 where to go.

24 You want to make sure that this is a fair process
25 as you go forward. And so, that's what I would recommend.

1 CHAIRMAN GOULD: Well, it's duly noted and it's
2 very good advice. I do want to not sort of correct, but
3 just to amplify one point that you made. And that is
4 that -- two, I want to make two points. One is that we
5 have reached out. And perhaps we weren't -- I wasn't aware
6 of your organization and should have reached out to you
7 directly.

8 But we have reached out to a number of employer
9 organizations and to employers, themselves. And we -- I
10 mean, I created, this summer, this Ad Hoc Committee which
11 is going to look at a number of things that we are thinking
12 of doing.

13 And we've gotten feedback from them. We're
14 getting feedback from them today and we'll get feedback
15 from them in the future. Point number one.

16 Point number two, I'm not sure -- we want input.
17 I'm not sure that in all instances we can necessarily get
18 complete consensus. You know, in some instances we have to
19 proceed as we're obliged to proceed to implement this law
20 as written.

21 But your point is well taken that we need to get
22 public input. And that's what our meeting was about in
23 August. That's what it's about today and in the future.

24 And I'm very grateful to you for coming here and
25 providing constructive advice to us.

1 I don't know, do my colleagues have some
2 questions here you want to put forth?

3 BOARD MEMBER SHIROMA: No. I appreciate it and
4 appreciate your laser-like commentary at the late hour.
5 Thank you.

6 CHAIRMAN GOULD: Cathryn?

7 BOARD MEMBER RIVERA-HERNANDEZ: No, thank you.

8 CHAIRMAN GOULD: Eduardo?

9 MR. BLANCO: Yes. So, I just wanted to make sure
10 we had her contact information.

11 CHAIRMAN GOULD: Okay, thank you very much, Ms.
12 Brown.

13 (Off-the-record discussion.)

14 CHAIRMAN GOULD: So, our next witness is Irma
15 Luna. Okay, we gotta proceed here. We have to -- okay,
16 let's proceed. Ms. Luna, would you please identify
17 yourself and tell us a little bit about yourself, and what
18 it is that you would like to say to our Board today.

19 MS. LUNA: Yes. Yes, good evening. My name is
20 Irma Luna. I'm currently employed with ALRB as a Field
21 Examiner at the Visalia Office.

22 I also consider myself a member of the community
23 here, in the valley. I've been in the valley for close to
24 20 years. Moved here in late 1996 from the State of
25 Washington. Ever since, I've lived here.

1 And just about the proposal that you guys are
2 talking about in presenting, I think it's very, very
3 important that there's outreach in the field work and to
4 talk to workers. And most importantly, as we've heard from
5 other experts here, that there's a lack of -- the language
6 barrier, it's really huge in the valley. There's a lot of
7 newcomers that do not speak the language, and speak their
8 own language, which makes it a little bit harder.

9 I do understand that there are a lot of migrant
10 farmworkers that do speak the language and have a little
11 bit better knowledge of what their labor rights are. And
12 I'm, you know, happy for them because that's good for them
13 to put it in practice.

14 But you're still talking about farmworkers that
15 are coming to this country every year, the new migrant
16 farmworkers that are still lacking that, you know, part.

17 CHAIRMAN GOULD: When you say the language, you
18 mean the Spanish language?

19 MS. LUNA: Mixteco, indigenous language. I speak
20 Mixteco, myself. And having somebody to do that kind of
21 education to the community, one-on-one, it's very
22 effective. And especially if you have someone which speaks
23 their own language, which would be very effective.

24 I understand that there's going to be a lot of
25 other challenges, but if the effort is there to do it, I

1 think everything is possible.

2 MR. BLANCO: I just wanted the record to reflect
3 that we requested Ms. Luna to speak today. And she's less
4 of a volunteer than one might think.

5 And also that because of her being our only
6 Mixteco-speaking employee, we thought that perspective
7 would be one that the Board should hear from her with
8 respect to the Mixteco community. And how outreach is an
9 issue that she could speak upon because in her past she has
10 worked for CRLA. For how many years?

11 MS. LUNA: Fifteen years for CRLA.

12 MR. BLANCO: And she also was one of the
13 interviewers in the Dr. Mines --

14 MS. LUNA: Survey.

15 MR. BLANCO: -- indigenous survey. So that she
16 has that perspective to provide to the Board on this issue.

17 And you've heard -- to cut things down to the
18 bones of it, again, as Ms. Brown said, we've gotten to the
19 point where we've heard a lot of folks essentially saying
20 the same things.

21 But I did want to get your perspective on the
22 technology issue and whether or not that segment of the
23 farmworker population has access to that technology and
24 uses it?

25 MS. LUNA: I've been to many farmworkers' homes

1 and that's something that I don't see. I visit many
2 families for interviews for other reasons, and it's not so
3 common. Some families do have it, but the family that I've
4 talked to and visited, it's you don't find computers in
5 their homes.

6 In keeping in touch with the people that I work
7 with, it's very difficult because most of them tend to have
8 like those rechargeable phones or their prepaid phone, with
9 a card. You lose contact with them because it's not a
10 phone that they have service, that they keep, you know, for
11 year after year, like most of us do when we go through a
12 phone company.

13 A lot of the people, they buy their phone on the
14 corner store which, you know, has a certain amount of
15 minutes in them and they just get rid of it. And it's hard
16 to keep in touch with the farmworkers sometimes because of
17 that.

18 MR. BLANCO: Now, also, there's commentary about
19 trying to use methods of brochures, and written materials
20 like that. But is there a problem with doing that as well,
21 with the Mixteco community?

22 MS. LUNA: For the indigenous community, it
23 doesn't make any sense to have any brochure in Spanish or
24 in Mixteco because the majority of them, they would have to
25 know how to read Spanish in order for them to understand

1 the written indigenous language. The written indigenous
2 language is more for academics, not for farmworkers.

3 MR. BLANCO: Some of the -- we also talked about
4 legal concepts and the complexity of some of these legal
5 concepts. And I think Mr. Vasquez spoke to the point
6 that -- and Ms. Keffer, I think as well, that a concept
7 like protected concerted activity isn't something that
8 somebody might normally think of as being a way to be able
9 to advance a position and then have protection from what
10 you're -- you know, from retaliation for speaking in a
11 group.

12 And do you think it means, in the Mixteco
13 community, do you think that that's true that they don't
14 have any knowledge or awareness of that kind of a
15 protection?

16 MS. LUNA: Well, I think what I can tell you is
17 that they put it in practice a lot at work, but they don't
18 know what it means. Because in our community, they're --
19 they work in groups. And wherever they tend to settle,
20 it's always by group. If a family moves to somewhere,
21 they're going to be pulling other families and telling them
22 about someone.

23 So, pretty soon people are coming from Guerrero
24 or Moxaca and they know where to go because a family
25 recommended that place.

1 So, whatever place works the same, it's usually a
2 referral, a recommendation of somebody who is working there
3 already. So, they tend to do a lot of things as a group.

4 But they're aware that it's protected and they
5 will probably continue speaking for each other and
6 protected each other. But they have no idea that it is
7 protected under the Act. And if there is retaliation what
8 or where can they go? A lot of people just don't know.

9 MR. BLANCO: And during your time with the CRLA,
10 were you aware of the Agricultural Labor Relations Act?

11 MS. LUNA: At first, no. I honestly have to say
12 no. It wasn't until a couple of years later that we worked
13 with a group of workers that were fired for concerted
14 activities. So, we worked for the portion of getting their
15 money back. And then it was referred to the ALRB. That's
16 how I found out more about the ALRB.

17 MR. BLANCO: I think I'm going to stop there.

18 CHAIRMAN GOULD: Okay.

19 MR. BLANCO: It gets more cumulative.

20 CHAIRMAN GOULD: Do either of you have questions?

21 BOARD MEMBER RIVERA-HERNANDEZ: Thank you. I was
22 wondering about -- we've heard a lot about the trust issues
23 and the networks, and how you gave access and overcome that
24 obstacle. Is speaking the language enough or how have you
25 been able to do that with them?

1 MS. LUNA: One thing is the language, speaking
2 the language. I think if they see somebody from an agency
3 that speaks their language, you know, not immediately, but
4 you do gain their trust if you work with known agencies,
5 and like grass root organizations. It's you gain their
6 trust that way.

7 But like Rick said, it's really important to go
8 into their network, their leader, their head person of
9 their "comunidad", talk to that person. And they always
10 have somebody who leads the community. And so, if you get
11 to that person you gain their trust, and then pretty soon
12 you gain the trust of their whole community from that, you
13 know, part of their town.

14 BOARD MEMBER RIVERA-HERNANDEZ: And those
15 employees that you have worked with or have come through
16 the door, how have they found out about the ALRB?

17 MS. LUNA: You mean currently?

18 BOARD MEMBER RIVERA-HERNANDEZ: Uh-hum.

19 MS. LUNA: We have somebody, very rare walk into
20 the office. Mostly, we get phone calls and they just get
21 referred by other agencies, telling them to call us. And a
22 lot of the calls are about wages and so then we have to
23 refer them back. We get a lot of calls when it's about
24 wages because it's -- in Spanish, they call us "La Ley
25 Laboral", so immediately, you know, "Ley Laboral", they

1 must deal with wages. But then we get a lot of the calls
2 by phone.

3 BOARD MEMBER RIVERA-HERNANDEZ: Thank you.

4 BOARD MEMBER SHIROMA: Okay, Ms. Luna, we really
5 appreciate your service at the Agricultural Labor Relations
6 Board in the Visalia Office.

7 My question is we heard a lot about "Radio
8 Bilingue" and the once-a-week-four-hours of program for
9 indigenous language programming.

10 Do you see that reaching a wide audience and
11 perhaps growing over time, from once-a-week, for four
12 hours?

13 MS. LUNA: Well, it has. At first, for a couple
14 of years, it was -- at first it was one hour. And then it
15 increased to two hours. And I'm not sure, but maybe like
16 five years -- or four years, more or less, it increased to
17 four hours every Sunday.

18 But during those four hours, only one hour is
19 for, you know, any topic for, you know, community
20 information. And it's usually from, I think, 10:00 to --
21 no, 11:00 to 12:00, I think, and the rest is basically for
22 radio listeners to call in. Because from 2:00 and -- no,
23 from 12:00 and on there's a connection with Oaxaca. So, a
24 lot of the families that lived in Oaxaca, they'll listen to
25 it and they'll call to send dedication to their family.

1 And vice-versa, people that live here, they'll
2 call in and a lot of them in Oaxaca will listen to it. But
3 that's specific time, only one hour is dedicated for any
4 agencies that's pretty much open to go and do community
5 education through the radio station.

6 MS. SNELL: Okay.

7 BOARD MEMBER RIVERA-HERNANDEZ: Have you ever
8 participated in that program?

9 MS. LUNA: Yes, many times. It's because it's
10 the only, right know, that does it in Mixteco. Actually,
11 there's one that recently started, it's on air, and it's
12 called (speaking Spanish), and it's down in Oxnard. But
13 it's very new, so not many people know about it.

14 And they also have a space for agencies to do,
15 you know, any kind of presentation.

16 BOARD MEMBER RIVERA-HERNANDEZ: Okay.

17 MR. BLANCO: And what about the Spanish TV
18 stations, are they doing anything?

19 MS. LUNA: Yes, Univision have a program that's
20 called "Arriba Valle Central". It's pre-recorded and it's
21 also dedicated to, you know, give information to the
22 public. And it's usually early in the morning, 5:00 in the
23 morning. So a lot of people are, if not already heading
24 out to work are getting ready, and I find it effective
25 because a lot of people watch that program in the morning.

1 And, you know, they find out about agencies around. So, I
2 find that effective because, you know, it's you're talking
3 to somebody there on TV and they're listening to you. And
4 I've also done it in Mixteco on that TV station.

5 MR. BLANCO: And do you know if that's -- so,
6 that's here in the San Joaquin Valley area?

7 MS. LUNA: Yes.

8 MR. BLANCO: And do you know about any other
9 parts of the State or do they have similar TV programs?

10 MS. LUNA: I don't know. I would assume they do,
11 but I don't know.

12 CHAIRMAN GOULD: Okay, well, thank you very much.
13 And I want to reiterate what my colleague has said, and
14 that is that we thank you very much for your work at the
15 Board and for your taking the time and trouble to testify
16 before us here, today. Particularly at this late hour.

17 And I want to conclude by saying that I thank all
18 of you who have participated in this proceeding for your
19 input and your valuable contribution.

20 As I said earlier, we will be continuing these
21 hearings on the 14th in Salinas, and the 15th in Santa
22 Maria. And we plan to schedule a similar hearing in
23 Oxnard, soon thereafter.

24 Thank you very much, all.

25 BOARD MEMBER SHIROMA: Thank you.

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BOARD MEMBER RIVERA-HERNANDEZ: Thank you.
(Off the record at 7:26 p.m.)

REPORTER' S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of September, 2015.

Jacqueline Denlinger

CERTIFICATE OF TRANSCRIBER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



MARTHA L. NELSON, CERT**367

September 16, 2015

