HIDDEN TRAGEDY: UNDERREPORTING OF WORKPLACE INJURIES AND ILLNESSES

HEARING

BEFORE THE

COMMITTEE ON EDUCATION AND LABOR

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HIDDEN TRAGEDY: UNDERREPORTING OF WORKPLACE INJURIES AND ILLNESSES

Thursday, June 19, 2008
U.S. House of Representatives
Committee on Education and Labor
Washington, DC

The committee met, pursuant to call, at 10:37 a.m., in Room 2175, Rayburn House Office Building, Hon. George Miller [Chairman of the Committee] presiding.

Present: Representatives Miller, Kildee, Woolsey, Tierney, Holt, Grijalva, Bishop of New York, Sarbanes, Hirono, Yarmuth, Hare, Courtney, Shea-Porter, McKeon, Wilson,Kline, and Foxx.

Staff present: Aaron Albright, Press Secretary; Tylease Alli, Hearing Clerk; Jordan Barab, Senior Labor Policy Advisor; Jody Calemine, Labor Policy Deputy Director; Lynn Dondis, Policy Advisor,Subcommittee on Workforce Protections; Brian Kennedy, General Counsel; Danielle Lee, Press/Outreach Assistant; Sara Lonardo, Junior Legislative Associate, Labor; Alex Nock, Deputy Staff Director; Joe Novotny, Chief Clerk; Meredith Regine, Junior Legislative Associate, Labor; Michele Varnhagen, Labor Policy Director; Michael Zola, Chief Investigative Counsel, Oversight; Mark Zuckerman, Staff Director; Robert Borden, Minority General Counsel; Cameron Coursen, Minority Assistant Communications Director; Ed Gilroy, Minority Director of Workforce Policy; Rob Gregg, Minority Senior Legislative Assistant; Jim Paretti, Minority Workforce Policy Counsel; Molly McLaughlin Salmi, Minority Deputy Director of Workforce Policy; Hannah Snoke, Minority Legislative Assistant; Linda Stevens, Minority Chief Clerk/Assistant to the General Counsel; and Loren Sweatt, Minority Professional Staff Member.

Chairman MILLER [presiding]. The Committee on Education and Labor will come to order for the purposes of conducting a hearing on the issue of underreporting of workplace injuries and illnesses.

And I recognize myself for the purposes of an opening statement.

The Occupational Safety and Health Act of 1970 requires the U.S. Department of Labor to collect and compile accurate statistics on occupational injuries, illness and fatalities in the United States.

Accurate injury and illness records help the Occupational Safety and Health Administration better allocate its resources, accurately target its inspections, and evaluate the success of its efforts to improve the health and safety of American workers.

Every time top officials at the Department of Labor and Occupational Safety and Health Administration have appeared before Congress, they have cited declining injury, illness and fatality numbers to demonstrate their effectiveness at protecting America's working men and women.

When Assistant Secretary Foulke has testified before the committee, whether on OSHA's failure to issue standards to protect workers, OSHA's failure to address the fatal "popcorn lung" disease, or OSHA's failure to mitigate combustible dust hazards or OSHA's shortage of inspectors, he has cited record-low injury and illness statistics.

Secretary Foulke has essentially told the committee that if fewer workers are being injured on the job, the agency must be doing something right. However, a growing amount of evidence suggests that the workplace and injury statistics Secretary Foulke cites are grossly inaccurate.

Today we will hear about the growing number of academic studies that conclude that the Department of Labor is actually counting and reporting as few as one-third of all workplace illnesses, injuries and deaths.

Some of the undercounting can be blamed on the fact that millions of public employees and self-employed workers are not required to report injuries and illnesses to the Labor Department. Some of it is the result of the difficulty in counting occupational illnesses like cancer or asthma that may appear years after workers' initial workplace exposure.

However, critics also correctly point to a more significant reason why it is difficult to get accurate injury and illness data: The nation's workplace injury and illness report card is based upon a system of self-reporting by employers.

This flawed system gives employers an incentive to underreport injuries. The fewer injuries and illnesses an employer reports, the less likely it will be inspected by OSHA and the more likely it will pay lower premiums for workers' compensation.

There is also mounting evidence that a number of employers are engaging in intimidation in order to keep workers from reporting their own injuries and illnesses. A recent Charlotte Observer investigation on the hazardous working conditions in North Carolina's poultry industry revealed a shocking record of worker abuse and exploitation, often leading to crippling injuries and illnesses.

The Observer also uncovered concerted efforts to discipline, intimidate and fire workers in retaliation for reporting serious on-the-job injuries. The Observer found that workers were forced to return to work immediately after having surgery so that the company would not have to file for workers' compensation.

I want to commend the Charlotte Observer for their amazing work on this important story on revealing working conditions that remain hidden to most Americans.

We learned about workers with shattered ankles, workers whose hands went numb after thousands of repetitive motions, and workers who suffered serious knife cuts while on the job. But none of these injuries appeared on the poultry company's accident or injury logs, as required by law.

We also read about the very same poultry processing plant proudly claiming a perfect safety record—records that were hard to believe if you know anything about the hazardous working conditions.

Underreporting of on-the-job injuries and illnesses is not a new problem, nor is it an isolated one. It happens in job sites across different industries and throughout the entire country.

As demonstrated by the extensive report released in this committee today, it is a regular practice for the steelworkers to avoid detection and therefore retaliation by management by keeping their injured hands in their pockets. This is known as the "bloody pocket syndrome." A recent Transportation Committee hearing also revealed similar patterns in the rail industry.

And the threats are not just limited to workers. We will hear testimony today that occupational physicians are often pressured to improperly report and provide inappropriate treatment to injured workers in order to keep the incidents off of the OSHA log.

Although there is widespread agreement that workplace injuries and illnesses are woefully underreported, OSHA refuses to recognize that the problem exists. The agency stubbornly refuses to perform thorough audits, which further calls into question the accuracy of the statistics it relies on.

Today we will hear testimony from a long-time OSHA official about the agency's failure to seriously address this problem. Some will dismiss recordkeeping problems as insignificant paperwork violations, but these infractions are anything but insignificant. Without accurate injury and illness statistics, employers and workers are unable to identify and address safety and health hazards and to ensure that workers get appropriate medical treatment.

We cannot properly evaluate the status of our nation's workplace safety and health laws in this country if we do not start with accurate information. We simply must not allow the lack of information to permit hazardous working conditions to go unaddressed, putting workers' limbs and lives at risk.

The purpose of today's hearing is to evaluate the extent and the causes of this problem and to learn what we can do to improve reporting in order to do more to protect workers' health and safety.

I am grateful to all of our witnesses for taking the time to join us today, and I look forward to your important testimony.

At this point, I would like to recognize Congressman McKeon, who is the senior Republican on the committee, for his opening statement.

[The statement of Mr. Miller follows:]

Prepared Statement of Hon. George Miller, Chairman, Committee on Education and Labor

Good morning. Welcome to today's hearing on the underreporting of workplace injuries and illnesses.

The Occupational Safety and Health Act of 1970 requires the U.S. Department of Labor to collect and compile accurate statistics on occupational injuries, illnesses and fatalities in the United States.

Accurate injury and illness records help the Occupational Safety and Health Administration better allocate its resources, accurately target its inspections, and evaluate the success of its efforts to improve the health and safety of American workers.

Every time top officials at the Department of Labor and Occupational Safety and Health Administration have appeared before Congress, they have cited declining injury, illness and fatality numbers to demonstrate their effectiveness at protecting America's working men and women.

When Assistant Secretary Foulke has testified before this committee—whether on OSHA's failure to issue standards to protect workers, OSHA's failure to address the fatal "popcorn lung" disease, or OSHA's failure to mitigate combustible dust hazards or OSHA's shortage of inspectors—he has cited record-low injury and illness statistics.

Secretary Foulke has essentially told this committee that if fewer workers are being injured on the job, then the agency must be doing something right.

However, a growing amount of evidence suggests that the workplace and injury statistics Secretary Foulke cites are grossly inaccurate. Today we will hear about the growing number of academic studies that conclude that the Department of Labor is actually counting and reporting as few as one-third of all workplace illnesses, injuries, and deaths.

Some of the undercounting can be blamed on the fact that millions of public employees and self-employed workers are not required to report injuries and illnesses to the Labor Department. Some of it results from the difficulty in counting occupational illnesses like cancer or asthma that may appear years after workers' initial workplace exposure.

However, critics also correctly point to a more significant reason why it is difficult to get accurate injury and illness data: The nation's workplace injury and illness report card is based on a system of self-reporting by employers.

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I am grateful to all of our witnesses for taking the time to join us today. I look forward to your important testimony.

Thank you.

Mr. MCKEON. Thank you, Chairman Miller. And good morning.

We are here today to examine how the Department of Labor collects statistics on workplace injuries, illnesses and fatalities.

Under OSHA's recordkeeping system standard, employers record and report work-related injuries, illnesses and fatalities. This data is then used to evaluate the effectiveness of the agency's practice and to target industries and companies with high evidence rates for future inspection.

I understand that today's hearing was triggered, in large part, by a series of newspaper articles that were published earlier this year in which it was alleged that a certain business has not been properly or accurately reporting its employees' injuries and illnesses to OSHA.

Such an allegation is troubling and certainly warrants further investigation. But, Mr. Chairman, you know as well as anyone that I hesitate, and I think we all hesitate, to draw broad-based conclusions from examples that have not been fully investigated.

For that reason, I hope today's hearing is approached as an opportunity to listen and learn, rather than to seek evidence that supports existing conclusions.

OSHA's recordkeeping standard is an important tool that allows us to monitor workplace safety and target initiatives that can reduce injury and illness. Because of its importance, I appreciate the opportunity to look more closely at the data-collection methods used for the recordkeeping standard. The information gathered through this standard helps ensure effective enforcement of workplace safety standards.

I also think we need to look more closely at the guidance offered to employers about what to record, what to report and when to do so. Employers are held responsible for compliance with this standard, which is why it is important that they be given clear guidance about their responsibilities.

I expect that the discussion today may turn to questions about the accuracy of the data associated with the recordkeeping standard. It is a valid concern, and that is why I look forward to hearing from our witnesses with the Bureau of Labor Statistics about the audit process in place to ensure the integrity of the data reported and collected under this standard.

Ultimately I think the greatest value we can draw from today's hearing is a greater understanding of the mechanisms in place to ensure the prompt and accurate reporting of relevant workplace injury and illness data. I look forward to such a discussion.

And I yield back the balance of my time.

[The statement of Mr. McKeon follows:]

Prepared Statement of Hon. Howard P. "Buck" McKeon, Senior Republican Member, Committee on Education and Labor

Thank you Chairman Miller, and good morning. We're here today to examine how the Department of Labor collects statistics on workplace injuries, illnesses, and fatalities.

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Chairman MILLER. I thank the gentleman.

Again, let me welcome the witnesses to today's hearing. We look forward to your testimony. And we certainly appreciate that time that you are giving over to the committee inquiry.

Let me begin by introducing A.C. Span, Jr. He worked for 6 months at Bashas' Distribution Center, a food warehouse and distribution center located in Chandler, Arizona. Originally from Chicago, A.C. worked in home construction before moving to Arizona. He is the father of an 18-year-old daughter. And he worked as a baler at Bashas', and in doing that, he loaded and unloaded trucks, sorted pallets, cleaned ice cream totes, and flattened cardboard boxes. In January of 2008, he was fired from Bashas'.

Dr. Robert McLellan is an immediate past president of the American College of Occupational and Environmental Medicine. He is a board-certified occupational medicine physician; additional certification in family medicine. Dr. McLellan has extensive experience as an occupational medical consultant to business and a wide range of economic sectors, including health care, manufacturing, nuclear energy and public safety.

Baruch Fellner is representing the U.S. Chamber of Commerce. He is a partner in Gibson, Dunn & Crutcher in Washington, D.C., practicing in the area of labor relations. He has also worked in the Solicitor's Office at the Department of Labor and in the Appellate Court Branch of the National Labor Relations Board. Mr. Fellner received his B.A. from George Washington University and a law degree from Harvard Law.

John W. Ruser has served as assistant commissioner for safety, health and working conditions at the U.S. Bureau of Labor Statistics since November 2006. Dr. Ruser is responsible for the Census of Fatal Occupational Injuries, the Survey of Occupational Injuries and Illness, and special surveys. Dr. Ruser holds Ph.D. and M.A. degrees in economics from the University of Chicago and a B.A. in economics from Princeton University.

Dr. Kenneth Rosenman is a professor of medicine and chief of the Division of Occupational and Environmental Medicine at Michigan State University. Dr. Rosenman is board-certified in internal medicine and occupational medicine, and he received his medical degree from the New York Medical College in 1975. He is a fellow at the American College of Epidemiology and the American College of Preventative Medicine. He also has published approximately 145 articles on occupational and environmental disease.

Bob Whitmore is in charge of OSHA's injury and illness recordkeeping activities in the Office of Statistical Analysis since 1988 and was employed as an economist in the Bureau of Labor Statistics from 1972 until 1990. He has been the Department of Labor's expert witness on OSHA recordkeeping litigation and a member of the OSHA's significant case team and has personally reviewed all the egregious and significant recordkeeping cases since late 1986. He obtained his B.S. degree in economics at the University of Baltimore in 1972. And he is speaking today on behalf of himself and not representing OSHA.

As we informed the witnesses, because of the importance of getting complete, full and truthful testimony, the witnesses in an investigative hearing before the committee in Congress are sworn in. And our witnesses will be sworn today.

So before we move to your testimony, if I could ask you to please stand and raise your right hand.

[WITNESSES SWORN.]

Let the record show that the witnesses answered in the affirmative.

And thank you very much for that.

And now, Mr. Span, we will hear from you.

Under our system, a green light will go on when you begin to testify, which gives you 5 minutes. And then 4 minutes into your testimony, an orange light will go on and give you an idea to start to wrap up, but we want you to complete your thoughts. And then a red light will go on when your 5 minutes is up. But, again, feel free to complete your sentences or your thoughts at that point.

TESTIMONY OF A.C. SPAN, JR., FORMER EMPLOYEE, BASHAS' DISTRIBUTION CENTER

Mr. SPAN. First of all, Mr. Chairman, I would like to thank you and the committee for giving me the opportunity to be here in Washington and testify at this hearing.

My name is A.C. Span. I recently moved to Arizona from Chicago, Illinois. In doing so, I heard wonderful things about the Bashas' Corporation, so I applied for a position there, and thank God they gave me an opportunity to go to work. I was told I would be part of the Bashas' family. I was also told that it would be an open door.

Being an employee there, I was employed on the baler. That is the department that shreds the paper and unloads the tractor trailers. I was given 5 minutes of training on the heavy equipment that I must operate on an 8-hour basis.

As a baler, I witnessed a lot of debris scattered around on the docks as well as the plates, and it was about my concern about me being a diabetic that, you know, I had to pay attention to the things that was around me. Because I also witnessed people getting run over, getting their fingers smashed and picking them up, scared to report these accidents, because of the fact of Bashas' policies, which Bashas' has a policy of a point system, with 16 points and you immediately walk out the door.

And also they have another policy with the injury. If you get hurt on the job and you report it, you are going to light duty, from making $19 to $20 an hour, your pay is dropped, you know. So a lot of people that work there have been there for years. They can't afford for their pay to drop to minimum wages, considering the price of gas and everything else there in Arizona.

As I started working, I witnessed a lot of things that need to be changed there, you know. So me and some more people that work with me decided to get a safety committee going. We tried to approach the Bashas' Corporation many a time, you know. And we had a petition. And every time that we went, the door was actually closed in our face.

So we decided to call OSHA and have them to come in. And it is sad that OSHA came in and they gave us the investigation very poorly. Because, you know, when I drive a car and the speed limit says 35 miles per hour and I am doing 40, I am being punished for it. And OSHA did not—they wrote a report, and they had Bashas' fix certain things, but it was sad that, you know, there wasn't even a smack on the wrist.

And here it is, a plant that people are being hurt on a daily basis, and they are scared to report it because of the fact that Bashas' is punishing them for it, you know? So most of the workers there do not, do not at all, report any injuries because of the fact that the policy that the Bashas' Corporation had set forth.

And I would like to take the time to—medical, you have to wait 6 months before any medical is provided for you there. And it is sad that the workers have to go through this, and they are going through it today.

Very little training at all. You know, when you are hired there, you are just out there. You are being thrown out there, and this is the way you have to get the job done.

At the Bashas' Corporation, the order selectors, they take the orders for 166 stores. You are put on a time limit to have these pieces and have them ready within a certain length of time, or you can be either suspended or fired. You are given points for these things.

So with the lack of the training to operate this heavy equipment, as well as the pressure that they put on you to pull these orders, it is chaos.

And at the time that OSHA did come in, it is surprising and alarming that the company will shut down their operations. While OSHA was in the building, we were told not to get on any heavy equipment, you know. And I am surprised that OSHA didn't catch on to this as well, that the whole plant was just in there sweeping, you know.

And it is sad that all this stuff is happening, and OSHA was supposed to be there for us. We contacted OSHA, but we have no response or anything of that nature. In terms of the safety, you know, it is sad that people have to go to work and to look over their shoulders or watch to make sure they don't step on any nails or for a guy to get on a two-ton pallet jack and drive with no training, you know, it is a very scary sight, you know, even to imagine that this is happening. I never experienced anything like this before.

And also, you know, to see my fellow employees get ran over and have their toes amputated as well as their fingers smashed, and they are just taking tape to tape their fingers back up because they are scared to report these injuries, because of the fact that you will get punished for them. And this punishment goes toward the point system, and this punishment also goes toward my pay scale getting cut.

And, you know, it is not right at all. And I am sitting here to testify from my experience, what I have seen. And I hope that we can make a difference and a big change.

[The statement of Mr. Span follows:]

Prepared Statement of A.C. Span, Former Employee, Bashas' Distribution Center

Thank you Chairman Miller, Representative McKeon, and Members of the Committee for holding this hearing and for the opportunity to testify. My name is A.C. Span and it is indeed an honor to be here in Washington for my first time and to testify today at this important hearing. Less than a year ago, I moved to Arizona and after hearing about what a great place it was to work, applied and accepted a job at Bashas' Distribution Center in Chandler, Arizona. It was clear to me almost instantly that there are serious safety and health problems at that Center and I am here today to tell you about my experience working for Bashas'.

Prior to moving to Arizona, I lived in Chicago, Illinois and worked as a house builder. I was a proud member of Teamster Local 222. Then last summer, I moved with my wife to Phoenix, Arizona. Given the good things I had heard about the Arizona based grocery store chain—Bashas', and how hard it was to get a job with them, I was pleased when I was offered a job as a baler in the Distribution Center. I couldn't wait to be "part of the Bashas' family." I had only been on the job for six months before I was terminated for advocating for improved workplace safety and for forming a union, which I will talk about later. I now work for the Association of Community Organizations for Reform Now (ACORN), which is a grassroots organization of low- and moderate-income people.

I started work as a baler on August 8th of last year. I joined approximately 800 workers at the warehouse distribution center. The Distribution Center distributes food and merchandise to more than 166 grocery stores primarily located throughout Arizona. Although I had been well trained to be a house builder, I did not receive any formal training to prepare me for the work I would do at the Center. I believe I was partially hired because of my experience building houses. Yet, as a baler, I

was responsible for loading and unloading trucks going to and coming from the stores, sorting pallets, cleaning the ice cream totes and flattening and shredding cardboard boxes. This was much different work with much different skills than building houses. This work involved operating heavy equipment, lifting, pulling and pushing crates and cleaning totes with chemicals and disinfectants.

Before I go into some specific details of injuries at the Center and what is and isn't reported, it is important to give you some background about the company. There are seven key factors—

First, new employees do not have any medical insurance until their sixth month anniversary.

Second, new employees get very limited training when they start work. I noticed early on that the lack of training and required speeds to do the work created a very unsafe work environment. I, along with my coworkers in the balers department, work on and with heavy equipment without any real training. Most are given only about 10 minutes of driving practice on the forklifts and pallet jacks through cones in a clear and uncluttered area, not at all like real the real work area at the Center, which has trash and pallets all over. The forklifts and pallet jacks can weigh 5-10 tons each. When I worked there, much of this equipment was in bad condition with brakes that didn't work properly. There were dock plates that were bent or damaged and many of the storage racks were loose and swayed. Plus, the ladders around the balers were often broken and unsafe. The combination of all these problems, most of which still exist, created an environment where workers could and would get injured. Without proper training, maintenance, repair and protective equipment and clothing, accidents and injuries are just waiting to happen.

In addition, typically the warehouse floors are covered with nails, broken straps, broken wood and broken bottles, which cause the floors to be slippery and dangerous. There are protruding nails from broken pallets and dust everywhere. Most workers wear sneakers which do not protect us from injuries. We also do not have any eye protection, ear plugs, gloves, etc. to prevent injuries from any of these common hazards.

In another part of the Center, "Order Selectors," drive forklifts to collect orders for stores. They are given strict time limits to finish an order and are expected to finish one complete order within the time limit. They are penalized with points if they do not finish the order in time. The selectors fly down the aisles jumping on and off the lifts getting the orders together. I saw a man lose his toe when a machine ran over his foot. People get run over all the time because of the haste in filling orders. Workers frequently get hurts because of the speed and the badly maintained forklifts. However, Bashas' routinely blames the workers for causing their injuries.

Third, Bashas' has a point system that penalizes workers for absences and tardiness by giving them points. While workers are not supposed to get points for time lost for industrial injury, there are many examples of workers who take time off for work related injuries and then get points. Workers who get 16 points in a year are terminated. Typically you are given two points per missed day. Workers who don't maintain 100% of the expected standard for selecting orders get points. So, it is easy for the points to add up. In my case, receiving points for taking time off for a work related injury could have been a potential violation of the Family and Medical Leave Act.

Fourth, if an employee's injury is severe enough that he or she cannot return to the regular job, the worker is put on "light duty." Although that sounds reasonable, the company actually drops your pay to minimum wage when you are on light duty. So, if you normally make $19-20 an hour, your pay is cut by more than a one third to minimum wage. Few workers can afford that kind of pay cut, especially when they are also faced with medical bills. This kind of cut is punishment for getting injured on the job.

Fifth, Bashas' has a policy that workers who get injured or report an injury have to be drug tested.

Sixth, workers are directed to go to the company doctor and not their own personal doctor. The Bashas' doctors may send you back to work, even if you are not physically ready to go back to work and regardless of your medical condition. The Bashas' doctor also determines if you need to go on light duty and when you can come off of it.

Finally, the company holds monthly raffles. If your department has not had any injuries reported for the month, the entire department is eligible for the raffle. If one person reports an injury, the entire department is ineligible. The prizes include coupons for dinner, Ipods, gameboys, etc. Everyone loves winning and there is great peer pressure to keep injuries quiet so you can participate in the raffle.

All these things create an atmosphere where workers do not want to report injuries. I have actually seen workers limping around rather than report an injury. Reporting illnesses or injuries can cause you to be unpopular with your co-workers, get disciplinary points, have your salary reduced and ultimately lose your job. Why take the chance? Most workers don't want to and end up staying silent about injuries.

My injury occurred about three months into the job. One of my jobs was to unload trucks filled with empty palettes and product returned from stores. The trucks are usually quickly loaded with contents shifting during the drive to the Center. This truck had been sitting on the lot for awhile. When I lifted the back door of the trailer, a large pile of dust came out and went into my eye since I did not have safety glasses. My supervisor, who was standing next to me, advised me to go and wash off my face and eye. I then returned to work. When I woke up the following day, my eye was glued together and the size of a baseball. Since I was already scheduled to have two days off, I went straight to my doctor. I preferred to go to my doctor since I have diabetes and high blood pressure and want to make sure that those conditions are taken into consideration for any treatment. After being examined, my doctor told me I had a contagious eye infection and took me off work for an additional two days. He gave me medication for my eye and a letter saying I should allow my eye to heal and not operate heavy equipment. Because I had no medical insurance through Bashas', my visit was an out-of-pocket expense for me.

Three days later I returned to work still putting medication in my eye. I had called the company about five hours before I was supposed to return to let them know that I had been injured. I was told to bring in documentation but when I arrived with the letter, the plant manager commented that my "eye was still messed up." He started to make noise about how I had not reported my injury but my supervisor who had been there when I got injured told him he was a witness. This annoyed the manager. I think he had wanted to make it clear that this had not been a work injury but with the support of the supervisor, that was not possible.

The manager then told me he would need to take points off for my missed days. I said that this was a work related injury and that I had a doctor's note so I shouldn't get points. I was told that it was the company's rule to deduct points and that I would get two points for the days off. I told him again I didn't think any points should be taken off and he said that "two points ain't going to hurt you." Workers should not be penalized for taking time off to recover from a work injury. I returned to work to clean out ice cream totes, stack pallets with a forklift and run to the freezer—with my eye still swollen. My injury was never covered under worker's compensation.

Besides my own injury, working at Bashas' gave me a first hand look at workers in the Distribution Center and I have seen workers with broken fingers and toes. One of my co-workers had a toe cut off and passed out on the floor. We watched managers debate whether they should actually call 911. I have seen countless workers injured by getting hit by equipment. I have seen workers with broken limbs and with toes cut off. I have watched them struggle between reporting the injury and just working with it. I saw one worker actually tape his coworker's broken finger so he could return to work. I have seen the great efforts of my co-workers to hide injuries rather than report them. I have seen workers come to work with the flu rather than face taking time off and getting points.

This is horrible no matter where it occurs but I'd like to remind you that this is happening in a food facility. We are moving and lifting food that is heading to grocery stores and then being purchased by consumers. Not reporting these injuries and illnesses and working despite them, is bad for the worker and bad for the consumer.

Shortly after I started working at Bashas', I saw the serious problems at the Center. Along with a couple dozen of my coworkers in the baling department, we started talking about the problems and decided the best way to improve workplace safety would be to form a union. We did not let the company's anti-union attitude—an attitude that resulted in 85 allegations of workers' rights violations—deter us and we began to act like a union to address our safety concerns. We drafted a petition that highlighted the unsafe conditions and how fearful workers were to report injuries. We approached management three times requesting specific hazards be corrected as well as for a joint safety committee to be formed. We proposed that the committee be made up of management representatives and hourly workers to address on a regular and formal basis safety and health concerns that arose in the warehouse.

We tried three times to meet as a group with a Bashas' management team but the door was always closed in our face. Bashas' would only agree to meet one-on-one and not as a group. With no luck with the company, we eventually contacted the Arizona Division of the Occupational Safety and Health Administration and

filed a complaint. Seventeen workers signed onto the complaint. An additional 70 workers signed the original petition. Like the company, OSHA never contacted any of the workers who filed the complaint. They did examine the warehouse, found some violations and cited the company. They mainly focused on the ventilation system in the battery room.

I think it is important to tell you my impressions about when OSHA came for inspections. What was really interesting is that the company always seemed to know when OSHA was coming in for inspections. Things were quickly repaired, fixed, cleaned—hours before the OSHA representatives arrived. Once we were all told not to get on any forklift while they were there inspecting. We were told not to do anything until they left. So we spent the day sweeping and cleaning. No production was done that day. It made me wonder what OSHA was thinking when they didn't see anyone actually working during the inspection but the company was never questioned.

We also tried to designate workers who could represent us for the OSHA inspections. We picked workers who worked in the Distribution Center, making sure we had workers who could tell the OSHA inspectors our side of the story and what was really happening at the Center. We put their names on the complaint form but OSHA ignored the request to speak to these workers. Instead, when OSHA made the inspections, they only talked to workers on a list provided by the company. In the end, while OSHA solved a few things, they did not fix everything and the company was never fined.

Within two weeks of OSHA issuing the citations, the company announced that they planned to make major changes in the baling department by outsourcing the jobs. In the end, 29 of us lost our jobs as balers. Some were transferred to other jobs but most of us lost our jobs at Bashas'—simply for standing up for our rights. On the day I was fired, I was simply told that the company did not need me anymore and that there were no other jobs available to me at Bashas'.

We were called troublemakers and told we had bad attitudes. They were cleaning house of those workers who were outspoken. The message was clear—don't report, don't talk, just keep your mouth shut or else. Our goal all along was to make the workplace safer—both in terms of safety and health—but also to make the workers feel safe reporting problems and injuries. We were just trying to exercise our constitutional rights. All workers should have safe working conditions.

I was raised by my parents to speak my mind. If I am wrong, I'll admit it. But, it is my God given right as well as my constitutional right to protect myself and stand up when I see a problem. It is also my right to work in a safe environment. That was not the case at Bashas' and I stood up for myself and my co-workers. Even though I am not there anymore, I know there are still problems. Yes, the company fixed the ventilation system in the battery room, but there has been no increased training; the point system still exists, workers are still paid minimum wage on light duty, and workers are still rushed to get orders completed. These are things that need to change—not only to make the work safer but to provide workers with a safe environment to come forward and report injuries. Bashas' may think this Center is "state of the art," but I know what happens to the workers inside.

I believe major changes need to be made by Bashas' to correct the serious safety and health problems that hurt workers everyday. My former employer needs to do more to protect workers and allow them to report injuries without repercussions. I think it is time for the government to examine the problem with under-reporting and I am glad you are holding this hearing today.

Thank you again for the opportunity to testify and tell you my story. Bashas' says it is dedicated to serving Arizona families but I know first hand that this commitment does not include their workers or the workers' families. It is time that the company and the government do what they can to truly serve and protect all Arizona families. I urge you to use the power of your offices to help the workers by protecting our safety and health at work. Again, thank you for your time and I would be pleased to answer any questions that you may have.

Chairman MILLER. Thank you.
Dr. McLellan?

TESTIMONY OF ROBERT MCLELLAN, M.D., IMMEDIATE PAST PRESIDENT, AMERICAN CONFERENCE OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINE

Dr. MCLELLAN. Good morning, and thank you for this opportunity. I am Robert McLellan, an occupational medicine physician and the immediate past president of the American College of Occupational and Environmental Medicine, known as ACOEM.

I serve as the chief of the Section of Occupational and Environmental Medicine at Dartmouth-Hitchcock Medical Center and as associate professor of medicine and community and family medicine at Dartmouth Medical School.

Founded in 1916, ACOEM represents more than 5,000 physicians and other health-care professionals and is the nation's largest medical society dedicated to protecting and promoting the health of workers.

ACOEM's interest in OSHA recordkeeping stems from our role as physicians with a dual mission: We provide direct care to workers in the clinic, and we serve as public health officers of the employed population.

Over the last year, I had the opportunity to tour the country to meet with occupational physicians working in a variety of settings. During these visits, physicians reported that some employers exerted pressure on them to alter treatment and/or return-to-work statements in ways likely to minimize OSHA recordability.

Based on the frequency of this report, I suggested that ACOEM convene a special session on OSHA recordkeeping at ACOEM's recent annual scientific meeting. My testimony today represents the results of preliminary exploration of this issue by our college.

The OSHA log has grown to serve many purposes beyond that for which it was originally designed. For example, today, many owners select contractors on the basis of the contractor's rates for lost work days and total recordable. At its best, this practice results in the intensive efforts to improve safety. At its worst, however, the spotlight on the log produces efforts to make the log look good, rather than placing attention on reducing risks.

ACOEM members report that various incentive programs to produce a "good" OSHA log have distracted safety programs from the primary goal of prevention. When workers and managers are promised valuable prizes to avoid recordable injuries, our members have observed pressures to underreport. In brief, when a single metric becomes the focus of safety efforts, it can become distorted by a variety of forces.

ACOEM has not conducted its own systematic research on this issue, but we find anecdotes of distorted reporting troubling, indicating a process and a system in need of review because of the potential for causing both medical harm and flawed statistical results.

Let me give just a few examples.

We observe, first, that there is a wide variability in employers' understanding and application of the recordkeeping standard. Many employers make every effort to comply assiduously to the letter of the standard. Others, particularly smaller employers, find the rule inordinately complex and confusing and complete the log incorrectly through ignorance of the rules.

A number of our members complain that distinctions in the standard between first aid and medical treatment are nonsensical and drive bad medical practice.

Several members indicate that selected workers, employers and insurance companies have tried to influence medical treatment in ways that may result in harm to a worker or, in some cases, excessive costs.

For example, certain employers have asked clinicians to write "Work is tolerated" on the return-to-work form to avoid reporting lost work days. A member reported that the employer then expected the worker, with a fractured leg, to sit in a wheelchair at a construction site.

One member relayed an instance where a safety team at a site without an on-site medical office inappropriately controlled access to health-care providers in the context of plant incentive programs that rewarded the absence of recordable injuries. She intervened when she learned that after a worker was exposed to vinyl chloride, safety personnel had applied a hazardous chemical, potash, to the worker's skin since they had read that potash could be used to neutralize environmental spills.

In view of these examples and many others detailed in our written testimony, ACOEM's advocacy on OSHA recordkeeping is quite straightforward.

Number one, physicians must always do the right thing for the patient. Although health-care providers do not have a regulatory obligation under the standard, they do have an ethical obligation to correctly diagnose, report and treat injuries.

Number two, we believe that OSHA must encourage a better understanding of the requirements interpretations of the recordkeeping standard.

Number three, it is time to consider updating the correct OSHA recordkeeping standard and its enforcement to minimize underreporting.

Number four, it is time for OSHA to consider undertaking a special emphasis program to increase the number of medical records reviewed as part of OSHA's Audit and Verification Program of Occupational Injuries and Illness Records.

And, number five, ACOEM supports efforts to broaden the suite of occupational health indicators used at a national, state and facility level in order to improve the quality of the data necessary to prevent work-related injuries and illnesses.

Our intention today is not to point fingers, but rather to seek solutions that are based on what is right for the patient and that are grounded in good science and best occupational medicine practices.

Thank you.

[The statement of Dr. McLellan follows:]

Prepared Statement of Robert K. McLellan, M.D., MPH, FACOEM, Representing the American College of Occupational and Environmental Medicine

Good Morning. I am Robert McLellan, an occupational medicine physician and the Immediate Past President of the American College of Occupational and Environmental Medicine, known as ACOEM. I serve as the Chief of the Section of Occupational and Environmental Medicine at Dartmouth-Hitchcock Medical Center and as Associate Professor of Medicine and Community and Family Medicine at Dartmouth Medical School. ACOEM represents more than 5,000 physicians and other health

care professionals specializing in the field of occupational and environmental medicine. Founded in 1916, ACOEM is the nation's largest medical society dedicated to promoting the health of workers through preventive medicine, clinical care, disability management, research, and education.

ACOEM welcomes this opportunity to provide our organization's perspective on OSHA recordkeeping. Our interest in this subject stems from our role as physicians with a dual mission; we provide direct care to workers in the clinic and we serve as public health officers for employed populations. As clinicians, we have an obligation to provide the best, evidence-based care to workers. As a specialty of preventive medicine, we also have a responsibility to use epidemiological tools such as the OSHA log to design population-based preventive interventions.

In my position as President of ACOEM, I had the opportunity over the last year to tour the country and visit with occupational physicians and allied health providers working in a variety of settings. A concern reported to me during these visits was that some employers exerted pressure on occupational physicians to alter treatment and/or return to work statements in ways likely to minimize OSHA recordability. Based on the frequency of this report, I suggested that ACOEM convene a special session on OSHA recordkeeping at ACOEM's annual meeting known as the American Occupational Health Conference, this year held in New York City, In addition to this session, ACOEM recently established a forum on its website to gather additional perspectives from our members on their experience with OSHA recordkeeping. In the coming months, we look forward to participating in a survey of our membership to be conducted by the Government Accountability Office, at the request of Chairman Miller and Representative Woolsey, and Senators Kennedy and Murray, in an exploration of the issue of reporting of work-related injuries and illnesses. We expect to publish a position paper in the upcoming months, but not before our College has had the opportunity to more fully explore options as to how best to further the goal of valid and reliable recordkeeping that supports preventive health and evidence-based medical care. My testimony today therefore represents the results of preliminary exploration of this issue by our College.

From the public health perspective, the OSHA Log was created as a tool to describe the burden of occupational injuries and illnesses on society. This data drives occupational health and safety resources. It is also used to target interventions to address industries and processes that carry the greatest risk. When followed over time, the log can help evaluate the effectiveness of these interventions. However, the OSHA log can only support these functions to the extent that it is valid and reliably maintained. Most importantly, society's interest in preventing work-related injuries and illnesses is foiled when our picture of the true burden of work-related injuries and illnesses is distorted.

Limitations of the OSHA log in serving these basic public health functions have long been recognized. Several peer-reviewed articles in the scientific literature have concluded that for many reasons, the annual BLS survey of employer logs results in substantial under-reporting of the full extent of work-related injuries and particularly illnesses (Azaroff, Levenstein, et al 2002, Boden and Ozonoff 2008, Rosenman, Kalush et al, 2006). With reference to other data bases and changes in the recordkeeping rules (Friedman and Forst 2007), some researchers have questioned whether the apparent decline in injuries and illnesses is a true reflection of reality. These conclusions do not mean that most employers are not in good faith doing their best to accurately comply with the recordkeeping rule. Rather, multiple factors are at play.

The OSHA log was never designed to serve as a single, comprehensive metric of occupational health and safety at either the national or employer level. By prescription of the OSH Act itself, the recordkeeping standard has always excluded first aid cases. As well, several sectors of workers are excluded; a problem which is growing with the burgeoning number of contingent workers, a workforce estimated in a recent article in the Journal of the American Medical Association as representing nearly a third of the American workforce (Cummings and Kriess 2008). The OSH Act also did not supersede workers' compensation law, which often defines compensable injuries and illnesses somewhat differently than the OSHA recordkeeping standard. In fact, since the turn of this century, the Council of State and Territorial Epidemiologists has promoted the use of a suite of 19 different occupational health data bases in an effort to capture a more valid picture of work related injuries and illnesses (Council of State and Territorial Epidemiologists 2008).

The OSHA log has grown to serve many purposes beyond that for which it was designed. When a single metric becomes the focus of safety efforts, it can become distorted by a wide variety of pressures. For example, OSHA's preamble to the recordkeeping rule cites a stakeholder, who commented that "Today, many owners are selecting contractors on the basis of the contractors' rates for lost work days and

total recordables." At its best, this concentration results in intensive efforts to improve safety. At its worst, however, the spotlight on the log produces efforts to make the log look good, rather than placing attention on reducing risks that lead to injury and illness. ACOEM members report that various incentive programs to produce a "good" OSHA log can distract safety programs from the primary goal of prevention. When workers or managers are promised a valuable prize to avoid recordable injuries, they may pressure each other to under-report. One ACOEM member reported that a worker came directly from the job to the clinic with a very recent, significant laceration. In contrast to obvious appearances however, the worker reported that the injury had occurred the night before at home and in passing stated that to claim otherwise would risk that his fellow workers would lose a steak dinner. In another case, the entire plant was told that if they had a recordable injury, the whole workforce would lose its bonus. When managers' bonuses are dependent on a "clean" log, they may make efforts to reduce reporting, whether it be by discouraging reporting by employees, shifting medical care costs to group health insurance or inappropriately intruding on the doctor-patient relationship.

Although physicians and providers do not have a regulatory obligation under the standard, we have an ethical obligation to correctly diagnose, report, and treat injuries. The rule allows business to use a physician of its choice in the final determination of causation, treatment, and work restrictions. At its best, this provision allows employers to select knowledgeable physicians. At its worst, this provision can lead employers to select physicians not for their competence, but for their reliability in declaring that an injury is not work related.

ACOEM Members' Perspectives

ACOEM has not conducted its own systematic research. The following comments represent perspectives and anecdotes collected from our members.

- Some ACOEM members have observed a wide variability in employers' understanding and application of the recordkeeping standard.
- Many employers make every effort to comply assiduously to the letter of the standard. In these settings, reporting is encouraged and the general rule is to "treat the patient, not the log." The log is used to stimulate interventions that improve safety. Unfortunately, in some cases, this careful compliance can result in the industry being targeted for OSHA inspection because of incidence and severity rates that appear above comparable businesses.
- Some employers, in the spirit of training, ask physicians if they can make minor alterations to their treatment, if medical outcomes are not compromised, to take advantage of regulatory distinctions between first aid and medical treatment.
- Some, particularly smaller employers, find the rule inordinately complex and confusing, and complete the log incorrectly through ignorance of the rules.
- Some employers work closely with in-house or outsourced physicians to coordinate administrative functions of recordkeeping with the medical providers who best understand the circumstances of the worker's health problem. In other cases, an employer's recordkeeper has little contact with knowledgeable providers.
- Some of our members point out that the OSHA log is a lagging indicator of safety; no matter how accurate, it counts past events. These members encourage employers with whom they work to use a broad set of metrics to evaluate and promote the health and safety of a workplace, such as first aid and near misses, workers compensation data, and hazard assessments. Noting that any injury, no matter how minor is an indicator of a hazard, several members would rather declare all first aid incidents as "recordable." They reason that efforts should be devoted to prevention rather than arguing about recordkeeping rules.
- Some of our members complain that distinctions that the standard make between first aid and medical treatment are nonsensical and can drive bad medical practice.
- For example, using a cotton swab to remove a foreign body from the eye is considered first aid. Unfortunately, use of a swab may damage the cornea. The appropriate tool for the same purpose is a needle like tool, called an eye spud, used by a trained health care provider. Use of this tool, however, is considered medical treatment.
- The difference between a laceration of only a few millimeters, for which a band-aid is sufficient, and a laceration of a few centimeters needing sutures is luck, not safety.
- Some members indicate that several parties including some workers, employers, and insurance companies try to influence occupational medical treatment in ways that may result in medical harm to a worker or in other cases, excessive costs to employers. We do not know how extensive this problem is, but anecdotes are common enough to be a concern. Let me note parenthetically that it is clear some em-

ployees may demand inappropriate time off or medical treatment and that some physicians may comply with those requests, in this case resulting in over-reporting rather than under-reporting. However, since the focus of this hearing is on under-reporting, we will focus our testimony on anecdotal evidence from ACOEM members illustrating how some employers, supervisors or safety professionals act in ways that are driven primarily for the purpose of minimizing OSHA recordability.

• Some employers willfully misinterpret the "routine functions" criteria of OSHA to define cases as not recordable. Some employers have asked clinicians to write "Work as tolerated" on the Return to Work form in order to manage the restrictions themselves and avoid a paper trail of recordability, for example.

• One member reported an instance where a safety team at a site without an on-site medical office, inappropriately controlled access to health care providers in the context of plant incentive programs that rewarded the absence of recordable injuries. She intervened when she learned that after a worker was exposed to vinyl chloride, the safety team had applied a hazardous chemical (potash) to the worker's skin since they had read that the chemical could be used to neutralize environmental spills.

• Some employers send supervisors to the clinic with the expectation that they accompany the worker into the exam room to contribute to the evaluation of an injured worker.

• Some employers send messages to be attached to medical charts directing the physician to opine that the injury was not work-related.

• Some employers ask occupational health professionals to prescribe "exercise" instead of physical therapy or to employ athletic trainers instead of therapists to minimize recordability.

• Some employers have been known to question the clinician's decision to sew up a wound or they have requested Steri-Strips (a type of bandaid) in order to prevent recordability.

• Occupational health professionals are asked to review treatment by other clinicians to determine if the prescription was "really necessary" in an effort to avoid recordability, clearly in violation of OSHA's own interpretations.

• Some of our members report that employers have diverted injured workers to other physicians in a community who are apparently more willing to comply with an employer's directives to alter care to minimize recordability.

Conclusions and Recommendations

Let me conclude by saying that we believe most physicians and employers are trying to do the right thing when it comes to OSHA recordkeeping. But we find anecdotal examples of distorted reporting troubling, suggesting a process and a system in need of review because of the potential for causing both medical harm and flawed statistical results.

No single party is to blame for under-reporting: As often is the case, it is a complicated mix of pressures that range from workplace practices to health provider policies and government regulations. ACOEM has developed strong relationships with multiple constituencies, including workers, employers and regulators, and has partnered with NIOSH to further the protection of the workforce. It is not our intention to point fingers, but rather to seek solutions that are based on doing what's right for the patient and that are grounded in good science and best practices.

Our advocacy on this issue is quite straightforward:

• Number one: Physicians must always do the right thing for the patient. Although physicians and providers do not have a regulatory obligation under the standard, they do have an ethical obligation to correctly diagnose, report, and treat injuries. This obligation also extends to avoiding unnecessary treatment and disability. These principles are built into our Code of Ethics and adhering to them must always remain as a key goal. This will be our overriding priority in all of our discussions of the issue.

• Number two: We believe that OSHA must encourage a better understanding of the requirements contained in the recordkeeping standard and the various interpretations and uses surrounding the standard. Providing employers with electronic decision-making tools that incorporate rule interpretations, for example, could reduce the variability in recordkeeping.

• Number three: It may be time to update the current OSHA recordkeeping standard and its enforcement to minimize under-reporting.

• Number four: OSHA might undertake a special emphasis program to increase the number of medical records reviewed as part of OSHA's Audit and Verification Program of Occupational Injury and Illness Records (CPL 02-00-138).

• Number five: ACOEM supports efforts to broaden the suite of occupational health indicators used at a national, state, and facility level in order to improve the quality of the data necessary to prevent work related injuries and illnesses.

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Chairman MILLER. Thank you very much.

Dr. Ruser?

TESTIMONY OF JOHN RUSER, ASSISTANT COMMISSIONER FOR SAFETY AND HEALTH STATISTICS, BUREAU OF LABOR STATISTICS

Mr. RUSER. Thank you, Chairman Miller, Congressman McKeon and members of the committee, for inviting me to talk about the workplace injury and illness statistics produced by the U.S. Bureau of Labor Statistics.

The BLS provides annual estimates of workplace injuries, illnesses and fatalities from two separate programs. These are the Census of Fatal Occupational Injuries and the Survey of Occupational Injuries and Illnesses, often called SOII. It is this survey that has come to be the focus of much of the undercount allegations, so it will be the focus of my remarks today.

The survey is a federal-state cooperative program that estimates the number and rate of new non-fatal workplace injuries and illnesses. The data are obtained from a sample of employers who gather their information from OSHA logs and supplementary materials they keep throughout the year.

Because the data come from OSHA logs, the injuries and illnesses counted by our survey are OSHA-recordable cases only. These cases may differ from those counted in other data systems, such as workers' compensation.

An important advantage of the survey is that it provides the most occupational injury and illness counts available for the nation and consistently across states. This includes estimates by state and industry that state policymakers use to track their own injury and illness experience compared to similar states.

Other surveillance systems do provide some estimates of workplace injuries and illnesses. However, these other systems tend to collect only a small amount of data or they are not consistent across states.

Recently, some academic studies have asserted that our survey undercounts the total number of workplace injuries and illnesses. A review of this literature suggests that three different types of undercount are asserted.

First, it is pointed out that the survey does not count most long-latent occupational illnesses such as cancer. The BLS has long acknowledged this point. Many work-related illnesses take years to develop and may be difficult to attribute to a specific workplace.

A system based on employer records, like our survey, does not capture most of these illnesses. Instead, the overwhelming majority of new reported illnesses in our survey are those that relate more directly to the workplace.

The undercount literature also mentions that we do not count occupational injuries and illnesses incurred by workers outside of the survey's scope. That is, the survey does not include all public-sector workers, the self-employed, workers in households and on small farms.

To partially address this issue, we are expanding our survey to include government workers. Starting with the 2008 survey, BLS will collect state and local government data for all states. This will allow us to provide estimates for some high-hazard public-sector occupations, such as police and firefighters. In addition, BLS is exploring with OSHA ways to collect data for federal government agencies.

It is more difficult to collect data for other groups of workers. These workers, principally the self-employed, are not covered by the Occupational Safety and Health Act and are not required to record injuries and illnesses.

In addition, BLS samples establishments from a list of those on state unemployment insurances rolls. The self-employed are rarely on this list. BLS has held discussions with the National Institute for Occupational Safety and Health, or NIOSH, and with some other groups on ways to utilize other data to estimate workplace injuries and illnesses for these non-covered groups of workers.

The last undercount allegation is that our survey does not count some worker injuries and illnesses that are within the scope of the survey. These allegations come from academic studies that match individual case data in the survey to data in other surveillance systems, such as workers' compensation. The studies typically find that the survey and the other data systems each miss a substantial number of cases.

The BLS takes claims of potential underreporting seriously and has begun a number of activities to understand and, if necessary, address the issue.

First, in 2007, BLS conducted a quality-assurance survey that indicated that the survey accurately captured the data entered on employers' OSHA logs.

Second, BLS has instituted a program of research to examine and extend the previous data matching work. The goal is to learn if certain types of cases and respondents show greater apparent undercounting and to determine what factors might explain these findings.

The BLS is also undertaking a pilot program of employer interviews to learn about injury reporting and illnesses on OSHA logs and other data systems.

This is not an audit of employers' OSHA logs, which is an activity outside of BLS's jurisdiction. I want to repeat that: This is not an audit of employers' OSHA logs, which is outside of the jurisdiction of the Bureau of Labor Statistics.

In addition, BLS has discussed with NIOSH the possibility of conducting research in partnership.

BLS has already begun research with matched workers' compensation and survey data for a single state. Some preliminary findings suggest that a variety of factors many explain apparent undercount results.

One explanation is that there are legitimate differences between the types of cases that are included in different systems. The academic undercount research previously mentioned tries to account for these differences.

Another explanation is that some workers' compensation cases for a particular year are entered into the workers' comp databases long after the end of that year. In order to be timely, our survey collects data soon after the end of the calendar year, perhaps before some of these cases have been recognized.

Finally, there are some methodological issues that might magnify research estimates of the survey undercount. For example, our survey collects data for establishments, while workers' compensation data are reported by company. When a company has multiple establishments, it is difficult to determine in the workers' compensation data for which establishment a particular case comes from. This makes matching individual cases difficult. And when you fail to match cases in these systems, it appear there is an undercount.

In summary, the BLS believes that a variety of factors may account for the research showing differences between the cases captured in the Survey of Occupational Injuries and Illnesses and in other data systems. The BLS has instituted a program of research to understand and explain these differences. Within the constraints of its mission as a statistical agency, BLS will continue to work to ensure that the survey accurately measures within-scope workplace injuries and illnesses.

Thank you.

[The statement of Mr. Ruser follows:]

Oral Statement of John W. Ruser, Ph.D.
Assistant Commissioner for Safety, Health and Working Conditions
U.S. Bureau of Labor Statistics
Before the

Committee on Education and Labor
U.S. House of Representatives

June 19, 2008

Thank you, Chairman Miller, Congressman McKeon, and members of the Committee, for inviting me to talk about the workplace injury and illness statistics produced by the US Bureau of Labor Statistics. The BLS provides annual estimates of workplace injuries, illnesses and fatalities from two separate data programs. These are the Census of Fatal Occupational Injuries and the Survey of Occupational Injuries and Illnesses, often called SOII. It is this Survey that has been the focus of much of the undercount allegations, so it will be the focus of my remarks.

This Survey is a Federal-State cooperative program that estimates the number and rate of new non-fatal workplace injuries and illnesses. The data are obtained from a sample of employers, who gather their information from OSHA logs and supplementary materials they keep throughout the year. Because the data come from OSHA logs, the injuries and illnesses counted by our Survey are OSHA-recordable cases only. These cases may differ from those counted in other data systems, such as workers' compensation.

An important advantage of this BLS Survey is that it provides the most complete occupational injury and illness counts available for the nation and consistently across states. This includes estimates by State and industry that State policy makers use to track their own injury and illness experience compared to similar States. Other surveillance systems do provide some estimates of occupational injuries and illnesses. However, these other systems tend to collect only a small amount of data or they are not consistent across states.

Recently, some academic studies have asserted that our Survey undercounts the total number of workplace injuries and illnesses. A review of this literature suggests that three different types of undercount are asserted. First, it is pointed out that the Survey does not count most long-latent occupational illnesses such as cancer. The BLS has long acknowledged this point. Many work-related illnesses take years to develop and may be difficult to attribute to a specific workplace. A system based on employer records, like our Survey, does not capture most of these illnesses. Instead, the overwhelming majority of new reported illnesses in the Survey are those that relate more directly to a workplace.

The undercount literature also mentions that we do not count occupational injuries and illnesses incurred by workers outside of the Survey's scope. That is, the Survey does

not include all public sector workers, the self-employed, workers in households and on small farms. To partially address this, we are expanding our Survey to include government workers. Starting with the 2008 survey, BLS will collect State and local government data for all states. This will allow us to release estimates for some high hazard public sector occupations such as police and firefighters. In addition, BLS is exploring with OSHA ways to collect data for Federal government agencies.

It is more difficult to collect data for other groups of workers. These workers, principally the self-employed, are not covered by the Occupational Safety and Health Act and are not required to record injuries and illnesses. In addition, BLS samples establishments from a list of those on state unemployment insurance roles. The self-employed are rarely on this list. BLS has held discussions with the National Institute for Occupational Safety and Health (or NIOSH) and with other groups on ways to utilize other data to estimate workplace injuries and illnesses for these non-covered groups of workers.

The last undercount allegation is that our Survey does not count some worker injuries and illnesses that are within the scope of the Survey. These allegations come from academic studies that match individual case data in the Survey to data in other surveillance systems such as workers' compensation. The studies typically find that the Survey and the other data systems each miss a substantial number of cases.

The BLS takes claims of potential underreporting seriously and has begun a number of activities to understand and, if necessary, address the issue.

First, in 2007, BLS conducted a quality assurance survey that indicated that the Survey accurately captured the data entered on employers' OSHA logs.

Second, BLS has instituted a program of research to examine and extend previous data matching work. The goal is to learn if certain types of cases and respondents show greater apparent undercounting and to determine what factors might explain these findings.

Third, BLS is undertaking a pilot program of employer interviews to learn about injury reporting and illnesses on OSHA logs and other data systems. This is not an audit of employers' OSHA logs, which is an activity outside of BLS's jurisdiction.

Fourth, BLS has discussed with NIOSH the possibility of conducting research in partnership.

BLS has already begun research with matched workers compensation and survey data for a single state. Some preliminary findings suggest that a variety of factors may explain apparent undercount results.

One explanation is that there are legitimate differences between the types of cases that are included in the different systems. The academic undercount research mentioned previously tries to account for these differences.

Another explanation is that some workers' compensation cases for a particular year are entered into the data base long after the end of that year. In order to be timely, the Survey collects data soon after the end of a calendar year, perhaps before some of these cases have been recognized.

Finally, there are some methodological issues that might magnify research estimates of the Survey undercount. For example, our Survey collects data for establishments, while workers' compensation data are reported by company. When a company has multiple establishments, it is difficult to determine in the workers' compensation data from which establishment a particular case comes. This makes matching of individual cases difficult.

In summary, the BLS believes that a variety of factors may account for the research showing differences between the cases captured in the Survey of Occupational Injuries and Illnesses and in other data systems. The BLS has initiated a program of research to understand and explain these differences. Within the constraints of its mission as a statistical agency, BLS will continue to work to ensure that the Survey accurately measures within-scope workplace injuries and illnesses.

I look forward to addressing your questions.

Chairman MILLER. Thank you.
Mr. Fellner?

TESTIMONY OF BARUCH FELLNER, PARTNER, GIBSON, DUNN & CRUTCHER, LLP, REPRESENTING THE U.S. CHAMBER OF COMMERCE

Mr. FELLNER. Good morning, Chairman Miller, members of the committee. My name is Baruch Fellner. I am an attorney with the law firm of Gibson, Dunn & Crutcher here in Washington. And I very much appreciate your invitation to participate in this important hearing dealing with the extent of underreporting under OSHA's complex recordkeeping requirements.

I am appearing this morning on behalf of the United States Chamber of Commerce, the world's largest business federation. I am also here in my personal capacity as an attorney who has found himself on both sides, having been a participant in the development of the law and policy of OSHA during his first decade and then a frequent critic of OSHA thereafter.

I hope to draw on this balanced experience in attempting to answer to the critical question that underlies this hearing, and that is: Does the current recordkeeping system accurately reflect employers' understanding of their OSHA recordkeeping requirements?

Before turning to my prepared remarks, I think it would be important to be directly responsive to the chairman's opening statement, and specifically to one of the underpinnings of the concerns that are expressed by this committee, namely that there is an incentive on the part of employers to under-record, because the fewer injuries, if I heard correctly this morning, the fewer injuries that are recorded, the less likely employers are to be inspected.

In response to the point made by the chairman this morning, let me rely on the report of the AFL-CIO. The annual report on fatalities in the workplace of the AFL-CIO points out that, as a result of the number of inspectors, both state and federal, the likelihood of employers to be inspected, the 7 million workplaces in the United States to be inspected, is once in 100 years or so.

It seems to me that the incentive of underreporting in order to make the likelihood to be somewhat longer than once in 100 years is a small incentive. And I would think that this committee should look carefully before it jumps to the conclusion that that incentive in any practical or real aspect exists for underreporting.

Based upon 40 years of experience, I believe that the steadily declining injury rates provided by OSHA and the Bureau of Labor Statistics are and must be substantially reliable. These statistics are the linchpin of OSHA's enforcement and compliance policies and priorities.

And let me rely on the words of Richard Fairfax, OSHA's director of enforcement under both Democrat and Republican administrations, one of the most respected OSHA personnel. And he said that inspectors search for underreporting, and the Charlotte Observer said, "But when we try to track it down, it goes nowhere."

OSHA uses at least two methods to try to track down underreporting. First, it compares information supplied by employers in high-hazard industries with what is on their OSHA 300 logs and then further compares those logs with medical records.

And, second, under its site-specific targeting program, it not only inspects employers with high injury incidence rates, but also selects a statistical sample of employers with low rates in order to

find out whether or not they are cooking the books. And they have concluded that the vast majority of establishments are, in fact, maintaining accurate records.

Let me suggest that those who disagree with that statement ignore the complex legal, factual and regulatory framework that human resources personnel, on a daily basis, are asked to implement. First, human resource personnel are supposed to decide whether an injury has occurred; secondly, they are supposed to decide whether or not the workplace is the discernible cause of that industry.

Those determinations are clear when an employee, God forbid, has an amputated finger as a result of an unguarded machine or falls off an unguarded platform and breaks his arm.

Those decisions are far from clear, and the dispute erupts, when the focus shifts to working with pain. And let there be no mistake: We do not trivialize pain. Pain is real. But the subjectivity of its symptoms and whether those symptoms constitute pathoanatomic injury, as well as the difficulty of ascertaining discernible causes, raise a number of distinct challenges for any recordkeeper who aspires to perfect accuracy.

And let me further suggest to the committee that the issues are not only in the subjective area of pain, but they also involve the more routine injury recordation questions. Any recording scheme that has 46 sections and 200 pages of frequently asked questions has got to be a regulation which is difficult to implement.

And just to give you one example, how much Motrin, over-the-counter Motrin, is prescription-oriented and requires recordkeeping as opposed to non-prescription-oriented Motrin and doesn't require recordkeeping? When is a soft splint used versus a hard splint? A soft splint is not recordable. When is oxygen used for purposes of treatment, which is recordable, or prophylactically, when it is not recordable?

Put yourselves in the shoes of the staff that is trying to make these decisions on a day-to-day basis. Innocent error is unfortunate but inevitable.

Let me conclude with a modest observation. Employers are doing a good and conscientious job. We can all agree that there is clearly some underreporting, and OSHA must remain vigilant to minimize it in order to maintain the integrity of its enforcement and regulation programs. But the committee should focus on the scope of the problem.

The title of this hearing declares in no uncertain terms that we are dealing with a tragedy of deliberately hidden injuries. Such a conclusion ignores the real efforts that employers are making to accurately identify all work-related injuries in a complex regulatory and medical environment.

This concludes my remarks. I would like my more extended testimony to be submitted for the record. And I look forward to your questions. Thank you.

[The statement of Mr. Fellner follows:]

Prepared Statement of Baruch Fellner, Esq., Gibson, Dunn, & Crutcher, LLP, on Behalf of the U.S. Chamber of Commerce

Chairman Miller, Members of the Committee, my name is Baruch Fellner, an attorney with the law firm of Gibson, Dunn & Crutcher, LLP. I very much appreciate

your invitation to participate in this important hearing dealing with the extent of potential underreporting under OSHA's complex recordkeeping requirements.

I am appearing in this hearing on behalf of the U.S. Chamber of Commerce, the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

I serve on the Chamber's Labor Relations Committee and its OSHA Subcommittee. I am also here in my personal capacity as an attorney who has found himself on both sides, an observer and participant in the development of OSHA law and policy during its first decade and a frequent critic of it thereafter. I hope to draw on that balanced experience in attempting to answer the critical question that underlies this entire matter: does the current recordkeeping system accurately reflect employer's understanding of their OSHA recordkeeping requirements?

Some have suggested that the answer to that question is, "no." Indeed, in the last several years, the charge of underreporting has become something of a professional mantra. In perhaps the most comprehensive of these studies, Azaroff, et al. have identified several "filters" in the current recordkeeping process at which underreporting could occur, including possible motivations of both workers and employers for suppression of information.[1] Essentially, the allegations are twofold: first, employers are deliberately underreporting because of a perverse incentive structure that encourages them to make their workplaces appear as safe as possible. Second, employees are incentivized not to report injuries because they fear stigma or retaliation.

I respectfully submit that both of these claims overstate the extent of and motive for underreporting. Based upon almost 40 years of experience, I believe that the steadily declining injury rates provided by OSHA and the Bureau of Labor Statistics ("BLS") are and must be substantially reliable. These statistics are the lynchpin of OSHA enforcement and compliance policies and priorities. That is precisely why the Agency inspects workplaces not only with high injury rates, but also those with low ones. Thus, as I will discuss in greater detail below, the appropriate mechanisms for detection are already in place. Many of the witnesses before this panel want OSHA to discover underreporting that simply is not there. In the words of Richard Fairfax, OSHA's Director of Enforcement under both Democrat and Republican administrations, inspectors search for underreporting but "[w]hen we try to track it down, it goes nowhere."[2] My testimony today discusses that search and why the numbers it yields are far more reliable than critics claim.

A. OSHA's own audits establish that underreporting is minimal and concentrated among very few workplaces

Let us be clear that no one is suggesting that employer candor about injury rates should be taken for granted. To its credit, OSHA recognizes that some may try to game the system by deliberately suppressing the number of injuries actually occurring. That is why it conducts an annual OSHA Data Initiative (ODI) analysis of its audits of employer injury and illness recordkeeping. After compiling occupational injury and illness data from around 80,000 establishments in high-hazard industries, ODI ensures the accuracy of that data in order to measure the Agency's performance in reducing workplace injuries and illnesses. The audits first evaluate the internal consistency of employer records by comparing the information in an employer's OSHA 300 Log with the information that employer submits to OSHA. The audits then evaluate the reliability of the OSHA 300 Logs themselves by comparing them with employees' medical records. If an employer is improperly recording injury information or keeping it off the books entirely, OSHA auditors would find it through this investigation. The only way that injuries could escape OSHA's attention is if employees are seeing private physicians without telling their employers, or, more likely, if employees simply are not telling anyone at all. But regardless of the potential for employee self-censorship, about which more is said below, the ODI audit at the very least provides a means of detecting underreporting by employers.

The results of the 2006 ODI audit analysis[3] demonstrate a high level of accuracy in employer records—roughly 95 percent of both total recordable cases and DART (days away from work, restricted work activity, and job transfers) injury/illness cases. Furthermore, a small number of establishments account for a large part of that five percent. Four establishments out of a total of 251 accounted for over 27 percent of the underrecorded DART cases and almost 25 percent of the cases that went entirely unrecorded on the OSHA 300 Logs. Overall, 92.43 percent of the establishments audited were at or above a 95 percent accuracy rate with respect to underrecording of total recordable cases. That the vast majority of establishments are maintaining accurate records, with the small degree of inaccuracy concentrated among a few employers, demonstrates widespread compliance with OSHA recordkeeping.

In addition, OSHA has implemented a second check on the accuracy of its recordkeeping system. Since 1999, OSHA has conducted Site-Specific Targeting inspections ("SST") for non-construction workplaces with 40 or more employees. Based on the data received from ODI, SST selects for inspection individual workplaces with high rates of DART or DAFWII (days away from work injury and illness). But lest anyone conclude that this only encourages employers to "cook the books," SST also selects for comprehensive inspection a number of establishments reporting low rates in traditionally high-rate industries. In 2008, for example, approximately 175 of these low-rate establishments will be added to the SST primary inspection list. Similarly, a random sample of establishments that do not provide rate information in accordance with the ODI survey will also be added to the primary inspection list. Workplaces that fall into any of these categories—high rates, low rates, or non-respondents—may be liable for any recordkeeping violations discovered. This enforcement structure is specifically designed to discourage deliberate underreporting.

The success of OSHA's enforcement system is evident in the numbers. Of the 61 establishments audited for low rates in 2006, only eight were cited for recordkeeping violations. Of these, only five were serious enough to warrant a monetary penalty. In 2005, 15 out of 103 establishments were cited, only seven of which warranted a penalty. None of these citations suggested a premeditated attempt to withhold information. Instead, employers were cited for a lack of precision in what was already recorded and not for "hiding the ball" by not recording at all.

B. The recordkeeping decisions that employers must make are too complex for any reasonable observer to expect perfect accuracy

1. Musculoskeletal disorders ("MSDs")

Those who are attributing a more malevolent rationale to employers must consider the complexity of the legal, factual and regulatory framework that human resources personnel are asked to implement. First, they must decide whether an injury has occurred. Then, they must also determine whether the workplace is the "discernable cause."[4] Those determinations are self-evident when a digit is amputated by an unguarded machine or an arm is broken as a result of a fall from an unguarded platform; no one at this hearing would seriously suggest that such injuries are not being systematically recorded. However, the recordkeeping controversy erupts when the focus shifts to working with pain. Let there be no mistake—we do not trivialize pain. Pain is real. But the subjectivity of its symptoms, whether those symptoms constitute pathoanatomic injury, and the difficulty of ascertaining its discernible causes, raise a number of distinct challenges for any record keeper who aspires to perfect accuracy. These points were salient when OSHA promulgated—and the Congress rejected—the ergonomics regulation eight years ago, and they remain so today. Given the increasingly clear value of and trend toward data driven medicine, the decision on the recordability of MSDs in the absence of demonstrable injury and in the absence of the workplace as a discernable cause is by no means an easy one.

Furthermore, it appears that the attribution of cumulative pain to work-related causes is a matter of generational, subjective perception—the older you get, the smarter you get about coping with the discomfort ancillary to work and non-work circumstances. Thus, since the allegedly debilitating effects of physical activity build up over time,[5] one would expect that if serious underreporting of MSDs exists, injuries of older employees would be disproportionately represented. In fact, research has shown precisely the opposite. A study of health care workers in the Veterans Administration found that employees with a service of over five years were almost 40 percent less likely to report injuries than their counterparts with less service, as were care-givers over 50 years of age.[6] This explanation accords strongly with the findings of a study that compared British employees' occupational attribution of repetitive arm strain injuries with expected estimates for persons exposed to their particular workplace risk factors.[7] That study found that the ratio of cases that employees subjectively deemed work-related to the objectively expected attributable number was substantially higher for respondents below the age of 50 than above 50. It estimated that this over-attribution ratio was nearly twice as large (5.4 to 3.0) if the employee was part of the younger cohort.[8]

In sum, these studies and much more data-driven medicine underscore the complexities of the decisions that must be made every day by this nation's OSHA record keepers. It is little wonder that OSHA gave up any pretense of even defining an MSD in 2000, much less providing a separate column for recording MSDs in its recordkeeping regulation. To suggest a vast conspiracy to underreport injuries is to ignore the complexities of ergonomic issues.

Dr. Fred Gerr of the University of Iowa, a major proponent of ergonomic regulation and hardly an apologist for the business community, succinctly summarized

these difficulties in an editorial in the Journal of Occupational and Environmental Medicine:

"It is not news that musculoskeletal disorders are common among working age persons and that some considerable proportion of the burden of these conditions is attributable to factors other than exposure to risk factors in the work place. Given this fact, we are faced with the larger question of when is arm pain (or other, more specific musculoskeletal disorders) attributable to work? * * * [W]hen a considerable proportion of the disease burden would still occur, independent of occupational exposures, what method do we have to attribute to work those musculoskeletal conditions that are truly work-related and how do we ensure that is done accurately and uniformly across industry and various worker characteristics?" [9]

2. Other injuries

The recording of MSDs is not the only hard question human resource personnel must answer in trying to assess whether an injury is recordable. Even the more routine, day-to-day decisions, are difficult given the complexity of the recordkeeping regulations. Any rule that has 46 subsections and over 200 pages of frequently asked questions is susceptible to innocent error in its implementation. For example, how many milligrams of over-the-counter Motrin is prescription strength (recordable as medical treatment) and non-prescription strength (nonrecordable)? Did the employee have a soft splint on his wrist (non-recordable) or a hard splint (recordable)? Was oxygen administered as a treatment (recordable) or prophylactically (nonrecordable)?

Put yourselves in the shoes of the staff charged with making these fine-toothed distinctions. Innocent error is unfortunate but inevitable. The numbers show that while OSHA must continue to educate employers to reduce unintended recordkeeping mistakes—and let us all be perfectly candid about that concession—it is not faced with the sinister conspiracy of employers hiding injuries that are recordable under the law.

C. OSHA's Critics Rely on Dubious Assumptions

Much of the momentum leading up to this hearing resulted from the publication of a study by Kenneth D. Rosenman, et al., in the Journal of Occupational and Environmental Medicine ("the Michigan Study").[10] In calculating the extent of underreporting, the Michigan Study relied principally on a workers' compensation database, with an average number of reports nearly fifteen times the size of the next largest source (35,310 to 2,483). But workers' compensation claim rates should not be a referendum on OSHA recordkeeping. First, workers' compensation is a completely different statutory and regulatory regime that bears no relationship to the definition of recordable injuries under OSHA. Second, we should not necessarily assume that every payment is the result of a meritorious claim. When faced with questionable claims, many employers would simply rather not litigate what constitutes an injury or what is work related and just let the insurance company make the payout. Third, claim frequency itself is falling, suggesting that even workers' compensation rates support the conclusion that workplaces are becoming safer.[11]

Another oft-cited piece of evidence for underreporting is a purportedly perverse incentive structure in which employers are encouraged to hide actual injuries in order to avoid OSHA targeting inspections. The reality is that the size of these incentives has been drastically overblown. The information in OSHA 300 Logs does not create liability for workers' compensation or any other insurance scheme since it does not indicate whether the employer or worker was at fault, nor does it indicate whether an OSHA standard was violated. Employers are made explicitly aware of this on the Log coversheets.[12] Moreover, we must recall that a substantial proportion of purportedly underrecorded cases are MSDs,[13] which only rarely trigger enforcement activities. No ergonomics regulation exists, and only the most egregious MSD violations can be cited for a "recognized hazard" under the General Duty Clause. Since January 2001, only 19 such citations have been issued. Instead, OSHA has implemented non-mandatory guidelines for employers. If failure to follow a guideline does not give rise to an enforceable citation, employers have no incentive to deliberately underreport MSDs.

What employers do have to worry about, however, is doctoring the record. As discussed above, they are far more likely to be penalized for excluding recordable MSDs from the OSHA 300 Logs than they are for acknowledging the marginal increase in ergonomic risk.[14] Even the most calculating, profit-maximizing employer would recognize that there is less potential liability associated with recording noncitable MSDs than with an underreporting audit.

D. Conclusion

Employers are doing a good and conscientious job. This is a modest point. I have resisted the more polemical response—that underreporting is a myth. We can all agree that there is clearly some underreporting, and OSHA must remain vigilant to minimize it in order to maintain the integrity of its enforcement and regulation programs. However, the Committee should focus its attention on the scope of the problem. The title of this hearing declares in no uncertain terms that we are dealing with a tragedy of deliberately hidden injuries. Such a conclusion ignores the real efforts that employers are making to accurately identify all work-related injuries in a complex regulatory and medical environment. The question I posed at the outset—whether the current recordkeeping system reflects the best understanding of employers—should be met with a resounding yes.

This concludes my remarks and I would ask that my more extended testimony be submitted for the record. I look forward to any further questions you may have.

ENDNOTES

[1] Azaroff et al., Occupational Injury and Illness Surveillance: Conceptual Filters Explain Underreporting, 92 Am. J. Pub. Health 1421 (2002).

[2] Kerry Hall, Amy Alexander, and Franco Ordonez, The Cruelest Cuts: The Human Cost of Bringing Poultry to Your Table, Charlotte Observer, at 1A (Feb. 10, 2008).

[3] See OSHA Data Initiative Collection Quality Control, Analysis of Audits on CY 2003 Employer Injury and Illness Recordkeeping: Final Report, (2006).

[4] Settlement Agreement: Occupational Injury and Illness Recording and Reporting, 66 Fed. Reg. 66,944 (Dec. 27, 2001).

[5] In the preamble to the Clinton administration's final ergonomics rule, OSHA stated matter-offactly that "persistent signs or symptoms of MSDs will progress and become more severe and disabling if they are not treated and the employee remains in the job unabated. * * * [T]he pain usually increased if exposure to the ergonomic risk factors continues." Ergonomics Program, 65 Fed. Reg. 68,262, 68,753 (Nov. 14, 2000).

[6] Siddharthan et al., Under-reporting of Work-related Musculoskeletal Disorders in the Veterans Administration, 19 Int'l J. Health Care Quality Assurance. 463, 470 (2006).

[7] Keith Palmer, et al., How Common is Repetitive Strain Injury?, 65 Occupational & Envtl. Med. 331 (2008) at 333.

[8] Id.

[9] Fred Gerr, Surveillance of Work-related Musculoskeletal Disorders, 65 J. Occupational & Envtl. Med. 298, 299 (2008).

[10] Kenneth D. Rosenman, et al., How Much Work-related Injury and Illness is Missed by the Current National Surveillance System, 48 J. Occupational & Evtl. Med. 357 (2006).

[11] See National Academy of Social Insurance, Workers' Compensation: Benefits, Coverage, and Costs 5 (2004); National Council on Compensation Insurance, Inc., Workers Compensation Claim Frequency Continues to Fall in 2006 (2007).

[12] Available at *http://www.osha.gov/recordkeeping/new-osha300 form1-1-04.pdf/*.

[13] See Azaroff et al., supra note 1.

[14] The extent of that risk cannot be reduced to partisan politics. In fact, OSHA has never been hesitant to issue such citations for faulty recordkeeping. The average penalty for recordkeeping violations between 1985 and 1987 was $8,589. Though the Reagan administration was never considered especially pro-employee, that figure dwarfs the Clinton administration's $1,734 average.

Chairman MILLER. Thank you.

Dr. Rosenman?

TESTIMONY OF KENNETH ROSENMAN, M.D., PROFESSOR OF MEDICINE, CHIEF, DIVISION OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINE, MICHIGAN STATE UNIVERSITY

Dr. ROSENMAN. Thank you for the opportunity to talk about the system to keep track of occupational injuries and illnesses in the United States. My name is Kenneth Rosenman. I am a physician and epidemiologist who has studied and written about surveillance systems for the last 25 years.

Recent newspaper articles have once again—and I really want to emphasize "once again"—highlighted shortcomings in the nation's efforts to track work-related conditions.

A basic tenet for preventing and minimizing any disease is to have a system that provides accurate information on both the frequency and circumstances associated with those conditions. Such a

system is essential in order to determine how much resources to allocate, how to target interventions, to evaluate those interventions and, if necessary, to redirect the interventions.

The current U.S. system to count occupational injuries and illnesses in the United States does not provide this necessary information.

In 1987, the National Academy of Sciences issued a report, "Counting Injuries and Illnesses in the Workplace: Proposals for a Better System." As a consequence of that report and the deficiencies noted in the system, some changes were made.

The most pronounced change was how acute work-related traumatic fatalities were counted—you know, somebody dying because of a trench collapse, being electrocuted, falling off a scaffold. As a consequence of these changes made in the tracking system, the number of work-related deaths doubled in the first year of the new system. So they doubled.

This 100 percent increase in the number of deaths was not due to a sudden increase in the hazards of work but, rather, to the implementation of a new and accurate system to count these deaths.

No such changes were made in how work-related diseases, such as lead poisoning, silicosis or work-related asthma, were counted or how non-fatal injuries, such as amputations, burns, lacerations or fractures, were counted.

In the last 20 years, I and others have researched and published multiple studies that the current system provides an inaccurate count of work-related illnesses and non-fatal injuries. There is no disagreement in the medical literature that an undercount exists and that this undercount is significant.

Attached to my statement are 15 references from the medical literature, and I want to quickly summarize the work of four investigators.

First, Dr. Leigh from the University of California in Davis, whose work shows that the current system misses 33 to 69 percent of all non-fatal work-related injuries. He calculated, using the current system, that work-related injuries and illnesses cost the United States $170 billion a year, which is five times the cost of HIV-AIDS and three times the cost of Alzheimer's disease.

Next, Drs. Boden and Ozanoff from Boston University, who have shown in the six states of Minnesota, New Mexico, Oregon, Washington, West Virginia and Wisconsin that the current system misses up to 50 percent of non-fatal work-related injuries and illnesses.

The next, Drs. Friedman and Frost from the University of Illinois in Chicago, who have shown that reductions in the non-fatal work-related injuries reported over the last decade are not due to improvements in the workplace conditions but, rather, reductions in OSHA's enforcement of recordkeeping rules and changes by OSHA in the definition of work-related injuries.

They actually showed that 83 percent of the decrease in the last decade were due to these record changes by OSHA and not due to any reduction in actual injuries and illnesses. So that even, one would hope, if the underreporting was consistent, that one could at least look at trends, but their data says no.

My work with colleagues from Michigan State University that show the current system misses 66 percent of work-related injuries and illnesses in Michigan. And we found that this undercount occurred across all different types of industries and for both injuries and illnesses.

And in a separate study, we showed that the current system missed one-third of amputations. And a similar study in Minnesota also showed those results.

So, in summary, the current system to count work-related injuries and illnesses has been repeatedly studied and shown by researchers to have a large undercount. Expert panels that have reviewed the current system have reached a similar conclusion.

The current system for non-fatal injuries and occupational illnesses relies solely on employer reporting. And the previous speaker spoke to some of the problems with employer reporting.

And our current system ignores the large number of databases that are not dependent on employer coverage or compliance with OSHA recordkeeping. These include hospital and emergency room databases, Poison Control Center data, state laboratory reporting regulations, state occupational disease reporting laws, and workers' compensation.

What is needed is a comprehensive system for work-related illnesses and non-fatal injuries that makes use of available non-employer-based data systems, analogous to what now exists for traumatic work-related fatalities.

Currently, the annual number of work-related illnesses and injuries reported is based on a statistical extrapolation from a relatively small sample of employers, about 150,000 to 200,000 out of our 7 million employers. Statistical extrapolation from a much wider range of medical data systems is essential if we are to have an accurate tracking system that will provide the basic numbers needed for targeting the effort to reduce these injuries and illnesses.

Thank you.

[The statement of Dr. Rosenman follows:]

Prepared Statement of Kenneth D. Rosenman, M.D., FACPM, FACE, Professor of Medicine, Michigan State University College of Human Medicine

Thank you for the opportunity to talk about the system to keep track of occupational injuries and illness in the United States. My name is Kenneth Rosenman, I am a physician and epidemiologist who has studied and written about surveillance of occupational injuries and illnesses for the last 25 years. Recent newspaper articles have once again, and I emphasize once again, highlighted shortcomings in the nation's effort to track work-related conditions. A basic tenet for preventing and minimizing any disease is to have a system that provides accurate information on both the frequency and circumstances associated with those conditions. Such a system is essential in order to determine how much resources to allocate, to target interventions, to evaluate these interventions and if necessary to redirect the interventions.

The current U.S. system to count occupational injuries and illnesses does not provide the information necessary to make the above decisions. In 1987 the National Academy of Sciences issued a report titled "Counting Injuries and Illnesses in the Workplace. Proposals for a Better System". As a consequence of that report and the deficiencies noted in the system some changes were made. The most pronounced change was how acute work-related traumatic fatalities (i.e. being buried in a trench, being electrocuted and falling from a roof) were tracked. As a consequence of the changes made in the tracking system the number of work-related deaths doubled in the first year of the new system. This 100% increase in the number of deaths

was not due to a sudden increase in the hazards of work but rather to the implementation of a new and accurate system to count these deaths. No such changes were made in how work-related diseases such as lead poisoning, silicosis or work-related asthma were counted or how non-fatal injuries such as amputations, burns, fractures or lacerations were counted.

In the last 20 years, I and others have researched and published multiple studies that the current system provides an inaccurate count of work-related illness and non-fatal injuries. There is no disagreement in the medical literature that an undercount exists and that this undercount is significant. I have attached to my statement a list of examples of articles from the medical literature that have presented the results of research on the undercount. I will quickly summarize four of the studies:

1) Dr. Leigh from the University of California in Davis whose work shows that the current system misses 33 to 69% of all non-fatal work related injuries. Based on 1992 dollars, he calculated that work-related injuries and illnesses cost the U.S. 170 billion dollars a year which was five times the cost of HIV/AIDS and three times the cost of Alzheimer's disease

2) Drs. Boden and Ozanoff from Boston University who have shown in the six states of Minnesota, New Mexico, Oregon, Washington, West Virginia and Wisconsin that the current system misses up to 50% of work-related injuries.

3) Drs. Friedman and Frost from the University of Illinois in Chicago who have shown that the reductions in non-fatal work-related injuries reported over the last decade are not due to improvement in workplace conditions but rather reductions in OSHA's enforcement of recordkeeping rules and changes by OSHA in the definitions of work-related injuries.

4) My work with colleagues from Michigan State University that show the current system misses 66% of the work-related injuries and illnesses in Michigan. We found that this undercount occurred across all different types of industries and for both injuries and illnesses.

In summary, the current system to count work-related injuries and illnesses has been repeatedly studied and shown by researchers to have a large undercount. Expert panels that have reviewed the current system have reached a similar conclusion. The current system for nonfatal injuries and occupational illnesses relies solely on employer reporting and ignores the large number of data bases that are not dependent on employer coverage or compliance with OSHA record keeping. These data bases include hospital and emergency room data bases, poison control center data, state laboratory reporting regulations, state occupational disease reporting laws, and workers' compensation. What is needed is a comprehensive system for work-related illnesses and non-fatal injuries that makes use of available non-employer based data systems analogous to what exists for acute traumatic work-related fatalities. Currently, the annual number of work-related injuries and illnesses reported is based on a statistical extrapolation from a relatively small sample of employers. Statistical extrapolation from a much wider range of medical data systems is essential if we are to have an accurate tracking system that will provide the basic numbers needed for targeting the effort needed to truly reduce workplace injuries and illnesses.

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Chairman MILLER. Thank you very much.
Mr. Whitmore?

TESTIMONY OF BOB WHITMORE, FORMER CHIEF, OSHA DIVISION OF RECORDKEEPING, U.S. DEPARTMENT OF LABOR

Mr. WHITMORE. Yes, before I get going, I would just like to say how proud I am to see so many members here today. And I want to say how much I appreciate your attendance and involvement.

Chairman Miller, Ranking Member McKeon and other dedicated committee members, my name is Bob Whitmore. I am a Vietnam veteran with an additional 36 years of government service with the U.S. Department of Labor.

I have directed the national OSHA Injury and Illness Recordkeeping system since 1988, and am the Department of Labor's expert witness for recordkeeping litigation.

I have been subpoenaed to testify today and am accompanied by my counsel, Mr. Robert Seldon of Robert C. Seldon and Associates.

On July 17th of last year, my OSHA director, Keith Goddard, placed me on paid administrative leave in a non-duty status 11 months ago. Therefore, at the outset, I want to make it very clear that I am here today representing myself as a concerned citizen, one with over 20 years of experience directly related to the subject of today's hearing. I am not here representing OSHA or the Department of Labor.

I contend that the current OSHA injury and illness information is inaccurate, due in part to wide scale underreporting by employers and OSHA's willingness to accept these falsified numbers.

There are many reasons why OSHA would accept these numbers, but one important institutional factor has dramatically affected the agency since 1992, regardless of the political party: Steady annual declines in the number of workplace injuries and illnesses make it appear that OSHA is fulfilling its mission.

In 1992, Congress passed GPRA. That holds OSHA accountable. And we are going to be judged by where these numbers go, thanks to GPRA.

All of us want to see a reduction in the number of workplace injuries and illnesses. However, this reduction must be the result of fewer injuries and illnesses actually occurring, and not the result of falsified reporting. It is impossible to evaluate the effectiveness of any OSHA program if the data aren't accurate. Inaccurate data also make it harder to know how to protect American workers from real hazards.

To understand how we got to this point, it is critically important to look into history at the OSHA recordkeeping system. That history can be broken into three segments.

What I refer to as the "Taxi Fare Era" began with the start of the recordkeeping system in 1972 and continued through mid-1986. While citations for recordkeeping topped the list of the most cited OSHA standard or regulation during this period, the fines in these cases were usually $100. Many of us refer to those fines as corporate taxi fare.

From April 1986 to 1992, we entered what I term the "Egregious Era." In April of 1986, under the Reagan administration, OSHA issued its first-ever million-dollar fine to Union Carbide in West Virginia for inaccurate recordkeeping.

During this period, I reviewed over 40 cases in which we applied the newly developed instance-by-instance penalty policy, allowing us to cite and fine the company for each violation of recordkeeping rules.

I now want to make the second most important point in my testimony. After we began vigorously enforcing OSHA's recordkeeping rules in the Reagan administration, injury and illnesses went up from 1985 through 1992. I believe Dr. Ruser wrote an article in 1988 and 1991, with Robert Smith, that addressed that very fact.

Okay, why? Employers may have many incentives not to record injuries and illnesses accurately. For example, many plant and corporate managers, physicians and supervisors receive bonuses based on their OSHA recordable rates.

So when you enforce the recordkeeping rules, employers who will be more careful to record all injuries and illnesses in rates will go up. The reported national injury and illness rates rose during this period, and the leading occupational illness collected in the system went from contact dermatitis to cumulative trauma disorders.

Does this mean workplaces are becoming more unsafe? No. It just means that we have had a more accurate picture of what was going on, because the employers were actually reporting injuries and illnesses. If injury and illness rates go up when you enforce recordkeeping rules, if you don't enforce the rules, will reported rates go down? The answer is yes.

And this is the most important point of my oral testimony. Not enforcing OSHA recordkeeping rules mean many employers will not record injuries and illnesses affecting their workers. Do falling reported rates mean workplaces are actually safer and healthier? No. Estimates about how many injuries and illnesses go unreported range from 30 to 60 percent.

I believe the final period, from 1992 to the present, demonstrate that when you don't enforce recordkeeping, reported injury and illness rates will fall. I call this period the "Report Card Era."

Around 1992, Congress passed GPRA in an attempt to make agencies quantify their performance with objective findings. For the very first time, GPRA made OSHA directly accountable for the rise and fall of the injury and illness numbers.

Chairman MILLER. Mr. Whitmore, I am going to ask if you can wrap it up, please. Thank you.

Mr. WHITMORE. Yes, sir.

It doesn't take an expert to question these data when one looks at just a few examples. A steel plant in Kentucky reported no cases on their log for 2005—no cases, a steel plant. Two other steel plants in Ohio and one in Pennsylvania had recordable case rates below one, total case rates below one. Another steel plant in North Carolina and two poultry plants in Iowa reported days-away rates of zero. And a large poultry processor in North Carolina had a DART rate of 1.1.

In conclusion——

[The statement of Mr. Whitmore follows:]

Prepared Statement of Bob Whitmore, Former Chief, OSHA Division of Recordkeeping, U.S. Department of Labor

Chairman Miller, Ranking Member McKeon and other dedicated Committee members. My name is Bob Whitmore. I am a Vietnam veteran with an additional 36 years of government service at the US Department of Labor. I have directed the national OSHA Injury and Illness Recordkeeping system since 1988, and am the Department of Labor's expert witness for recordkeeping litigation. I have been subpoenaed to testify today and am accompanied by my counsel, Mr. Robert C. Seldon, of Robert C. Seldon and Associates. Mr. Seldon is well known for representing employees who speak out about abuses in the public and corporate sectors, and whom I believe has prevented OSHA from firing me. On July 17th of last year my OSHA Director, Keith Goddard, placed me on paid administrative leave in a non-duty status.

Therefore, at the outset I want to make it very clear that I am here today representing myself as a concerned citizen; a concerned citizen with over 20 years of work experience directly related to the subject of today's Committee hearing. I am not here representing OSHA or the Department of Labor.

I have been an outspoken critic regarding the inaccuracy of OSHA's Injury and Illness Recordkeeping since 1985. Several years ago, I assisted the Oakland Tribune in its 2005 coverage of the fraudulent records kept by the joint venture KFM during the construction of the San Francisco-Oakland Bay Bridge East Span, and the subsequent California State Auditor investigation. More recently, I was involved with the Charlotte Observer's six-day series, "The Cruelest Cuts," which was published this past February. The graphic and disturbing pictures I have in front of me come from that coverage. That private investigation uncovered horrendous working conditions and fraudulent records at one of the nation's largest poultry producers, the House of Raeford Farms, with plants in both North and South Carolina.

I contend that the current OSHA Injury and Illness information is inaccurate, due in part to wide scale underreporting by employers and OSHA's willingness to accept these falsified numbers. There are many reasons why OSHA would accept these numbers, but one important institutional factor has dramatically affected the Agency since 1992, regardless of the political party in power: steady annual declines in the number of workplace injuries and illnesses makes it appear that OSHA is fulfilling its mission.

All of us want to see a reduction in the numbers of workplace injuries and illnesses. However, this reduction must be the result of fewer injuries and illnesses actually occurring, and not the result of falsified reporting. Obviously, it is impossible to evaluate the effectiveness of any OSHA program in the results aren't accurate.

To understand how we got to this point in time it is important to look at the history of the OSHA Recordkeeping system. That history can be broken into 3 segments.

What I refer to as the "TAXI FARE ERA" began with the start of recordkeeping in 1972 and continued through mid 1986. While citations for recordkeeping topped the list of the most cited OSHA standard or regulation during this period, the fines in these cases was usually $100. (Note: $100 in 1972 = $518 in 2008) Many of us referred to these fines as "Corporate Taxi Fare."

From April 1986 to 1992 we entered what I term the "Egregious Era." In April of 1986, under the Regan administration, OSHA issued its first ever million-dollar fine to Union Carbide in West Virginia. The $1.3 million dollar fine was for inaccurate recordkeeping. During this period I reviewed over 40 cases in which we applied the newly developed "instance-by-instance" penalty policy called the Egregious Penalty. One only has to look at the injury/illness rates from 1985 through 1992 in order to see the impact of this era. In fact I believe that in 1988 and 1991 Dr. Ruser and Robert Smith wrote about this impact. The national injury and illness rates rose during this period and the leading occupational illness collected in the system went from contact dermatitis to repeated trauma disorders.

I call the period from 1992 up to the present the "Report Card Era." Around 1992 Congress passed the Government Performance Results Act (GPRA), in an attempt to make Agencies quantify their performance with objective findings. For the very first time, GPRA made OSHA directly accountable for the rise and fall of the injury and illness numbers. This information became the "Report Card" of success or failure for OSHA. Obviously, the Congress was looking for real numbers. Regrettably, the new OSHA of the nineties and beyond responded to the complaints from large employers and their representatives that the Agency was too zealous with "paperwork enforcement". OSHA ceased virtually any meaningful recordkeeping enforcement actions after 1991. Unfortunately, rather than aggressively pursuing programs to try and insure accurate numbers, OSHA's leadership turned its backs on such pursuits. Sadly, OSHA's primary mission—trying to insure worker safety—was lost in their attempt to obtain and publicize a better report card. Until recently Congress didn't seem to care either.

Like everything in life there seems to be good news and bad news. The good news was that in 1995 OSHA began collecting the injury and illness records directly form approximately 85,000 establishments nationwide, called the annual OSHA Data Initiative or ODI. For the first time ever, this program gave OSHA the injury and illness data for specific establishments, rather than overall industry information. OSHA could finally focus its attention on the employers having the highest injury rates and so it then created the Site Specific Targeting System (SST). Unfortunately except for one year since 1995 OSHA has decided not to collect information from employers in the Construction industry, one of our deadliest sectors.

The bad news was that employers were reporting these rates to OSHA and history had already warned us of such perils. In the early 1980's OSHA instituted a "Records Check" policy, in which Compliance Officers calculated the "lost-time" rate from the OSHA Log and immediately vacated the premises if the employer's rate was below the national average rate (around 4.5 at that time). During the "Egregious Era" everyone came to realize the ridiculous nature of the Records Check Policy and it was eliminated.

The SST recently announced for 2008 will include establishments with DART rates, formerly called lost-workday rates, of 11.0 (3,800 establishments) and above on the primary targeting lists and 7.0 and above on the secondary targeting lists. Please realize that these lists are for potential inspections, and other inspections, including fatality, complaint, National and Local emphasis programs often preclude an Area Office from completing even a sample of the SST primary targeting list. Bottom line, if you report a DART rate below 7.0 you aren't even on OSHAs radar for the potential of a planned inspection. Employers have always had incentives not to report all injuries and illnesses: many plant and corporate managers, physicians, and supervisors receive bonuses based on their OSHA recordable rates. While well intentioned originally, the SST as it is currently administered provides them with another one.

It doesn't take an expert to question this data when one looks at just a few examples from 2005:

1) A steel plant in Kentucky reported no, or 0%, cases on their log.

2) Two other steel plants in Ohio and one in Pennsylvania had total recordable case rates, TCR, below 1.

3) Another steel plant in North Carolina and two poultry plants in Iowa reported "Days Away/Restricted/Transferred" (DART) rates of 0, and a large poultry processor in North Carolina reported a DART rate of 1.2.

To try and put these numbers in context, the 2005 data for all private sector establishments classified as General Merchandise Stores (code 452) under retail trade reported the following:

Total Case Rate—6.7
DART rate—3.9

So what can this Committee do to ensure that the OSHA numbers are real?

1) Direct OSHA to put its entire employer reported data since 1995 on its website so that no one would be forced, as has been the practice, to submit a FOIA request for this releasable information. This would include the data from the OSHA ODI and OMB Records Audit programs.

2) Direct OSHA to reinstitute firm, fair & consistent enforcement of the recordkeeping regulations by establishing an ongoing National Emphasis Program that will begin to address the problem of intentional underreporting of workplace injuries and illnesses.

3) Direct OSHA to create an independent Recordkeeping Inspection Support Office that would contain a national Office "SWAT Team" for potentially egregious cases so that the Field Compliance staff would be able to proceed with their other inspections.

4) Direct OSHA to establish an SST program that does not ignore employers who send in highly questionable, if not fraudulent, information.

5) Finally, but probably the single most effective way to quickly improve the data, direct OSHA to issue a requirement that would make Corporate Safety Directors certify that they have made meaningful and effective efforts to insure the accuracy of the OSHA records throughout their corporation. With Sarbanes/Oxley in effect, large employers will most likely vigorously oppose this idea.

In conclusion, I'd like to share with you the response of Ms. Cherie Berry, Labor Commissioner for North Carolina OSHA, to a question posed by the Charlotte Observer, which was printed in its "Cruelest Cuts" series I mentioned earlier:

Q. "Will your department take any additional steps to ensure that company injury logs reflect reality?"

"Well, I find it offensive that it seems to me you're suggesting that not keeping the proper paperwork is commonplace in our business community. I just don't find that. * * * We're going to keep doing what we're doing because it's working."

While Ms Berry might be offended, I personally find her response, as well as similar reactions throughout OSHA's leadership, outrageous. Today, and every day this year an average 16 pieces of "paperwork" will be completed for working men and women in America, their death certificates. It's time for the leadership of my Agency to show Chairman Miller's "sense of urgency" regarding the safety and health of America's workers. Unfortunately, tomorrow will be too little and too late for an additional 16 grieving American families.

I personally want to apologize to those 16 families, as well as to the family of Bobby Glover, pictured here after his death at the House of Raeford Farms.

Thank you for giving me the opportunity to appear before this Committee. I look forward to your questions.

Chairman MILLER. Mr. Whitmore, I am going to ask you to stop there. We have a vote on the floor, and I want to see if we can get to at least partial questions at this time. So your written statement——

Mr. WHITMORE. Can I——

Chairman MILLER. [continuing]. Is in the record in its entirety. I am sorry. I am just going to have to do this——

Mr. WHITMORE. Yes, sir.

Chairman MILLER. [continuing]. Because we are going to start to lose members.

Dr. Ruser, let me ask you a question. In your statement, you indicate that you are engaging in conversations about BLS looking at federal and local workers. Is that correct?

Mr. RUSER. Yes, sir, that is correct. We have already expanded the survey to include state and local government workers in all states.

Chairman MILLER. Any discussion of expanding that to part-time employees, which are a rapidly growing sector of the economy in all employment areas? You know, it is not just to retail now; it is all across the economy.

Mr. RUSER. Any worker who has an employment relationship with an employer is covered by our survey. So we already capture many part-time workers, sir. I think maybe you are referring to the self-employed. And, at this point in time, we have no——

Chairman MILLER. No, I am raising the question of whether or not, in fact, part-time employees are accurately counted within——

Mr. RUSER. Yes, we count part-time employees.

Chairman MILLER [continuing]. You survey.

Mr. RUSER. Yes, we do.

Chairman MILLER. Does OSHA?

Mr. RUSER. It is part of OSHA recordkeeping that any employee of a firm that is covered by the OSHA log system will be captured. The data for those injuries and illnesses to those workers will be captured.

Chairman MILLER. You also indicate in your statement, toward the end, that BLS has undertaken a pilot program of employer interviews. Any reason why you are not interviewing employees?

Mr. RUSER. Our focus is on employers because those are the entities that provide us with our data. And we have a list of employers to which we can go to. The Bureau of Labor Statistics uses a sample frame, which consists of establishments——

Chairman MILLER. Well, let me go back to, in the testimony this morning and in a number of studies referred to here, there is this suggestion that there is a mismatch between the interest of the employee and the employer. Why would you not conduct discussions with the employees about the reporting system?

Mr. RUSER. I think that would have to be done by another agency that has access to a roll of employees, as opposed to employers. Our data frame that we work from is of employers and not the employees.

Chairman MILLER. It is about the employer's workplace. It is about the workplace that the employer runs. A major component of that workplace would be employees.

Mr. RUSER. Yes, sir. And I think that perhaps another agency, such as the National Institute for Occupational Safety and Health, could explore, as——

Chairman MILLER. Are you arguing that you don't have authority to talk to them?

Mr. RUSER. We have a list of establishments that we go to, sir. And so we——

Chairman MILLER. Yes, and inside of those establishments are employees——

Mr. RUSER. Yes, of course there are employees.

Chairman MILLER [continuing]. Which is the subject of this hearing.

Mr. RUSER. But we don't have that list. We feel that our authority is to go and talk to——

Chairman MILLER. Hello? You just—you are like—I mean, you go in to talk to the employer. You can't ask to talk to employees in that same establishment?

Mr. RUSER. At this time, sir, we are focusing on talking with employers about their——

Chairman MILLER. So you have chosen not to talk to employees?

Mr. RUSER. For this study, we have chosen not to talk with——

Chairman MILLER. So this study will only be about employers?

Mr. RUSER. It will be about——

Chairman MILLER. And we will have half the picture when this study is all done.

Mr. RUSER. We are hoping to understand the decisions that employers make about what they record on OSHA logs and how they file workers' compensation claims. And this impacts, of course, the kind of information that we receive.

Chairman MILLER. Dr. McLellan, can we get there without talking to employees on an official capacity as to what is taking place in the workplace?

Dr. MCLELLAN. I can't speak to the regulatory authority of the BLS, but I would certainly concur that talking to the employees is important.

Chairman MILLER. Dr. Rosenman, Mr. Fellner suggests that this is just a mismatch of data. We have got people looking at different databases, and I think even Dr. Ruser suggested that we have different databases here. Is that accurate?

Dr. ROSENMAN. Well, I think the bottom line is we want to know how many occupational injuries and illnesses occur. And so, you know, do you dismiss worker comp data because you say it has different definitions? To me, those are injuries and illnesses, and they need to be considered. And, clearly, all the medical databases—the hospital discharge data, the emergency room data—is being ignored.

And so, I would say, no, it is not a mismatch. It is just there is a lot more out there, and we need to be counting that.

Chairman MILLER. Mr. Fellner, do you discount that information?

Mr. FELLNER. Of course not. I don't discount it at all. It——

Chairman MILLER. What does it tell you?

Mr. FELLNER. If this country wants to go in the direction of discarding the recordkeeping regulation that is promulgated pursuant to——

Chairman MILLER. It is not a question of discarding it. It is a question of what does the additional evidence outside of that system suggest to you.

Mr. FELLNER. It suggests that there are three times more apples than there are oranges. OSHA counts oranges——

Chairman MILLER. Or a third more amputations than there were.

Mr. FELLNER [continuing]. Dr. Rosenman counts apples. If this country wants——

Chairman MILLER. No, he was counting fingers, I think, or amputations.

Mr. FELLNER. No, not at all.

Chairman MILLER. Wasn't that in your testimony——

Dr. ROSENMAN. I would strongly disagree. We are all counting the same fruit. We are talking about work-related injuries and illnesses.

The number of fatalities doubled. Now, are you going to say those weren't work-related fatalities? I mean, there is no question. We are not talking about pain. We are not talking about musculoskeletal disease. We are talking about dead people, that there is no question they died from their work. And when you went beyond the employer-based survey, you doubled the number of workplace fatalities.

And that is what I am suggesting. We need a system that counts all the other injuries, non-fatal, and illnesses that we are missing.

Chairman MILLER. And what was the situation with respect to amputations, in your testimony?

Dr. ROSENMAN. So I am aware, as I sit here today, of two studies on amputations, one in Michigan, where we estimate that the current system misses a third of amputations. And there is a study from the University of Minnesota that has similar data, that, again, in Minnesota, a third of amputations were being missed by the current system.

Chairman MILLER. Mr. Whitmore, just quickly because we are running out of time. We have a vote. I am sorry, you can't see behind me. But we have a vote, and we have got 2 minutes left to get to the floor.

You cited at the very end of your testimony a series of facilities that had very, very low rates. You are telling us that that is just not plausible, that that couldn't happen in that kind of a facility, a steel mill could have no——

Dr. ROSENMAN. To say I was highly skeptical would be an understatement.

And you have to understand, Chairman Miller, that when they are talking about workers' comp and OSHA recordkeeping, most compensable cases are OSHA recordable. The reverse is not true. Most of the OSHA recordables are not compensable. But most of your compensables are recordable under the OSHA recordkeeping criteria. That is something we have known for years.

Chairman MILLER. We are going to have to come back for the questioning. Hopefully we will return in about 20 minutes. So the committee will stand in recess at this point.

[Recess.]

Mr. HARE [presiding]. The hearing will now reconvene.

I would now like to recognize the ranking member, my friend and colleague, Congressman McKeon, for 5 minutes.

Mr. MCKEON. Thank you very much.

Mr. Fellner, your testimony suggests that comparing workers' compensation claims to OSHA recordable injuries is an inappropriate comparison. I think we were discussing that, talked a little bit about that, and I think you didn't get a chance to fully explain that. Can you elaborate on that?

Mr. FELLNER. Thank you, Congressman McKeon. I would be delighted to do so.

The cliche I used before was it is like counting apples and oranges. Let me be a little bit more specific in that regard.

Any attempt to compare a single OSHA recordkeeping regulation, no matter how complex, with worker compensation regimes begins with the following problem: There is no single workers' compensation regime; there are 50 of them. And each one is distinct

unto itself, insofar as to how it categorizes and compensates for various injuries and illnesses.

Two, with respect to the universe of employees that are subject to OSHA jurisdiction and recordkeeping, once again it is apples and oranges. Workers' compensation, by and large, includes self-employed individuals. It includes federal, state and local individuals. It includes a variety of other individuals that are not subject to OSHA jurisdiction. The 10-employee-or-less exception to OSHA jurisdiction immediately comes to mind.

So the universe that is looked at, when you look at workers' compensation injuries and illnesses, is a much broader, a much more expanded universe than is involved in OSHA recordkeeping.

Number three, the definition of what constitutes an injury on the one hand and, number two, whether it is workplace-related on the other hand could not be more different in the workers' compensation—in the 50 workers' compensation contexts than exists in OSHA.

OSHA has its own definitional framework. The 50 regimes have their definitional frameworks. To suggest that one can simply look at a workers' compensation list of injuries and illnesses and transpose them to OSHA recordkeeping and say, "Therefore, there is something deliberately going on," as is suggested by the title of this hearing, something deliberately going on to cook the OSHA books, is a misconception that I would like to dispel.

Mr. MCKEON. Thank you very much.

You know, I listened carefully to all of your testimony. And I think you all have very sincere—you are all coming at this from different directions, but very sincerely. But it looked to me like the story, again, of the elephant, with the three blind men trying to describe it. One person touches the side of the elephant and says an elephant is a wall. Somebody grabs the leg and says it is like a large tree trunk. And somebody grabs the tail and says it is a rope. I mean, you have all heard the story. And that is what I gather here.

Mr. Whitmore, your testimony says this happened under Democrat and Republican regimes, the problems that you have with this. It is not a partisan thing, although, you know, probably the fact that we are doing it now with a Democratic Congress and a Republican administration kind of, you know, tends to think, well, it is all a Republican problem that we are going to expose.

I am glad we are having the hearing, because I come from a small-business background, and I am starting to think, you know, did we report all of our injuries? Did we know of all of our injuries? We didn't have some of—ours was retail business, so we didn't have some of the problems that Mr. Span talked about, you know, where you have warehousing. We didn't have that kind of a situation with big equipment and that kind of stuff.

But I can see problems; I don't know exact answers. And I think we are going to come up with a lot more questions today than answers. But I, again, appreciate you all being here. And I know, as we get all of your full testimonies in the record and go through the questions we have here today, it probably would lead to we should have more hearings to find out more of what is going on.

And my time has expired, Mr. Chairman. I yield back.

Mr. HARE. I thank the gentleman.

The chair now recognizes the gentleman from Maryland, Mr. Sarbanes, for 5 minutes.

Mr. SARBANES. Thank you, Mr. Chairman. I am glad we are having this hearing today.

About 15 years ago, I worked on a report with an organization called the Public Justice Center in Maryland, and we entitled it—it was a look at the poultry industry in particular, and the name of the report was, "The Disposable Workforce," because what we found was a lot of evidence of some of the issues that have been described in the Charlotte Observer series.

But, in particular, what was happening was, if you got hurt, you were gone. And that is why the workforce was disposable. They didn't have access to care if they got hurt. And the employers, in those instances, were taking advantage of the demand for the work to basically sideline people if they suffered an injury.

So I am very keen on the discussion that we are having today. But I am very focused, as well, on what we can do about it, in terms of raising the vigilance within OSHA.

And one of the questions I had is, a few of you have alluded to the fact that there are, sort of, bonuses and incentives out there that reward—I mean, you know, in addition to, sort of, the general reputation of a company for having a low injury report, that inside the company there are incentives and bonuses for medical people and others, human resources, whatever it is, if that count is low.

And I wondered if anyone would speak to—maybe we can start with Dr. Rosenman—speak to the question of whether that is just a practice that ought to be banned or prohibited or curbed in some way and what the potential to do that is.

Dr. ROSENMAN. I think there certainly are practices out there as you describe that discourage workers from coming forward. And some are incentives, and some are, sort of, almost punishment if they do.

The point I was trying to make is we need to go beyond an employer-based system, which would in some way minimize whatever incentives or disincentives. And we have all these additional databases out there, and I think it is very important—the point I try to make, in terms of acute traumatic work-related fatalities, where the system has gone beyond employer-based.

And I think that is very important. I mean, one could, by law, not allow, maybe, some of these incentives. But I don't think that is really the total answer. I think it is going beyond an employer-based system.

Mr. SARBANES. Do you think there is enough information out there in data that we could eliminate the undercount problem? I mean, is that possible to do?

Dr. ROSENMAN. Well, we have to remember that the whole system for non-fatal injuries and illnesses is based on a statistical sampling and an extrapolation. And I think, yes, we are smart enough to use other data systems to do the extrapolation, do a better extrapolation, do a better statistical sampling.

So the answer is, yes, I think going beyond employer-based, not eliminating the employer reporting, but using all these other data

systems, we could do a much better job at extrapolating the true numbers of injuries and illnesses in the United States.

Mr. SARBANES. Thank you.

Did you want to respond?

Dr. MCLELLAN. I would just like to point out that CSTE, which stands for the Council for State and Territorial Epidemiologists, have actually been looking at this issue for some period of time and have, in a number of states now, an ongoing project which uses a suite of 19 different occupational health indicators, really for the purpose of trying to take a better look at the whole elephant, recognizing that each one of these databases looks at only the arm or the trunk or whatever, to use your analogy, sir.

And so I think that there certainly are a number of databases that could be linked that could improve the situation. However, I will also say that there are no databases yet that really help us very much with the chronic occupational disease issues——

Mr. SARBANES. Right.

Dr. MCLELLAN [continuing]. And the exposure issues that cause latent diseases. And that needs further thought, deep thought, about how to address that issue.

Mr. SARBANES. Great.

Mr. Whitmore, first of all, I want to thank you for your testimony today. It is not easy to do what you have done. I want to acknowledge that you reside in my district, and I am very proud of that.

You had mentioned at the end of your testimony—and Chairman Miller cited this as well—statistics on, you know, a steel plant that has zero reported injuries and so forth.

What is the system—and I guess we heard a little bit about it—but what is the system inside OSHA where that would pop up on a radar screen and trigger an investigation or somebody to go out and check the situation? In other words, how do we allocate the resources of OSHA across the different workplaces that we look at?

Mr. WHITMORE. Thank you, Mr. Sarbanes. I appreciate your comments.

The bottom line is this. OSHA inspects when there is a fatality, when there is a complaint, or if there is a planned inspection, a targeted inspection. I think the one recently announced for this coming year has around, like, 4,000 establishments with high lost-time rates.

No one is looking below five. No one is looking at that. I looked at it and said, you know, guys, we can't go on like this. There aren't ma-and-pa steel mills out there. These are large establishments, large employers. We need to go after them.

Mr. Fellner talks about the SST. I welcome the opportunity, hopefully at some point today, to talk a little bit about his numbers. Because in one instance, he said in 2005, I believe it was, there was 100 audits done—100. We had put in for 400 in the primary list, okay? They only did 100. Is that going to tell you everything you need to know about low employer reporting? I don't think so.

I am not the Ph.D. statistician, never wanted to be, never will be. I know that these low rates are bogus. I have looked at them over my career, and they basically shut me down in 1992.

Mr. SARBANES. Thank you.

Mr. HARE. The gentleman's time has expired.

The chair recognizes the gentleman from Massachusetts, Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman. I have, really, only one question, and that is to Mr. Whitmore, if I could.

OSHA and Mr. Fellner indicate that the audits are being conducted that ensure accuracy of employer reports. You seem to feel otherwise. Would you tell us why those audits, in your estimate, are not adequate?

Mr. WHITMORE. Well, we have to be a little careful here, because the word "audit" is thrown around a lot. And I know it is hard for you guys; it is hard for me, and I have to deal with this stuff on a fairly regular basis.

There is a separate program that does records audits checks, okay? Just to give you an idea, in 2006, the last one I believe that was done, there were 24 employers in that sample that had more than 250 employees. I don't think we can say a whole heck of a lot for all employers above 250 employees based on a sample of 24.

And the audits are done—the critical thing you have to understand, that when our auditors in this audit program go in, they say, I want to see certain folders on certain people, like Representative Hare, I want to see your medical records. Who do you think gets them for them? The employer. Who do you think hands him the folder? The employer.

You are totally dependent because they don't follow up with a medical access order to go to the hospitals, the clinics that are used, to check. That is where we get our big cases. Not every employer is dumb enough to have the goods right there and hand them over to you. But there are cases where that happens.

And don't get me wrong. There are a lot of really good big employers around. You know, everybody says, "I think 90 percent are doing the right thing." And my response has been throughout my career, "Give me the 10." You take care of the 90 that are doing a great job. Give me the 10 that don't care about their employees and don't care about what OSHA does or stands for.

Mr. TIERNEY. Thank you.

I yield back, Mr. Chairman.

Mr. HARE. The chair recognizes the gentleman from Michigan, Mr. Kildee.

Mr. KILDEE. I first apologize. I had another hearing this morning on Resources Committee, but I read your testimony, appreciate your testimony.

I can just recall things years ago—I am 78 years old. I can recall when my dad worked in the plant and how things were then. We have come a long way since then. But there is human nature. There is a good side to human nature, and there is the bad side of human nature. And, at times, we have to make sure the law protects people from the bad side of human nature.

And I can recall my dad almost being killed in the plant by being pulled into his machine. He had no capacity to turn his own machine off. That was a long time ago. That was in the 1930s.

But human nature remains the same. And law protects people against the shortcomings of employers. And if it is the 10 percent,

that is the 10 percent we want to make sure the law watches and protects their employees from.

And I very much appreciate the testimony this morning.

And thank you, Mr. Chairman.

Mr. HARE. Thank you very much.

Mr. Span, I apologize. I came in late this morning, and I missed your testimony. I wonder if you could talk a little bit about your injury and the effects and any repercussions you had from reporting the injury and, you know, the effect of these incentive games that they are playing, in terms of being able to——

Mr. SPAN. Well, thank you.

And I would like to say that I was hurt doing my job at the Bashas' warehouse with my supervisor standing next to me. We were unloading a tractor trailer, and I got some debris in my eyes, which they did not have any safety glasses or anything like that, wasn't given to me. And I went home, and the next day I had an infection, so I went to the emergency room. After calling my doctor about me being a diabetic, I have to be real careful.

And I contacted my supervisor at the warehouse and explained to him what happened, the plant manager, explained to him what happened and the situation I was in. And the doctor gave me some days off work because of the infection I had in my eye. And he then immediately told me to bring in the documentation and he will take care of it.

So after returning back to work with my doctor's documentation stating that he kept me off from work for a few days and the reason why, he did take the papers and he also punished me by giving me points, stating that I shouldn't have called in from work, you know, to report that I would be off.

And I did question him and asked him what was the reason why would I be punished by given points when I got hurt on your job? And he tried to deny that it ever happened. But my supervisor explained to him that he was standing there when the incident did occur.

And, from that point, I don't know what happened, but I checked the OSHA 200 log, and it is not even mentioned in there. But I do have the documentation from my doctor that it occurred, you know?

And this goes on to say that the company that I was employed with, I don't know what is going on with the documentation as far as getting them on the OSHA log, but I was just listening to the guy here to my left stating that the facts and figures for the OSHA papers are right, and I am just, you know, from my—I am a worker. I know from experience, not from what I am told and what I am reading, you know.

They are like witnesses that millions of accidents and stuff that is happening in the workplace, and people are afraid to report them because they don't want their wages cut or being punished by their employer.

Mr. HARE. During your testimony, which I missed, you said that—and I want to make sure that I heard you right—that you received 10 minutes of training to drive a forklift?

Mr. SPAN. Yes, I received——

Mr. HARE. What would you say is the average time for a person to become reasonable proficient and have it safe to drive a forklift?

Mr. SPAN. Well, basically, it can take people up to 6 to 7 months to be properly trained to operate——

Mr. HARE. And you get 10 minutes.

Mr. SPAN. Pardon?

Mr. HARE. And you get 10 minutes?

Mr. SPAN. Yes. At Bashas' Corporation, I was only given 10 minutes to drive a pallet jack. Now, I need to remind you that the equipment that I had to use to perform my job, I would have to be on heavy equipment all through the 8-hour shift, as well as the people who was being hired who don't even have a driving license, to operate these equipment.

That is why if you look at the OSHA report, that the Bashas' Corporation, the warehouse itself, it explains more that they have got the average of injury rates anywhere in the United States. And these are the ones that is being recorded. Think about the ones that is not being recorded.

Mr. HARE. Well, let me ask you, if I could, Mr. Fellner, something that is troubling to me. Dr. Rosenman, as I understand it, did a study in 2003 that showed that there were 693 amputations in the state of Michigan, whereas the BLS survey estimated only 440 amputations occurred.

Now, you can argue that the ergonomic issues are hard for employees to diagnose and that their recordkeeping regulations are complicated, but it would seem to me that amputations aren't too hard for employers to be able to diagnose. And, yet, the BLS only estimated 64 percent of the true number of amputations in Michigan in 1997.

So how can you say there is no evidence of significant underreporting when you see numbers like this?

Mr. FELLNER. I have not had a chance to review Dr. Rosenman's study, but to the extent that that study relies in whole or in part on workers' compensation data, to the extent that it does, then my prior response to Congressman McKeon would apply. And that is, the extent to which that 680 includes individuals not subject to OSHA's jurisdiction, then we are indeed talking about apples and oranges.

Appropriate numbers of amputations were recorded under OSHA logs, and appropriate workers' compensation amputations occurred pursuant to his examination.

Mr. HARE. Just one final comment. We may be talking about apples and oranges, but we are talking about people who have lost limbs too. And I think that when we have an underreporting of 60 percent, you know, whoever is responsible for not getting the numbers correctly—it can be apples and oranges, it can be apples and anything, but the fact of the matter remains these are people, these are workers who have been harmed, severely harmed.

Mr. FELLNER. And I do not mean to denigrate any amputation, God forbid, for one second. The question is whether those workers were subject to OSHA's jurisdiction. And I would have to look much more closely at his study in order to make that determination and respond to your question.

Mr. HARE. My time is up. I will come back to you, Dr. Rosenman, because I know you wanted to comment on this.

The chair would now recognize the gentlelady from California, Ms. Woolsey, for 5 minutes.

Ms. WOOLSEY. Thank you, Mr. Chairman.

And I am so sorry that I have missed most of the questions. So I am going to ask a question that I think you all can answer for me. Well, I have two points.

The first point is, the answer to your question probably has to do with who has hired you to work for them on this, which I find quite disturbing.

But when we are doing such a poor job, I believe, in collecting the real data on workforce injuries, and when we have a hard time reporting severed limbs, amputations, how in the world do we report health, which isn't obvious, and near-misses?

I mean, because I was a human resources professional for 20 years, and that was back at the beginning, and we had Cal/OSHA. And, actually, near-misses made the difference quite often of whether a person would later on lose an eye because we learned from an experience or another.

So I don't know who to ask. I actually thought I was going to ask Dr. McLellan that question and then any of the rest of you.

Dr. MCLELLAN. Thank you for the question, because it is a question of significant concern to our members. And most of our members, when asked by an employer to advise them as to how to take good measure of how the employer is doing with respect to health and safety, would advise them to look beyond simply the OSHA log and very much to include first-aid reports as well as, as you point out, near-misses.

The difference between a few-millimeter scratch on the skin, which requires a Band-Aid and might be considered a first aid or a near-miss, and a significant laceration, perhaps severe enough to cause an amputation, is luck, not safety.

Ms. WOOLSEY. Right.

Dr. MCLELLAN. And so the point here is that the OSHA log itself will not give a true luck for the purpose for which we really have it, which is to prevent work-related injuries and illnesses.

The OSHA log even at its best is only going to be a lagging indicator, and it is a body count. We would really like to be able to use a suite of indicators that take a look at the bottom of the iceberg in order to prevent anyone from getting on the OSHA log for the real reason because it is safe.

Ms. WOOLSEY. Well, Mr. Span, if an employer had an appropriate safety committee, would a report internally of near-misses be a good indicator to the committee of what needed to be concentrated on?

Mr. SPAN. Yes, it could be true in some factors. It depends on actually where you are working at, because of the fact—that safety committee can basically—people who were inside the warehouse on site at the job can actually determine what need to be changed and what steps they may take to make the place even safer to go to work. You know, it is sad that you have to go to work and look around you, scared of what is going to happen or what limb is going to be cut off today.

And just to add on a little bit to this, it is sad that most of the reason why a lot of this stuff is not being reported, because of these

companies with their private doctors that they send you to, and these doctors will actually, no matter—from what my experience in seeing, that you can have your feet broken, toes broken, they send you back to work the next day. And then I believe this is the reason a lot of this is not getting reported.

Ms. WOOLSEY. Well, would you mind going back the next day if you weren't losing salary? I mean, light duty?

Mr. SPAN. Me, personally, I wouldn't go back to your job; you can basically keep it. Like I said, I am a diabetic, and my health and——

Ms. WOOLSEY. No, I mean, it would depend on the situation. But when an injured worker is ready to go back to work or a worker in poor health is ready to come back to work, if they were put back on light duty and with full pay, would there be any objection to that?

Mr. SPAN. I am quite sure a lot of people would go back to work if they are going to get their full pay and be able to support their family and pursue the American dream, like we all are. We need to support our families. And, you know, the price of gas today, who can afford to take off work?

Ms. WOOLSEY. Well, that is true too.

Yes, Mr. Whitmore?

Mr. WHITMORE. Yes, Ms. Woolsey, thank you very much. Real quickly, near-misses? The really good companies out there, they are collecting information on near-misses already, because they understand what you are saying. I think you are right about a safety and health program; a good one should have that.

This right here is a picture from the Charlotte Observer of a gentleman's ankle with one, two, three, four, five screws in it. This wasn't a near-miss. It was a real hit, and didn't get recorded. It was an oversight by the employer.

Ms. WOOLSEY. Thank you, Mr. Chairman.

Mr. HARE. The chair recognizes the gentleman from Michigan, Mr. Kildee, for 5 minutes.

Mr. KILDEE. I thank you, Mr. Chairman.

Mr. Span, can you tell us a little more about the effect of company raffles or other incentive programs in your workplace? Do they encourage workers to be more safe, or do they encourage workers to perhaps hide their injuries?

Mr. SPAN. First, personally, I believe it is—incentive and raffle, the reason why they company is doing it, to keep people quiet. Because of the fact that, you know, with the policy that they have at the company I was employed with, you know, it is totally unheard of. And they use this tactic to keep the people's mouth closed. Okay, well, we are going to win an mp3 player or a trip to Hawaii for a week or stuff in this nature that, you know, that is just what they offered them if you do not have any injuries in your department. So most of the people would love to take their wife on a cruise to California, to Great America or whatever the case may be. So I believe it is something that they are using to keep people quiet from reporting these injuries.

Mr. KILDEE. Mr. McLellan, could you comment on that?

Dr. MCLELLAN. Sure. Yes, I concur. Our members, we have been collecting anecdotes. And, for example, one of our senior physicians

reported a case in which an employee came to his clinic with a very fresh laceration, obviously had just occurred, requiring sutures. And he asked the physician to consider this as not work-related, to pretend that it had occurred the night before, because to consider it work-related would mean that his entire team would miss out on an opportunity for a steak dinner.

Mr. KILDEE. Okay. Thank you very much.

Thank you, Mr. Chairman.

Mr. HARE. Thank you.

I just wanted to follow up. I know, Dr. Rosenman, you had something that you wanted to say, and then I maybe have one question for you.

Dr. ROSENMAN. Thank you.

Yes, well, this study that was asked about was we reviewed emergency department data. And so it was worker compensation data, but we also looked at emergency.

I think it is important, this issue, whether it is within the scope of OSHA, I mean, as a health-care provider, I am interested in amputations and I am interested in preventing amputations. And I think it is too narrow to say, oh, well, OSHA may not cover this. I think we need to think about work-related injuries and illnesses and how are we going to prevent them in the United States.

And one other point I would like to make is, you know, it is true, the issue that Mr. Fellner has raised about workers' comp, well, maybe that is a different fruit. But, you know, in seven states this has now been looked out, and in seven states they are not being counted in the current annual survey. And in these studies, these people all had at least 3 lost work days. So these were people in the workers' comp system. In Michigan, it was 7 days away from work; in some of the states—because each state does vary. But in all seven states, people with at least 3 days away from work were not being counted in our current statistics.

And, to me, that is not apples and oranges. Those people were off work because of a work-related injury and illness, and they were not being counted.

Mr. HARE. Mr. Whitmore, you had something you wanted to add?

Mr. WHITMORE. Thank you, Representative Hare. Appreciate it. A couple quick things.

As much as I appreciate Dr. Rosenman's testimony, the mission of the Department of Labor is to take care of American workers. The mission of OSHA is to take care of American workers. I am very appreciative of his work. I want my agency to do its job effectively, honestly and openly.

I want to show you this from the Charlotte Observer series. This is their safety program. It is a T-shirt, and it says, "Strut McClucker, Columbia Farm's Safety Mascot." I guess when I get fired, I can put in for this job. "Two million safe hours without a lost-time accident." That is what you get. That is what you get when you work there, as well as all these other things I have here. That is their program.

If OSHA can't or won't do its job, it is up to you all to make it do the job that we are paid by from the American people to do.

Thank you.

Mr. HARE. Thank you, Mr. Whitmore.

Let me thank all the panel for coming.

I just wanted, in closing, to say something here. It seems to me Mr. Whitmore brought up a great point. We have 90 percent of the employers are doing the right thing and reporting this. Our job is to make sure that those people who work with the 10 percent who aren't—I am thoroughly convinced there is underreporting going on.

The T-shirt, you know, maybe, Mr. Span, I was just thinking of the T-shirt, you could wear that to Adventure Land or something. You know, it is just incredible to me that we have accidents occurring and yet we don't report it. The pictures, I think, speak much louder than probably anybody could.

I will tell you that Chairman Miller is a great chairman. And this is great hearing, and I had the honor of being able to chair the last part of it. It has been my first chance to sit in this chair, but——

Ms. WOOLSEY. You did well.

Mr. HARE. Thank you.

But he did bring up a good thing.

I think, too, one last thing. I think it is important that we just don't talk to the employers when we go in to find out what is going on in that factory or that plant. You have to talk to the workers. They do the work every single day. They are the ones getting hurt. They are the ones that have seen their coworkers getting hurt.

If we just really only talk to the employer, we will never really, as the chairman said, ever get a real picture of what is actually going on there. And I hope someday we will get to where workers actually had the very same rights and opportunity to be able to stay safe.

Let me just remind the members, you will have 14 days to submit additional materials for the hearing record.

I thank all of you for taking time out of, I know, busy schedules to be here.

This hearing is adjourned.

[The statement of Mr. Altmire follows:]

Prepared Statement of Hon. Jason Altmire, a Representative in Congress From the State of Pennsylvania

Thank you, Chairman Miller, for holding this important hearing on OSHA's underreporting of workplace injury and illness statistics.

Several recent academic studies have concluded that OSHA significantly underreports the number of workplace injuries and illnesses that occur in the United States. Anecdotal evidence from newspaper articles and workers support the findings of these studies and suggest that, at least in some cases, workers are being pressured to not report injuries by their employers.

OSHA has long used the declining number of reported workplace injuries and illnesses as evidence of their effectiveness and to defend their policies. Thus, determining whether or not OSHA has been underreporting injuries and ensuring that OSHA's future reporting is accurate is not only important for transparency, but also for making good public policy.

Thank you again, Mr. Chairman, for holding this hearing. I yield back that balance of my time.

[The statement of Ms. Sánchez follows:]

Prepared Statement of Hon. Linda Sánchez, a Representative in Congress From the State of California

Chairman Miller, I thank you for holding this very important hearing on the under reporting of workplace injuries. As one of the Co-Chairs of the Labor and Working Families Caucus, I have been working hard over the past several years to draw attention to workplace illnesses, injuries, and fatalities.

Sixteen workers are killed on the job every day in America. And hundreds more are the victims of illness and injury. Yet OSHA sits idly by while construction cranes topple across the country and workers in the microwave popcorn industry have their lungs and lives destroyed by diacetyl.

Current OSHA appointees argue that workplace deaths and injuries have declined during their tenure. Could one reason be that OSHA simply isn't very good at enforcing its reporting rules? In its relations with employers, it seems to me OSHA is more of a lap dog than a junkyard dog.

As we will hear in today's testimony, taking OSHA's work-related injury statistics at face value is about as naive as believing a child who says "I didn't eat the cookie," as he looks at you sweetly with crumbs all over his face and hands.

The job-related deaths, injuries, and diseases that plague the U.S. workplace are preventable. But OSHA, under the current Administration as well as past Administrations, has simply underperformed. It hasn't been funded, at least at any time that I can recall, at anywhere near the levels necessary to promote a true culture of safety and respect for those getting the job done every day in factories, warehouses, and offices across the country.

And during the Bush Administration, the chronic under funding has been combined with an effort to minimize enforcement and maximize friendly relations with employers. Fox * * * henhouse. It's and old cliché. But it's never been more relevant.

The Bush Administration's approach to overseeing workplace safety has been a lot like its approach to overseeing the Enron debacle and the mortgage crisis: say little, do less, and direct attention elsewhere.

And in the meantime, constituents of mine work at the Ports of Long Beach and Los Angeles, contracting cancer and heart and lung diseases after years of breathing and coming home covered in particulate matter from diesel and other pollutants.

Working for a living shouldn't be deadly.

Mr. Chairman, for workers in my district, and for workers across the nation, I thank you for holding this hearing. And I hope that it is one more chink in the wall of silence that surrounds workplace dangers.

[Whereupon, at 12:52 p.m., the committee was adjourned.]