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HEARINGS

BEFORE THE

SUBCOMMITTEE ON COMPENSATION, HEALTH AND SAFETY

OF THE

COMMITTEE ON EDUCATION AND LABOR HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

HEARINGS HELD IN WASHINGTON, D.C.
MARCH 1, 7; MAY 10, 23, 1977

Printed for the use of the Committee on Education and Labor
CARL D. PERKINS, *Chairman*

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CONTENTS

	Page
Hearings held in Washington, D.C.:	
March 1, 1977-----	1
March 7, 1977-----	89
May 10, 1977-----	269
May 23, 1977-----	293
Statement of—	
Bingham, Hon. Eula, Assistant Secretary of Labor for Occupational Safety and Health, accompanied by Bert Cottine, Special Assistant to Secretary Bingham; John Hynan, Deputy Associate Solicitor, and Joseph L. Kirk, Director, Office of Policy Analysis, Occupational Safety and Health-----	294
Hansen, Hon. George, a Representative in Congress from the State of Idaho-----	29
Helsel, Kathryn, Concerned Farm Wives, South Haven, Kans., accompanied by Peggy Yearout and Kay Burkhart-----	280
Skubitz, Hon. Joe, a Representative in Congress from the State of Kansas-----	269
Steiger, Hon. William, a Representative in Congress from the State of Wisconsin-----	153
Symms, Hon. Steve, a Representative in Congress from the State of Idaho-----	59
Prepared statements, letters, supplemental material, et cetera—	
Chappell, Hon. Bill, Jr., a Representative in Congress from the State of Florida, testimony of-----	324
Corn, Hon. Morton, Assistant Secretary of Labor, Occupational Safety and Health Administration:	
Letter from Hon. William Steiger, Member of Congress, dated August 24, 1976-----	144
Letter from Hon. William A. Steiger, Member of Congress, dated September 2, 1976-----	145
Letter to Hon. William A. Steiger, Member of Congress, dated October 19, 1976-----	147
Letter from Hon. William A. Steiger, Member of Congress, dated October 22, 1976-----	149
Letter to Hon. William A. Steiger, Member of Congress, dated November 11, 1976-----	150
Letter to Hon. William A. Steiger, Member of Congress, dated December 23, 1976-----	151
"Status Report on OSHA," submitted to Secretary of Labor W. J. Usery, dated January 12, 1976-----	160
Gaydos, Hon. Joseph M., a Representative in Congress from the State of Pennsylvania, opening remarks-----	1
Hall, Hon. Sam B., Jr., a Representative in Congress from the State of Texas, statement of-----	340
Hammerschmidt, Hon. John Paul, a Representative in Congress from the State of Arkansas, statement of-----	328
Hansen, Hon. George V., a Representative in Congress from the State of Idaho, testimony of, with attachments-----	7

Prepared statements, letters, supplemental materials, etc.—Con.

Ketchum, Hon. William M., a Representative in Congress from the State of California, statement of-----	Page 83
Long, Hon. Gillis, a Representative in Congress from the State of Louisiana, testimony of-----	324
Lovell, Malcolm R., Jr., president, Rubber Manufacturers Association, letter to Hon. Morton Corn, Ph. D., Assistant Secretary of Labor, dated April 21, 1976-----	134
Mann, Karen L., Office of Legislative and Interagency Affairs, Occupational Safety and Health Administration, letter to Paul F. Dwyer, counsel, Subcommittee on Compensation, Health and Safety, dated September 2, 1977-----	320
Myers, Hon. Gary A., a Representative in Congress from the State of Pennsylvania, letter to Chairman Gaydos, dated March 2, 1977-----	322
Robinson, Hon. J. Kenneth, a Representative in Congress from the State of Virginia, testimony by-----	255
Sarasin, Hon. Ronald A., a Representative in Congress from the State of Connecticut, opening remarks-----	3
Skubitz, Hon. Joe, a Representative in Congress from the State of Kansas:	
Letter from C. W. McMillan, executive vice president, American National Cattlemen's Association, dated March 1, 1977-----	272
Letter from James D. "Mike" McKeivitt, counsel, National Federation of Independent Business, dated March 4, 1977-----	273
Letter from Jerry Rees, executive vice president, National Association of Wheat Growers, dated March 7, 1977-----	274
Letter from Donald A. Frederick, assistant general counsel, National Council of Farmer Cooperatives, dated March 8, 1977-----	275
Letter from John C. Datt, director, Washington office, American Farm Bureau Federation, dated March 10, 1977-----	276
Steiger, William A., a Representative in Congress from the State of Wisconsin:	
Testimony of-----	90
"Amendment to OSHA", from the Congressional Record, dated March 4, 1974-----	95
Jurisdictional Statement, Ray Marshall, et al. v. Barlow's, Inc., Supreme Court of the United States, October Term, 1976-----	101
Symms, Hon. Steven D., a Representative in Congress from the State of Idaho:	
Statement of-----	54
Three-judge court decision, dated December 30, 1976-----	62

OVERSIGHT HEARINGS ON THE OCCUPATIONAL SAFETY AND HEALTH ACT

TUESDAY, MARCH 1, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMPENSATION,
HEALTH AND SAFETY OF THE
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 9:06 a.m., pursuant to notice, in room 2257, Rayburn House Office Building, Hon. Joseph M. Gaydos (chairman of the subcommittee) presiding.

Members present: Representatives Gaydos, Cornell, Zeferetti, Lefante, Myers, Sarasin, Buchanan, and Shuster.

Staff present: Paul F. Dwyer, counsel; Bernard Mandella, staff director; Denny Medlin, clerk; Terre Belt, research/writer; Marsha Gray, secretary; and Chuck Sheerin, minority counsel.

Mr. GAYDOS. The Subcommittee on Compensation, Health and Safety will come to order. Without objection, the Chair would like to place in the record at this time, the prepared text of opening remarks.

Without objection, so ordered.

[The opening remarks of Chairman Gaydos follow:]

REMARKS BY HON. JOSEPH M. GAYDOS, CHAIRMAN, SUBCOMMITTEE ON COMPENSATION, HEALTH AND SAFETY; OVERSIGHT HEARINGS ON THE OCCUPATIONAL SAFETY AND HEALTH ACT, MARCH 1, 1977

This is the first hearing of the Subcommittee on Compensation, Health and Safety, of which I am privileged to serve as chairman.

At the outset, I would like to set forth for the benefit of future witnesses who will appear before this subcommittee the procedure which will be followed.

Every witness who appears before congressional committees performs a vital service in the legislative process. Their expertise is indispensable to the enactment of the legislation which is considered by Congress. In order that these witnesses will most effectively participate in that process, the subcommittee will proceed as follows:

1. Hearings will commence at 9:00 a.m. This will allow sufficient time for all witnesses to present their testimony and be questioned by the members of the subcommittee. The members have indicated to me that they will make every effort to be here at 9:00 a.m. Therefore, I ask that the witnesses cooperate and also be present at 9:00 a.m. so that the hearings can commence on time.

2. Rule 12(b) of the rules of the Committee on Education and Labor provide that, "So far as practicable, each witness who is to appear before the committee or a subcommittee shall file with the clerk of the committee or a subcommittee, at least 24 hours in advance of his appearance, a written statement of his proposed testimony and shall limit his oral presentation to a summary of his statement."

Pursuant to this rule, the subcommittee is requesting that witnesses deliver their prepared testimony to the subcommittee clerk 48 hours prior to the hearing. This means 48 hours of the normal working day; it does not include Saturdays,

Sundays or holidays. I don't think there is anything more disturbing to the members than to see a witness submitting his prepared testimony just before he is called upon to make his oral presentation.

Furthermore, the subcommittee will request that witnesses *not* read their prepared statements. If their statements are timely filed with the subcommittee, the members and staff will have had an opportunity to review them, and additional information may then be elicited from the witness at the hearing.

This morning the subcommittee begins a series of oversight hearings on the Occupational Safety and Health Act, otherwise known as OSHA. These hearings will constitute an extensive and comprehensive review of OSHA, with special emphasis on:

1. OSHA's approach to the problem of health hazards in the workplace.
2. OSHA's relationship to the National Institute of Occupational Safety and Health (NIOSH).
3. The impact on OSHA on the employees and employers of small business.
4. The relationship of State occupational safety and health programs with OSHA.
5. The revision of current consensus standards.

Unfortunately, no single act of Congress in recent years has received the current criticism that has been directed at OSHA. We hear the complaints of business that OSHA is enforced in an arbitrary manner and in the eyes of many critics is merely a tool of harassment toward business. On the other hand, the voices of the working man and woman are heard in their criticism that OSHA has failed to deliver and provide the necessary safeguards against injury and disease in the workplace.

Many of our colleagues in the House have seen fit to report on the floor of the House or in their remarks in the congressional record about instances where the compliance efforts of OSHA seem to deteriorate into harassment of the small businessman.

On the other hand, within 100 miles of this very hearing room, we have witnessed two instances in the past four years where tragedies have occurred involving death or serious injury or disease to many workers, with the resultant criticism that OSHA has failed to protect these workers from unsafe or unhealthy working conditions. I refer to the Bailey's Crossroads tragedy of almost 4 years ago, where 14 workmen were killed and 46 injured as a result of the collapse of a high rise apartment building. More recently, this subcommittee visited the town of Hopewell, Va., just one year ago to conduct a hearing into the tragedy which occurred when several workers suffered serious and permanent disability as a result of occupational disease; namely, Kepone poisoning.

Both of these tragedies resulted in a torrent of criticism directed at OSHA for its inability to prevent such tragedies. Yet, it must be realized that the real reason these tragedies occurred was because of a callous and utter disregard for the welfare of the worker by the employers at the two locations.

When Congress passed the Occupational Safety and Health Act in 1970, it was not intended either to harass employers nor to allow the continuation of unsafe or unhealthy conditions to exist in the workplace. I was a member of the committee which drafted that legislation. I was convinced at that time that it was vitally necessary to protect the life and limb of the American worker. Today, in the light of the Bailey's Crossroads and the Hopewell Kepone tragedies, the effective enforcement of OSHA is still a vital necessity for the American worker.

Accordingly, the purpose of these hearings, which will be conducted throughout this year, will be directed to the sole objective of ascertaining whether the act has lived up to the high expectations which accompanied its passage, and to work with the Occupational Safety and Health Administration to remedy any failure. The subcommittee is prepared to listen to the testimony of anyone who can provide advice and constructive criticism in order to correct the past failures of OSHA.

Commencing this morning and continuing for the next 3 weeks, this subcommittee will hear testimony from Members of Congress who have introduced bills to amend or repeal OSHA. Following that, it is anticipated that administration witnesses will testify.

Mr. GAYDOS. Does anyone else have any remarks?

Mr. SARASIN. Mr. Chairman, when you complete your remarks I would like to make some remarks

Mr. GAYDOS. I want to welcome the audience and the witnesses that will be participating and also the members that are here today. The Chair now recognizes Mr. Sarasin for his opening remarks. [The opening remarks of Hon. Ronald A. Sarasin follow:]

OPENING REMARKS
BEFORE THE
SUBCOMMITTEE ON COMPENSATION, HEALTH, AND SAFETY
HOUSE EDUCATION AND LABOR COMMITTEE

Thank you, Mr. Chairman. While I will make my remarks brief in order to give our witnesses ample time this morning, I do want to say how much I look forward to working with Chairman Gaydos. He has publicly expressed his desire to make our Subcommittee one of the most effective and responsive in the Congress and to insure bi-partisan participation in all subcommittee activities. This attitude certainly bodes well for all individuals affected by the topics under our jurisdiction and should result in sound legislation during the ensuing two years. As Ranking Member of this Subcommittee I can assure you all of the willingness of my colleagues on the Republican side of the aisle to actively pursue the problems confronting us in the areas of compensation, health and safety.

OSHA is perhaps the best place for us to begin our commitment to positive action. First, there is widespread support among the committee members for the objectives of OSHA and for federal standards for Occupational safety and health. There can be no mistake that both the Chairman and I support OSHA and feel that the federal government can best lead the effort to reduce injuries, deaths and illness which stem from the worksite.

Secondly, we all are cognizant of the many problems beleaguering OSHA and threatening its very existence. It is my profound hope that we will deal realistically with the situations before us, casting aside past fears to bring the Act up for consideration and for improving amendments. We all realize that if we do not, the Appropriations Committee will continue to amend OSHA by withholding funding for its enforcement activities. Presently, first instant sanctions are prohibited in worksites where ten or fewer workers are employed. This is clearly in opposition to the law itself and has seriously diluted the effectiveness of the program. Additional efforts, reflected by some of you here today, are underway to either repeal the Act in toto or to exempt completely from coverage those businesses with 25 or fewer employees. It is my sincere belief that this will come to pass if our Subcommittee, and our counterpart in the Senate, continues to maintain a hands-off policy.

In past years, we have held days of oversight hearings on OSHA. Quite candidly, they have been almost meaningless. It is my hope that these hearings will be a concerted effort to root out the problems facing OSHA and to implement strong correcting amendments. We must also regain the control and involvement that has been taken by not only the House Appropriations Committee but also the Small Business and Government Operations Committee. The statements presented to us today clearly reflect the condition in which OSHA finds itself, the growing anger and resistance throughout the country, and the fact that this situation will deteriorate if we do not act.

Many individuals have expressed their opposition to on-site consultation. It is my hope that this Committee will take the time to rethink this position, to view OSHA realistically, and to determine whether on-site consultation would really dilute the impact of the Act or would in fact improve its effectiveness, provide greater assistance in realizing its goals, and increase the cooperation and interest of the private sector in improving their worksites.

The lack of adequate education and voluntary compliance are not the only areas we must address. We must look as well to the internal difficulties of the organization, to the rising criticisms of the administration of the Act. I do not dispute the dedication of those within OSHA. I sometimes must pause, however, and wonder how well these people communicate with the outside world.

I have every confidence that Mr. Gaydos will be a strong Chairman and will indeed walk where others have feared to tread, and I want to join him in welcoming those of you who are to appear before the first hearing of the Subcommittee on Compensation, Health and Safety.

Thank you, Mr. Chairman.

Mr. SARASIN. Thank you very much, Mr. Chairman. Gentlemen of the committee, and those who are going to testify before us this morning, and our colleagues in Congress, I will not indulge in a very long opening statement but I certainly do want to say how much I look forward to working with Chairman Gaydos.

He has publicly expressed his desire to make our subcommittee one of the most effective and responsive in the Congress and to insure bipartisan participation in all of the activities.

I do not think there is any question the members of this committee do feel strongly that OSHA is a good law and that there are ways in which it can be improved. I hope, Mr. Chairman, that we will take some action this year and try to make some changes and not be too timid or afraid that if we open the act, we are possibly going to lose it on the floor of the House.

I think if we do not open the act to provide for some areas of relief such as on-site consultation, especially for smaller business, that we may very well lose the act on the floor of the House, especially in the appropriations process.

I do not want that to happen. I have every confidence in the chairman and I know the caliber of the people that we have on the committee who will do their very best to make the Occupational Safety and Health Act and its administration an effective vehicle for safety and continue to guarantee the workers of this country that they will be entitled to safe and healthy workplaces.

Thank you, Mr. Chairman.

Mr. GAYDOS. Thank you, Mr. Sarasin. I am looking forward to working with you, have enjoyed working with you in the past and without reservation state for the record that you are a most valuable and productive member of the committee.

Mr. Shuster?

Mr. SHUSTER. I have no comments, thank you.

Mr. GAYDOS. Mr. LeFante, do you have any opening remarks?

Mr. LEFANTE. No.

Mr. GAYDOS. Without any further delay then, the Chair is very happy to welcome to the committee for testimony our colleague, Hon. George V. Hansen, the Second District of Idaho. Mr. Hansen, you may proceed in the manner that you deem best. We welcome you before the committee.

[The prepared testimony of Hon. George V. Hansen follows:]

Testimony of
The Honorable George V. Hansen
2nd District, Idaho
before the
Education and Labor Committee
Subcommittee on
Manpower
Compensation, and Health and Safety
Tuesday, March 1, 1977

One of the oldest and most enduring issues in government is the constant fight against bureaucratic growth and waste, and the abuse of power and citizens' rights. It is this overkill in size and use of authority which leaves the individual with a helpless feeling and creates the impression of government being a master over, rather than a servant to the people.

The Occupational Safety and Health Administration (OSHA) is a prime example of these abuses and the need for regulatory reform.

It seems ironic that during an era when we are celebrating the 200th Anniversary of our forefathers' fight for liberty from oppression, entry without notice, fines without consultation, and many other "Tory" tactics, [that the same ugly things are again happening to many small businessmen across the nation at this very moment. I refer to the practices and tactics of the government of the United States in such programs as these being administered by the Department of Labor, Occupational Safety and Health Administration. These very same acts against a citizen's basic rights helped precipitate the American Revolution over 200 years ago. (1)

[OSHA is one of the most unpopular acts ever passed and is presently being challenged on all sides. Several key cases are pending before the Supreme Court and many more are pending in Federal District courts and Circuit Courts of Appeal. The constitutional challenges are sound, i.e., freedom from warrantless searches, freedom from self-incrimination, right to due process, right to trial by jury, separation of powers doctrine and equal application of the law. In the past year's time there have been ten major court decisions against OSHA's practices in violation of constitutional rights. Courts in Idaho and Utah have even gone so far as to declare key portions of the OSHA Act unconstitutional and void.

A Federal three judge constitutional panel in the Barlow case in Idaho declared "That Section 8(a) of Public Law 91-596, December 29, 1970, 84 Stat. 1598 (29 U.S.C. 657(a)), is unconstitutional and void in that it directly offends against the prohibitions of the Fourth Amendment of the Constitution of the United States of America."

In the case of the Rupp Forge Company of Cleveland, a Federal Court found that "upon review of the Act and the relevant case authority, the Court is constrained to conclude that Congress did not intend to enact, nor did it in fact enact, proceedings encouraging or authorizing broad, arbitrary administrative searches such as that herein suggested by petitioner. Clearly such unbridled authority is not cognizable under the Fourth Amendment of the United States Constitution." (2)

I cannot help but believe that the Secretary of Labor realizes as I do that OSHA is on constitutionally unsound ground. OSHA's current plight is pointedly apparent in light of the fact that the Congress is still waiting for a progress and oversight report from OSHA due in April of 1974 as per Section 4(b) (3) of the Occupational Safety and Health Act of 1970. The report is now over two years overdue with no indication as to when it will be prepared.

The agency's credibility is sadly lacking. Recently, in a letter dated January 12, 1974, to all Members of Congress from former OSHA Administrator Morton Corn the agency even went so far as to mislead the entire Congress. I specifically refer to the Statement contained in the second to the last paragraph of the letter: "For these reasons one court of appeals has recently overturned a similar district court ruling, concluding that 'prompt, unannounced inspections without delay' are crucial to 'prevent subversion of the program and encourage consistent compliance.'" (emphasis added). The case referred to is *Usery vs. Godfrey Brake & Supply Service* where the court specifically stated that fourth Amendment questions were not under consideration. However, the statement contained in Dr. Corn's letter is misquoted and used in such a way as to imply that this case had somehow approved OSHA's warrantless searches. When contacted the Department of Labor has been considerably less than forthright on this matter and has consistently avoided or refused to clear up these serious misstatements which can be harmfully misleading to other public officials and present real problems to the individual citizen who is trying to establish what his rights and responsibilities really are. In fact, Mr. Chairman, there are very valid horror stories clearly showing OSHA efforts to actually deprive people of due process; push them into jail; impose huge fines, penalties, and compliance costs; mistreat their own employees; and then cover up.

The stated object of this agency is to improve safety conditions for American workers. There is precious little proof that it has done so -- but plenty of proof that it has caused immeasurable grief for their employers and resultantly for the citizens and consumers of the nation.

Consider, first of all, OSHA's record of metastatic growth. The law that gave it birth runs to a modest 31 pages, which could, of course, be troublesome but not impossible for average citizens to master. As usually occurs, however, Congress permitted executive agents in the Department of Labor to run amok -- pumping out an endless batch of OSHA regulations in the Federal Register.

At last count, there were some 800 pages of such regulations, setting forth the safety standards that strike the bureaucrats as proper. These standards number no less than 4,400 -- 2,100 devoted to business generally, 2,300 focused on the maritime and construction trades. They are enforced by an army of a thousand-plus inspectors with more due to be added.

These standards are not only voluminous, they are often of eye-glazing complexity. One of the most notable, isolated by Professor Murray Weidenbaum of Washington University in St. Louis, consists of gobbleygook on ladders, including this delectable specimen: "The angle (a) between the loaded and unloaded rails and the horizontal is to be calculated from the trigonometric equation: $\text{Sine } a = \frac{\text{difference in defection}}{\text{9' ladder width.}}$ " ③

Small wonder that the Federation of American Scientists says: "Regulations are voluminous and complex, the language convoluted beyond recognition except by a scientist or lawyer ... Businessmen who have no legal or scientific training are unable to understand OSHA regulations. Unfortunately, few efforts are being made to translate the information into readable language ... Equally unnerving to the businesses is the sheer volume of the regulations -- thousands of them apply to one small operation."

That the average citizen doesn't understand the mumbo jumbo is of small concern to OSHA. The important thing is that you be in compliance. OSHA agents make unannounced pop inspections and issue citations on the spot that can lead to fines of hundreds or thousands of dollars. There is no provision for advisory opinions on whether a given ladder, an exit, or trash can is out of sync with OSHA's mysteries. In fact, it is a criminal offense for anyone without authority to do so to give you notice of an OSHA inspection.

Even assuming the standards can be understood and met, the costs can be prohibitive. Robert Stewart Smith, formerly in charge of safety and health evaluation for the Department of Labor, has examined the costs and benefits of OSHA in an excellent analysis for the American Enterprise Institute, Washington, D.C. On his showing, the costs are heavy, the benefits negligible. Smith quotes findings by the National Association of Manufacturers that OSHA compliance costs range from \$35,000 (for businesses with 100 employees or fewer) to \$350,000 (for businesses with up to 1,000 employees).

This estimate is confirmed by the fact that the first 33 businesses obtaining small business loans for the purpose of OSHA compliance averaged loans of \$200,000 apiece.

Such costs are reflected in prices charged to consumers, ^④ and they are growing rapidly. Total costs of compliance came to \$2.5 billion in 1972, \$3.2 billion in 1973. And this is just for openers. Full compliance with existing OSHA noise standards would cost \$13.5 billion, and under one proposed noise standard it would cost \$31.6 billion (This doesn't count the additional millions in levied fines.)

Over against these heavy costs are Smith's findings that OSHA had apparently done little or nothing to improve the industrial accident record. Sifting OSHA's own inadequate data with other figures, Smith discovered (a) that injury rates were higher, not lower, in industries with good compliance ratings, ^⑤ and (b) that between 1970 and 1973, industrial accidents in OSHA's so-called "target industries" fell by less than 1 percent more than they would have in the absence of the program.

"At the very least," Smith concludes, "the results cast serious doubt on the effectiveness of the target program...A more ominous, but still speculative, implication is that OSHA, whether because of its standards or because of its failure to discover violations, may not be affecting the conditions which cause injury." ^⑥

^⑦ Given the limited potential of a perfectly enforced set of standards and the likelihood that inspectors discover only the most obvious violations, it is perhaps not surprising that the estimated effects on injuries are so small that they cannot be distinguished from zero."

The question of effectiveness is even more glaring when the National Safety Council's injury rates are checked. Since OSHA's inception the previous improvement trend leveled off and stagnated. ^⑧

^⑨ The net of it is that we are administering a vast bureaucracy armed with constitutionally questionable powers which imposes an unacceptable burden on the employers and cost consumers and taxpayers untold billions -- to achieve a statistically insignificant impact on the safety record of American industry.

I find sad parallel between the 1977 problem of "regulation without reason" and the 1776 problem of "taxation without representation."

It is clearly time for the Congress to relieve American businesses, farms and individuals from random searches, arbitrary enforcement and fines and unnecessary and repetitive regulations and reports.

Congress should reappraise each federal agency with a view to outright abolition of those which are non-productive or which have obviously outlived their usefulness. It should withdraw from the others the vast grants of arbitrary power which it has bestowed. And Congress should define the powers left to bureaucracies in language so clear and explicit that no officials can expand their authority beyond Congressional intent. ⑥

Broad national policies required to protect consumers, workers, minorities, and the environment should be implemented very sparingly with an eye toward preserving basic individual rights and only through specific legislation, rather than allowing non-elected bureaucrats to write the laws through the Federal Register. Certainly every effort should be made to solve problems through the private sector and at the state and local levels of government as envisioned by the Tenth Amendment.

I strongly believe that there are viable alternatives to OSHA. It is imperative that the Federal Government get back to an "incentive" system, towards American business rather than the "punitive" system which is presently being pursued. Stationing a federal policeman on everyone's doorstep just won't work and it certainly isn't the American way. A broadening of liability insurance, workmen's compensation and other ongoing state and local inspection and licensing programs which have proved themselves far more effective than OSHA in the past could likely accomplish the same goals of OSHA and in much more effective and acceptable fashion. It is a fact that insurance inspectors, health authorities, state and local inspection programs and employee benefit agreements already carry the major burden of assuring health and safety on the job. Insurance inspectors alone outnumber OSHA compliance officers by approximately three to one -- and they've never had the foul image of OSHA. ⑦ Their approach is different and effective -- it's incentive, not punitive.

I am repulsed by the fact that as OSHA grows, so grows its distorted opinion that most American workers are terribly exploited by employers and need the all-encompassing protection of the federal bureaucracy. This is indeed a sad commentary on the attitudes of bureaucrats and their understanding of the American enterprise system.

OSHA's unrealistic attitude is demonstrated in its compliance techniques and utilizations of inspectors too often not familiar with the types of businesses that they inspect and no comprehension of the individual needs and circumstances of each company. The very concept of sending inspectors armed with rule books to examine work places for potential hazards is, in a way, as odd as an insurance company personally inspecting every home for which it writes a policy. A more modern approach, and one well proven by the insurance industry, is to utilize statistical science and adjust an employer's workmen's compensation and liability rates according to his actual safety record.

OSHA, however, relies on its rules and in the process has compiled a litany of offenses against good sense. A few examples:

...Companies have been ordered to remove guardrails 41 or 43 inches high and replace them with rails exactly 42 inches high. (16)

[...]One firm provided more fire extinguishers than required and hung them carefully at the required height. It was slapped with a fine for setting an extra unit on the floor.

...Regulations required a shorter turning radius for some fork lifts. Their wheel bases were shortened to comply, and the vehicles were rendered dangerously unstable.

(17) [The burden of these OSHA regulations falls most heavily on small businesses, who are least able to pay the compliance costs and fines imposed. And it might be added wryly that while OSHA was spacing coat hooks and splitting hairs over the height of guardrails, Kepone blew into a major scandal right under their noses, and I understand the faces at the Labor Department are still mighty red over this.

The Barlow case, protesting warrantless searches has, on Fourth Amendment grounds, joined the Seventh Amendment trial by jury cases against OSHA before the Supreme Court and the decisions will most assuredly determine much of the future and direction of the agency. For the Committee's information I am enclosing reprints of several Congressional Record entries on these matters. Certainly no review of OSHA would be effective or complete without considering in depth the problems prompting such legal action.

OSHA is a product of the tired old idea that government can solve everything and it has typically become just another non-productive, expensive bully that has closed thousands of small businesses and created high costs and shortages and increased unemployment without producing any significant improvement in the health and safety of workers. I ask that a new concept in occupational health and safety be designed which would basically rely on the proven methods of private enterprise with compliance induced by incentive rather than punitive measures. The taxpayers and consumers would be most grateful as would employers and workmen.

On the basis of considerations presented before you I have been the sponsor of legislation to repeal the Occupational Safety and Health Act or at least halt its efforts pending the court's decision on its constitutionality. I believe OSHA has not only been non-productive in providing improved health and safety conditions for America's work force, but it has even been counter-productive by causing other health and safety groups to stand back and not perform to their best ability. This is obvious in viewing the stagnant progress since OSHA went into business.

Safety and health is everybody's business and with some imagination and proper application it can be accomplished without violating anyone's rights and in ways which would assure lower costs, abundant supplies, increased employment and more prosperous business operations. The time to do something is now. ¹⁶ Thank you.



OSHA PART I

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PROCEEDINGS AND DEBATES OF THE 95th CONGRESS, FIRST SESSION

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No. 4

House of Representatives

Court Deals OSHA a Crippling Blow

UNCONSTITUTIONAL OSHA INSPECTIONS SHOULD CEASE

HON. GEORGE HANSEN

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 11, 1977

Mr. HANSEN. Mr. Speaker, I make available to my colleagues the contents of a news release which I released to the media on January 10 regarding OSHA legal maneuvers:

OSHA'S BUREAUCRATIC MANEUVERS

WASHINGTON, D.C.—U.S. Rep. George Hansen today blasted Occupational Safety and Health Administration efforts to stay a court order blocking OSHA inspections which have been declared unconstitutional by a federal court decision.

"The Department of Labor is attempting a legal maneuver in order to continue their unconstitutional searches of private business premises during the pendency of the appeal," Hansen said. "This is just another burdensome bureaucratic act in the face of a unanimous decision by a Constitutional panel of judges declaring OSHA unconstitutional which can only further encumber our judicial system as informed citizens everywhere continue to reject OSHA inspections on sound Constitutional grounds," Hansen stated.

"OSHA should cease inspections pending a ruling from the Supreme Court," Hansen asserted. "Not only is this a matter of justice, but it is a matter of legal reality since necessary precedent exists for individual rejection of warrantless searches or inspections by any citizen in the nation."

OSHA inspections have stopped in Idaho and they should be stopped in all other areas under OSHA jurisdiction as well. The court's decision directly enjoins the Secretary of Labor, his agents and their successors from acting pursuant to Section 8(a) which authorized inspections under the Act of 1970. Hansen urged anyone who becomes subject to an OSHA inspection anywhere in the U.S. to consult legal counsel about the possibility of bringing contempt proceedings against the Secretary of Labor for violation of the injunction.

Accordingly, I have written the Secretary of Labor, OSHA Administrator Morton Conn, and U.S. Attorney General Levi asking that all inspections cease. Certainly government activities of this nature should not be enforced only against the acquiescing citizen who is either not informed of his basic rights or who is without the means or determination to protect such rights," Hansen said.

"I have introduced a resolution in the House of Representatives which demands that all OSHA inspections be discontinued pending action by the Supreme Court and I will continue to use every method at my disposal to help educate Americans everywhere of the unconstitutional actions of OSHA," concluded Hansen.

Mr. Speaker, for those who are unduly concerned as to the effect of stopping all OSHA inspections across the Nation, I would like to offer the following pertinent contents of a letter which I received from California State Senator Newton R. Russell:

NEWTON R. RUSSELL,
CALIFORNIA LEGISLATURE,
January 4, 1977.

Hon. GEORGE HANSEN,
Washington, D.C.

DEAR CONGRESSMAN HANSEN: I read with interest in the recent edition of Battle Line that you have been named Chairman of the project, "Stop OSHA."

As one who has been somewhat involved in OSHA in California, I thought that some factual data from this State might be of interest. The Department of Finance's Pro-

gram Evaluation Unit in January, 1976, put out a paper, "A Review of the Implementation of the California Occupational Safety and Health Act". In that report on page 20 they refer to recent research in Wisconsin and California which indicates that "most injuries are momentary or behavioral in nature and do not involve hazards which an inspector could be expected to perceive in the course of his inspection". The Wisconsin Study concludes that perhaps 25% of all industrial injuries are inspection preventable. The California study is less optimistic, estimating that roughly 18% are inspection preventable. These two reports are "Inspection Effectiveness Report," State of Wisconsin, Department of Industry, Labor and Human Relations, 1971 and "Development of Inspection Value Index," State of California, Department of Industrial Relations, Management Analysis Unit, 1973.

The report by the Department of Finance also examines injury rate data for California for the years 1969 through 1974 and for the second quarter of 1975. They state that "the injury rate increased in the nine months following the January 1, 1974 date of the initial Cal-OSHA inspections". They do indicate, however, that the injury rate decreased in the second quarter of 1975 and that they believe the decrease is attributable to external factors and not to Cal-OSHA. While they do not want to draw a firm conclusion based upon the history of the program, they do state categorically that "data do not support any contention that Cal-OSHA has reduced occupational injuries and illness."

While there were problems in California's industrial safety program prior to OSHA, it was probably, nevertheless, one of the best programs in the country. With the advent of Cal-OSHA, however, we find that costs have risen almost four times, and we have only about one-fifth as many inspections and that over 86% of all inspections deal with the citing of nonserious violations, and I could go on.

The above information was obtained by personal research in late 1975 and early 1976. There has been a change in the thrust of the OSHA programs with fewer citations being given for nonserious electrical violations and a greater attempt to adopt a "worst first" philosophy. I am personally concerned that if the Cal-OSHA program does not improve, there will be an attempt to repeat it and then we will be covered only by Fed-OSHA which will be even more impossible to deal with. I believe you are on the right track in trying to stop OSHA, or perhaps more practically to modify it, because since the Federal Government has preempted the field leaving very little flexibility at the state level, the only effective changes can come through congressional action.

Good luck!

Sincerely,

NEWTON R. RUSSELL,
Senator, 21st District.

Mr. Speaker, it should be noted that when multiplying the statistics which were developed in the California and Wisconsin studies against the 2 percent of all businesses which OSHA is capable of inspecting annually you will find that less than one-half of 1 percent are meaningful. This statistical amount would be considered inconclusive by most mathematicians and is certainly borne out by the conclusions of the California study cited in the Russell letter and by many findings on the national level.

OSHA is expensive and unproductive. We can do better for the Nation's work force and through ways not destructive of our basic rights.

COURT DEALS OSHA A CRIPPLING BLOW

HON. STEVEN D. SYMMS

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 11, 1977

Mr. SYMMS. Mr. Speaker, on December 30, 1976, a panel of three Federal judges in Idaho declared the inspection provisions of OSHA unconstitutional and void, and restrained and enjoined the Department of Labor from conducting further inspections of private business premises with or without a search warrant.

I would like to congratulate my colleague from Idaho, Mr. HANSEN, for his diligent work and persistence in bringing OSHA to a halt. His efforts have reflected the views of most Americans. There has been a rapidly growing concern over the erosion of individual rights and it is very gratifying to see this concern being translated into judicial remedy. I would hope that the Congress follows the court's lead in defending the constitutional rights of all Americans.

The following is a reprint of an article that appeared in the January 15, 1977, issue of Human Events. I highly recommend the article to my colleagues:

COURT DEALS OSHA A CRIPPLING BLOW

A three-judge federal court decision filed December 30 in the U.S. District Court for Idaho ruled that Section 8(a) of the Occupational Safety and Health Act of 1970 (OSHA) is unconstitutional because it allows federal inspectors to enter businesses and farms without a search warrant. The clause authorizing such warrantless inspections—which have resulted in harassment and fines for businessmen who could not possibly be expected to comprehend, much less remember and act upon, all of the 3,400 separate OSHA regulations—was found by the judges to be "unconstitutional and void in that it directly offends against the prohibitions of the 4th Amendment of the Constitution of the United States of America."



Idaho Rep. Hansen's encouragement to a Pocatello businessman was a factor in a three-judge federal court's decision that OSHA powers violated constitutional rights.

Interestingly, the Idaho ruling, which has all the earmarks of a landmark case, would not have taken place except for the controversy and determination of one small businessman who decided to make a stand. That businessman is P. G. (Bill) Barlow, owner of a plumbing, heating and electrical subcontracting business in Pocatello, Idaho, a community of about 45,000 people in the southeastern part of the state.

Barlow, who works with his four sons and has a total of 35 employees, explained last week that he had expected OSHA to show up sooner or later since they had been inspecting other businesses in the area. So, with encouragement from Rep. George Hansen (R-Idaho), who has been providing a clearinghouse of information on the OSHA law, Barlow began to study the issue.

"What is unconstitutional about it," he told Human Events, "is that the government can come in—with a program that we didn't want in the first place—and decide on the safety of your building, and if you're found guilty, serve as judge, jury and executioner since they can issue a fine."

So, said Barlow, "when they came to my door and asked to inspect the building, I simply said no. They couldn't do anything to do so by law, and I said they must first produce a warrant."

OSHA refused to get a search warrant, but they did get a court order commanding Barlow to allow the inspection since it was in the statute passed by Congress. But, convinced that the OSHA statute violated his constitutional rights, Barlow ignored the original court order—for which he was cited for contempt—and petitioned for the enjoining of the act. The court then determined the law's constitutionality.

It was that course of action that resulted in the December 30 ruling. And though Barlow still faces the court order, he is hopeful that it will be dismissed on appeal, especially if the unconstitutionality of the OSHA law is upheld.

Clearly, then, Barlow's decision to fight OSHA rather than surrender that he saw as his rights as a citizen was not an easy one to make. That he took the stand anyway drew strong praise from Rep. George Hansen, who said of Barlow: "He is just a small businessman with limited means, but his strong feelings about our rights as American citizens and his willingness to spearhead an effort marks him as a patriot in the tradition of our founding fathers whom we hail in this Bicentennial era. Barlow's victory shows that the Constitution is still a bulwark for human rights in this nation and we do not have to bow down to oppressive rulings and acts of government no matter how well intended they may be."

For businessmen, farmers and their supporters who are working to put a leash on OSHA, the judge's decision was a greater New Year's present than most had dared expect. For the bureaucrats at OSHA and their chief non-governmental champion, the AFL-CIO, on the other hand, the decision was seen as a grave threat not only to OSHA but to numerous other agencies that routinely conduct random inspections of business establishments without "probable cause" for a search.

Through the court's decision was handed down in far-off Boise, Idaho, its reverberations were not long in reaching Washington, D.C. Morton Conn, the assistant secretary of labor who heads OSHA, quickly announced last week that he would appeal the decision to the U.S. Supreme Court. "We consider the right of inspection to be absolutely vital. We will take whatever legal steps are necessary to vindicate that right," he said.

OSHA spokesman James P. Foster told Human Events that the agency planned to seek a stay of the ruling, pending a decision by the Supreme Court. In the meantime, he said, OSHA was suspending all further inspections in the state of Idaho.

But in the view of some OSHA opponents, the suspension of OSHA inspections in Idaho, though a start, is still not a sufficient response from the federal government to the constitutional right that is at stake.

Thus Rep. Hansen, who is chairman of a congressional task force working to limit regulatory agencies and head of the American Conservative Union's "STOP OSHA" project, fired off letters to Conn, Secretary of Labor W. J. Doyle and AFL-CIO Executive Secretary George Meany, commending OSHA for ceasing inspections in Idaho. "However," Hansen wrote, "under the concept of equal justice for all citizens, such OSHA inspections should also immediately be terminated for all other areas under OSHA's jurisdiction." Hansen was planning to introduce a House joint resolution to that effect later in the week.

Meanwhile, Hansen noted that, in the wake of the Idaho ruling, it is a relatively simple and inexpensive legal procedure for businessmen in other states to refuse OSHA inspectors access to their property, citing the Barlow precedent.

The Barlow ruling was not the first judicial decision to suggest that warrantless OSHA inspections should not be allowed, but it was certainly the most significant. Other courts, for instance, had ordered OSHA not to conduct inspections without having a search warrant. But the Idaho court went a step further, declaring the inspection provisions

of the law unconstitutional and void, thus depriving the Department of Labor of any authority to conduct OSHA inspections; with or without a warrant.

Should the High Court uphold the Barlow ruling, therefore, OSHA would be completely out of the inspection business, unless Congress first rewrote the legislation to conform to the requirements of the 4th Amendment. The written consent of the states involved, it is not surprising that groups on both sides of the issue were already mobilizing their forces last week for the legal and legislative battles that lie ahead.

Joining OSHA in opposing the Barlow ruling, for instance, is the AFL-CIO, George Taylor, executive secretary of the labor organization's Standing Committee on Safety and Occupational Health, said it would be a "calamity" if the Supreme Court upheld the ruling.

According to Taylor, such a decision would not only deprive OSHA of the authority to make routine inspections without first obtaining a search warrant, but it would also "affect every federal regulatory program and even the city and state inspection programs as well." He therefore said the right of entry has been assured by statute or local ordinance or state law without the need of a warrant. He then proceeded to rattle off a long list of areas, from "fire and hospital inspections all the way up to clean air, clean water, Coal Mine Safety Act, Metal and Non-metallic Mine Safety Act, Food and Drug Act," and so on and on that he maintained would be affected.

(In point of fact, the union operative seemed to be exaggerating. I is true, as Rep. Hansen pointed out, that the Barlow ruling would affect more than OSHA. But it is not true, as Taylor said, that "every federal regulatory program" would be barred from making inspections without "probable cause," that a violation existed. For in its written opinion accompanying the Barlow decision, the three-judge panel noted that some heavily regulated industries, such as those dealing with explosives, food and drugs, and so forth may be required to agree to such warrantless inspections as a condition for obtaining their licenses, and that this is consistent with the Commerce Clause.)

Taylor said the AFL-CIO's lawyers were looking into the Barlow decision and that the union would probably "join with OSHA as friends of the court when it gets up before the Supreme Court." In the event that the High Court upheld the December 30 ruling, he said, the union lobby might be expected "would try to get an amendment... if we had to, to Section 8(a) of the act, which would narrow the area as much as possible where you had to get a warrant."

While organized labor was lining up behind OSHA, others were preparing to argue for Barlow's position before the Supreme Court. Halting the rulings in favor of Barlow as a "triumph for individual liberty," Idaho Atty. Gen. Wayne Kidwell (R) announced that he had discussed the case with Barlow's attorney, John Runft, and that, if the Department of Labor appeals the decision of the three-judge panel, he would explore joining the case and trying to uphold their decision.

Spokesmen for the U.S. Chamber of Commerce and the National Association of Manufacturers also expressed an interest in the case. Both organizations indicated they might submit amicus curiae briefs when the issue reaches the High Court. Moreover, both groups said that, if as a result of the Supreme Court decision, the legislation goes back to Congress for revision, they would work to get numerous improvements in the measure, including a requirement that economic feasibility be considered when safety and health standards are set.

What happens now, of course, is up to the Supreme Court. But the ruling of the three-judge panel in Idaho indicates more than ever before that, for the thousands upon thousands of small businessmen and farmers in this country, relief from OSHA finally may be on its way. And for this, men like Bill Barlow and Rep. Hansen deserve a great deal of thanks.

The Occupational Safety and Health Administration (OSHA), in asking for the stay of the inspection ban, had said it will have "devastating effects on the employees for whose benefit the (OSHA) Act was passed."

Assistant U.S. Atty. Paul Westberg said he expected the government to file an appeal by the end of the week to the U.S. Supreme Court for a stay.

Part of the act, allowing inspections without a warrant, was ruled Dec. 30 to be unconstitutional by a panel composed of U.S. Circuit Judges Oliver Koelsch and J. Blaine Anderson and District Judge Ray McNichols.

As a result, OSHA has suspended all safety inspection in Idaho.

The inspection and investigation provision struck down by the court is at the heart of the act," Westberg wrote in a motion to the panel to stay the ban.

OSHA is "almost totally powerless to require employers to remedy hazardous conditions which endanger the safety and health of employees," to the extent the law has been overturned by the judges, the motion says.

But the court is not faced with a "bloody" emergency if the inspections are stopped during the appeal, wrote John Runft, the attorney for Barlow's Inc., of Pocatello who filed the suit leading to the decision.

OSHA can only inspect a small percent of Idaho's working environments during the appeal, Runft said, adding that there is a question of how effective OSHA is in preventing on-the-job injuries. The appeal is expected to take several months.

The panel apparently agreed, saying OSHA's showing irreparable harm would result if the inspections were not allowed was "conclusory and insulated every citizen."

The denial noted the panel did not dismantle the whole OSHA law.

The three-judge panel determined part of the law violated the due process right of the Constitution's 4th Amendment.

But other federal courts have either "flatly rejected" that constitutional attack, or have refused to strike down the entire section, according to the motion to stay.

Barlow's filed suit after refusing to obey a federal court order that he open his plumbing and electrical contracting air-conditioning firm to an OSHA inspection.

Mr. Speaker, recently OSHA stopped all inspections in Idaho pending legal appeal to the Supreme Court and a motion to stay the court order pending this appeal. This motion to stay has now been rejected by the court and it is now proper that inspections should be stopped in all other areas of the Nation under OSHA's jurisdiction. This is especially fitting in the sense of equal justice for all Americans which is guaranteed every citizen by the U.S. Constitution.

Mr. Speaker, I deem it my responsibility to advise my colleagues and their constituents that under section II of the Idaho court's summary judgment—

The Secretary of Labor of the United States of America, and all other defendants and their successors in office, and all other persons acting by, through or under them, are hereby forever and permanently RESTRAINED AND ENJOINED from acting or attempting to act pursuant to or in furtherance of Section 8(a) of OSHA (29 U.S.C. 657 (a)).

This appears to me as an injunction against the Secretary of Labor, wherever he may be, and not simply in the Idaho district. Further inspections of a non-uniform nature violate the equal protection of the laws guaranteed by the Constitution was well as being in contempt of the Idaho Court's decision. It is in this respect which I offer for the record as well as the benefit of my colleagues the contents of a House concurrent resolution which I introduced on January 6 and which I hope will receive support from the majority in this body.

The contents of the resolution follows:

H. CON. RES. 48

Resolved by the House of Representatives (the Senate concurring). That in view of the fact that a recent decision of a Federal three-judge court has declared that the inspection authority contained in section 8(a) of the Occupational Safety and Health Act of 1970 is unconstitutional and that inspections under such section within the jurisdiction of that court have been caused to cease pending appeal of such decision, and in view of the principle of equal justice and the dictates of legal reality, it is the sense of the Congress that all inspections under such section in all areas of the Nation should immediately cease until the Supreme Court of the United States has determined the question of whether or not any inspections under such section are constitutional.

OSHA LOSES ATTEMPT TO CONTINUE INSPECTING

HON. GEORGE HANSEN

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 11, 1977

Mr. HANSEN. Mr. Speaker, the Occupational Safety and Health Administration has lost another major court skirmish in Federal court in Idaho which is clearly stated in the following January 11, 1977 article from the Idaho Statesman newspaper:

OSHA LOSES ATTEMPT TO CONTINUE INSPECTING

A three-judge panel Monday refused to allow prompt federal safety inspections of Idaho businesses while the panel's decision barring them is appealed to the U.S. Supreme Court.

January 12, 1977

OF IDAHO
IN THE HOUSE OF REPRESENTATIVES
Wednesday, January 12, 1977

The following is a reprint of an editorial which appeared in the January 11, 1977, issue of the Washington Star. I highly recommend this article by syndicated columnist James J. Kilpatrick to my colleagues and all citizens concerned for the preservation of our traditional freedoms:

A FOURTH AMENDMENT VICTORY
(By James J. Kilpatrick)

"We cannot accept the proposition," said Circuit Judge Anderson, "that the language of the OSHA inspection provisions envisions the requirement that a warrant be obtained before any inspection is undertaken. Certainly Congress was able, had it wished to do so, to employ language declaring that a war-

Hallelujah! But let me add this: No rational critic of OSHA can oppose the general purpose—to promote safe working conditions in American industry. The purpose is fine. But on the record, OSHA's costly programs have accomplished little. The inspectors function as police, prosecutors, juries and judges. To this arrogant outfit, such constitutional protections as due process, jury trial, and Fourth Amendment rights are meaningless. The agency's inspections are so haphazard that a company could go 10 or 20 years without seeing an inspector. Injuries ordinarily are to be deplored, but in crippling this outfit, the Western judges have performed a splendid service.

MISREPRESENTATION BY OSHA

IN THE HOUSE OF REPRESENTATIVES
Wednesday, January 19, 1977

In view of these facts, the effect of the Idaho decision is potentially ominous. If it is permitted to stand, OSHA could conduct no inspections with or without a warrant, either to discover violations, determine whether employers have obeyed past court orders, respond to imminent dangers and worker complaints, or investigate accidents, even those claiming hundreds of lives. And the decision's implications are equally omi-

Sincerely,
MORTON CORN,
Assistant Secretary of Labor.

HON. MORTON CORN,
Assistant Secretary of Labor, Department of
Labor, Washington, D.C.

Your prompt attention to these issues will
be greatly appreciated.
Sincerely,

Mr. Speaker, to recap the situation as it currently exists, I submit the following January 15, 1977, newspaper article from the Idaho Statesman:

OSHA LETTER WARNS USERY OF CONTEMPT
(By Charles Ettlinger)

Idaho's two congressmen said Friday the secretary of Labor could be cited for contempt of court if OSHA continues making "unconstitutional" safety inspections.

A federal court order in Boise appears to enjoin the secretary from inspections by the Occupational Safety & Health Administration "wherever he may be, and not simply in the Idaho district," Republican Reps. George Hansen and Steve Symms said in a letter to the agency.

In a suit brought by Pocatello businessman Bill Barlow, a three-judge panel on Dec. 30 declared unconstitutional a section of the Occupational Safety & Health Act authorizing the inspections.

The panel last Monday refused to stay its inspection ban during the government's appeal of the decision. As a result of the decision, the agency temporarily has suspended all inspection of Idaho businesses.

But OSHA Administrator Morton Corn, who resigned Thursday, has notified Congress the inspections will continue as usual elsewhere.

The Idaho congressmen said in their letter to Corn that another federal court decision, on which the continuation of inspections was based, is not applicable to the Barlow decision.

The Barlow ruling found the OSHA inspection law violated due-process guarantees, but the other opinion did not take up those Fourth Amendment issues, the congressmen said.

Ben Mintz, associate Labor Department solicitor, said the government plans to file with the U.S. Supreme Court next week a temporary request to permit inspections in Idaho while the decision is appealed.

The OSHA solicitor declined to comment on the scope of the panel's ruling.

But he termed the decision "a serious threat to the OSHA program (nationally), and for this reason, we are taking it up very quickly."

The three-judge panel, Circuit Judges Oliver Koelsch and J. Blaine Anderson and District Judge Ray Nichols, ruled the section on inspections null and void.

The section authorizes the agency to "enter without delay and at reasonable times, any factory, plant, establishment, or environment where work is performed by an employee for an employer."

Barlow had refused to let an OSHA inspector to check his 35-employee heating, plumbing and electrical business without a warrant. He filed the suit after the government got a court order for an inspection.

Mintz and Boise attorney John Rumpf, who represents Barlow, declined to discuss plans for the appeal.

IDAHO COURT LEAVES OSHA IN THE COLD

HON. GEORGE HANSEN

OF IDAHO
IN THE HOUSE OF REPRESENTATIVES
Wednesday, January 19, 1977

Mr. HANSEN. Mr. Speaker, recent court decisions prohibiting unconstitutional OSHA inspections have received great attention from the public and news media. The following article from the New Hampshire Register of January 10, 1977, is an excellent statement on the situation which I submit for my colleagues' consideration and information:

"LITTLE MAN" WINS

(By John Chamberlain)

A little Bicentennial shot of fortune by a Pocatello, Idaho, businessman has just about killed the Occupational Safety and Health Act, known by the hated acronym of OSHA.

For upwards of four years OSHA inspectors have been descending on offices and factories, flashing their credentials, and demanding the privilege of conducting fishing expeditions that sometimes turned up unsafe procedures and sometimes did not. The cost of maintaining the OSHA bureaucracy exceeded 400 million dollars in four years, yet there was singularly little to show for the money. Factory bosses, lacking the time and the legal background to master the intricacies of an OSHA regulation book that runs to 800 pages and contains 3,400 regulations written not by Congress but by OSHA, have taken to themselves, quaked at the appearance of the OSHA traffic cop. But now they will quake no more.

The David whose slingshot has just caught the OSHA Goliath between the eyes is P. G., or Bill, Barlow, who runs an electrical, plumbing and heating business in Pocatello, Idaho. Some time ago he let an OSHA inspector into his front office. But when the OSHA man, after introducing himself, said "I'm ready to go back into your shop," Mr. Barlow, who knew there was a Fourth Amendment guarantee against searches conducted without a warrant specifying probable cause of illegality, said no. The inspector said he had the law on his side. But Barlow said, "According to my law, you don't."

In a lower court appearance Barlow's tenacity got him cited for contempt. His Congressman, Representative George Hansen, an inveterate enemy of OSHA who happens to be heading a congressional task force working to limit regulatory agencies, urged him to fight the case through to the Supreme Court if necessary. A Boise, Idaho, law firm, Rumpf and Longetz, brought suit against W. J. Uery, U.S. Secretary of Labor, in a district court and, after six months, a panel of

three judges—two from the circuit court, one a chief district judge—handed down a decision that the OSHA section involving inspections was "void and unconstitutionally repugnant to the Fourth Amendment."

To be sure, judges in Texas, New Mexico and Ohio had previously ruled against OSHA on Fourth Amendment grounds. But the Idaho judgment represents what Congressman Hansen calls a difference in kind. In an earlier case, Brennan vs. Gibson Products, Inc. of Plano, Texas, the judges had accepted the idea that OSHA searches could be undertaken once a warrant had been obtained. But the Idaho decision read that if Congress "had wished to do so," it was able to "employ language declaring that a warrant must first be obtained, the procedures under which it is to be obtained, and other necessary regulations."

Since Congress had not spelled anything out, the Idaho judges refused "to accept that duty." Judges must, so the Idaho decision says, "decline the invitation to judicially re-draft an enactment of Congress." The effect of the decision is to throw the whole OSHA enabling law back into the lap of Congress for a total rewriting. Meanwhile, OSHA inspectors can be told to go fish in their own homes even if the search is with warrants showing "probable" cause.

Bill Barlow is a "little man" in the business world, and he risked going to jail for taking his stand on the obvious wording of the Bill of Rights. In a telephone conversation he expressed to this column a particular happiness that the decision in his favor had come on Dec. 30, as a year-end Bicentennial present.

Mr. Hansen, who has headed a "Stop OSHA" campaign for the American Conservative Union, was equally joyous. "A reckless Congress," he said, "caught trying to set a constitutional base in the area of bureaucracy-building, has thankfully been called out" resoundingly by the umpires in the Court."

Mr. Speaker, the questions involved regarding OSHA inspections are clearly constitutional in nature. Therefore, I again call upon the Secretary of Labor to extend the equal protection of the law to all citizens wherever they may be by suspending inspections in all areas under OSHA jurisdiction pending resolution of the matter by the Supreme Court.

I would like to remind the Labor Department that section II of the Idaho's court's summary judgment states:

The Secretary of Labor of the United States of America, and all other defendants and their successors in office, and all other persons acting by, through or under them, are hereby forever and permanently RESTRAINED AND ENJOINED from acting or attempting to act pursuant to or in furtherance of Section 8(a) or OSHA (29 U.S.C. 657 (a) . . .)

It is apparent that this is an injunction against the Secretary of Labor, wherever he may be, and not simply in the Idaho District.

I must remind my colleagues that further inspections of a nonuniform nature violate the equal protection of the laws guaranteed by the Constitution. It is entirely possible that the Secretary of Labor could even be cited for contempt of court if he persists in these unconstitutional inspections.

January 24, 1977

GEORGE HANSEN 1—OSHA-CRATS 0

HON. STEVEN D. SYMMS

OF IDAHO
IN THE HOUSE OF REPRESENTATIVES
Monday, January 24, 1977

Mr. SYMMS. Mr. Speaker, in the instance of limited government, more specifically limited OSHA, the advocates have struck another blow. I am speaking of my colleague from Idaho, Mr. HANSEN. Through his efforts, we are now one step closer to the future control of the ever-growing, mammoth OSHA bureaucracy.

In the State of Idaho, for example, OSHA has, in my estimation, overextended its constitutional prerogative. The only catch, is that now they have been rebuffed by an Idaho court decision to halt their actions of search, seizure and conviction which had long continued seemingly out of control.

The following is a reprint of an article that appeared in the Caldwell-News-Tribune of January 6, 1977. I highly recommend this article for consideration by my colleagues; I would hope that Congress carefully follows the future developments concerning OSHA:

GEORGE HANSEN 1, OSHA-CRATS 0

"We sure bombed 'em."

Thus spoke Congressman George Hansen when asked his reaction to a court decision which bars the Occupational Safety and Health Act from doing its thing in the state of Idaho.

Hansen, who has taken plenty of abuse the past few years from organized labor and a couple of Idaho politicians called this decision "one of the bigger thrills I've had in Congress."

The Pocatello man said he has been attacking OSHA on all fronts in Washington during his time in Congress. "You always hope that your efforts are successful or you wouldn't try. I've tried fighting this thing through the Executive Branch, the Legislative Branch and the Judicial Branch. Finally, I got somewhere."

Hansen is known as Congress' foremost opponent of OSHA and its searches without warrants, trials without juries and so forth. And in the end, it was the court that found OSHA to be just what Hansen has been saying it is for several years—an illegal and unconstitutional invasion of privacy.

OSHA can do whatever it wants—search, seize, fine, convict, etc.—within the scope of the law. OSHA is judge, jury and executioner. It is the closest thing to the Gestapo and the KKK that this country has ever seen.

Why did Hansen's court fight prevail when other efforts didn't? "George Meanly virtually owns Congress," according to Hansen. "His money has elected a lot of people and some in Congress didn't want to offend him and take on OSHA."

Despite that reluctance, Hansen can point to a couple of victories in Congress against OSHA. "We have had some measured success in Congress," said Hansen, who is chairman of an ad hoc committee created to do battle with the federal agency.

"We gained some concessions for the farmer and the small businessman which got OSHA off their backs some. But George Meanly's influence in Congress was just too much to overcome. So we had to go through the courts and hope our argument about the unconstitutionality of OSHA and its tactics would succeed."

Obviously it did succeed with the biggest success coming here in Idaho where the OSHA program was, in essence, booted out of the state.

But there were lesser victories leading up to the crowning moment in Idaho, according to Hansen. "We won some court battles in Texas, Ohio and New Mexico but not to the same degree as in Idaho where the whole act was ruled invalid."

"In the other states, for example, the courts ruled that searching a business for violations without a warrant was illegal but the courts said it was okay with a warrant."

The Idaho decision differed from the others, noted Hansen, in that the ruling nullified the entire act because of the unconstitutional means used to enforce it.

OSHA, of course, plans to appeal the decision. And Hansen said he plans to roll over and playing dead now that he has won a major victory. Already he has introduced a resolution in Congress asking that OSHA be wiped out based on the decision by the courts in Idaho.

"We are demanding equal justice for all," said Hansen. "If OSHA isn't operate in Idaho then it shouldn't be allowed to operate in any other state either."

Hansen said the OSHA decision makes being a congressman worthwhile. There was a lot of toes stepped on to get this decision and believe me, I know firsthand the consequences you can suffer when you step on some of those big toes. But it is great fun to win a battle like this."

Hansen said reaction in Congress has ranged from "amusement and delight to chagrin. Some of the losers are really trying to deal in emotional overkill. They are saying that if OSHA dies all types of inspections will die."

"That just isn't so. This decision won't have hearings on things like fire inspections and general inspections. What this decision does to stop OSHA and its unconstitutional tactics from operating."

Though Hansen is happy to accept congratulations for his work in fighting OSHA, he is quick to point out that it took some other people to make it happen.

"When it was decided to pursue this thing through the courts we had a hard time finding legal counsel willing to handle the case. We really needed a Perry Mason type lawyer and we got it finally and some of that help came from some Boise attorneys. They deserve to be congratulated."

The lawyers in the case went to bat for Pocatello businessman Bill Barlow who employs 35 men in his plant. "It is a great tribute to Bill Barlow for standing up and fighting this thing. He refused to let OSHA inspectors in his business because he said it violated the fourth amendment which forbids unreasonable searches and seizures."

"He lost at the district court level but one year to the day later he won retribution from a higher court. Barlow knew this would cost him money but he knew that he might have to go to jail but the freedom ideal was important enough to him to stand up and fight."

The OSHA question will no doubt come before the U.S. Supreme Court for a final determination. Hansen thinks his side will win there too but, in the meantime, George has a big smile on his face that only the Supreme Court can alter.



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House of Representatives

OSHA inspections unconstitutional

OSHA'S SINKING AUTHORITY

HON. GEORGE HANSEN

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 4, 1977

Mr. HANSEN. Mr. Speaker, on December 30, 1976, a panel of three Federal judges in Idaho declared the inspection provisions of OSHA unconstitutional and void, and refused the Department of Labor further inspections of private business premises with or without a search warrant. That is a milestone in the continuing fight for individual rights which are traditional to American citizens.

I urge my colleagues both favorable and unfavorable to OSHA to read the panel's landmark decision, which follows:

Civil No. 1-76-3 (THREE-JUDGE COURT)

SUMMARY JUDGMENT

Barlow's, Inc., an Idaho corporation, Plaintiff, vs. W. J. Uery, Secretary of Labor of the United States of America, in his official capacity, et al., Defendants

The cross motions of the parties for summary judgment having been heard and submitted and the court having heretofore entered its memorandum decision and order, and it appearing that there are no genuine material issues of fact and that the record in this case presents only questions of law, and the court having concluded that plaintiff is entitled to the relief prayed for in its complaint on its facts,

It is hereby ordered, adjudged and declared as follows:

That Section 8(a) of Public Law 91-590, December 29, 1970, 84 Stat. 1598 (29 U.S.C. 657(a)), is unconstitutional and void in that it directly offends against the prohibitions of the Fourth Amendment of the Constitution of the United States of America.

II

That defendant, the Secretary of Labor of the United States of America, and all other defendants, and their successors in office, and all other persons acting by, through or under them, are hereby forever and permanently RESTRAINED and ENJOINED from acting or attempting to act pursuant to or in furtherance of Section 8(a) of OSHA (29 U.S.C. 657(a)) and from conducting or attempting to conduct any general searches or inspections of the non-public portions of the premises of the plaintiff herein pursuant to Section 8(a) of the Occupational Safety and Health Act of 1970.

III

No costs or attorneys' fees are allowed. Dated this 30th day of December, 1976.

M. OLIVER KOELSCH,

Senior Circuit Judge.

J. BLAINE ANDERSON,

Circuit Judge.

RAY MCNICHOLS,

Chief District Judge.

Civil No. 1-76-3 (THREE-JUDGE COURT)

MEMORANDUM DECISION AND ORDER

Barlow's, Inc., an Idaho corporation, Plaintiff, v. W. J. Uery, Secretary of Labor of the United States of America, in his official capacity, et al., Defendants.

Before: Koelsch and Anderson, Circuit Judges, and McNichols, Chief District Judge, Anderson, Circuit Judge.

Plaintiff is an Idaho corporation in good standing situated in Pocatello, Idaho. Its business is the installation of electrical and plumbing fixtures, heating and air conditioning units. The corporation is engaged in interstate commerce in that it purchases and uses materials such as sheet metal which are made without the State of Idaho.

On September 11, 1975, Occupational Safety and Health Compliance Officer Daniel T. Sanger arrived at plaintiff's business premises for the purpose of conducting a safety and health inspection pursuant to

Section 8(a) of the Occupational Safety and Health Act, 29 U.S.C. § 657(a). Mr. Sanger properly identified himself and requested permission to inspect the nonpublic area of the premises. Mr. Ferrol G. "Bill" Barlow, President and Manager of Barlow's, Inc., refused to allow the inspection, basing his refusal on the absence of a search warrant. It is undisputed that Mr. Sanger did not have any cause, probable or otherwise, to believe a violation existed nor was he in possession of any complaints by any employee of Barlow's, Inc.

As a result of Mr. Barlow's refusal, the Secretary petitioned this court on December 13, 1976, for an order compelling entry, inspection and investigation, to show cause order was thereafter issued and subsequent to the show cause hearing the Secretary's petition was granted on December 30, 1976.

On January 5, 1976, the court's order was presented to Mr. Barlow. Mr. Barlow again declined to permit the inspection. The next day the plaintiff filed the instant action requesting that a three-judge court be convened to enjoin the enforcement of the Act on the ground of repugnance to the Fourth Amendment and, further, requesting a temporary restraining order. The present three-judge court is empaneled and the temporary restraining order was denied on the ground of an inadequate showing of immediate and irreparable injury.

Footnotes at end of article.

This case squarely presents the issue of whether the entry and inspection provisions of the Occupational Safety and Health Act (OSHA), 29 U.S.C. § 651, et seq., are consistent and compatible with the dictates of the Fourth Amendment.¹

Preliminarily, the Secretary advances two grounds to preclude this panel from reaching a decision on the merits. First, it is contended that this court lacks subject matter jurisdiction. This argument is premised on two principles: First, that judicial review is improper because Congress has designated an exclusive forum—the Occupational Safety and Health Administration, and second, that plaintiff is not entitled to challenge agency action for a supposed or threatened injury until prescribed administrative proceedings have been exhausted. In short, the Secretary contends that plaintiff should simply have permitted a full inspection under protest, thereby preserving its objections for the Commission and appellate courts, if and when a citation resulting from the inspection is actually issued against it.

The purposes served by the exhaustion doctrine, as set forth in *McKart v. United States*, 395 U.S. 185 (1969), are absent from this case and we therefore will not apply the rule to this case. It is beyond question that the administrative channels created by the Act are the proper ones for the exercise of the expertise to consider and determine the constitutional question presented by this case. We also find, after a consideration of the factors set forth in *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967), that the issue presented by this case is ripe for judicial determination. The issue presented is one of constitutional law only and, further, the plaintiff is placed in a dilemma of being forced to give up his asserted right to privacy or potentially finding himself in contempt of court. We therefore reject the Secretary's contention that this court lacks subject matter jurisdiction.

The Secretary's second ground urged in support of dismissal is that plaintiff's failure to appeal the order of December 1976, requiring the inspection bars the present action on res judicata grounds. Our review of the transcript of that hearing convinces us that the presiding judge reserved the constitutional issue on the basis that it was premature. The ruling in that case, Civil 4-76-3, was left open for resolution of a subsequent litigation of the Fourth Amendment claim. We thus proceed to the merits.

II

In *Frank v. Maryland*, 359 U.S. 360 (1966), the Supreme Court upheld the conviction of Aaron D. Frank who refused to permit a Baltimore City health inspector to enter and

inspect his premises without a search warrant. This holding was expressly overruled by the Supreme Court in *Camara v. Municipal Court of San Francisco*, 387 U.S. 523 (1967), and its companion case, *See v. City of Seattle*, 387 U.S. 541 (1967). In *Camara* appellant was awaiting trial on a criminal charge of violating the San Francisco Housing Code by refusing to give permission to a city housing inspector who sought to inspect appellant's residence without a warrant. The court, in tracing the history and scope of the Fourth Amendment, stated:

"Nevertheless, one governing principle, justified by history and by current experience, has consistently been followed: except in certain carefully defined classes of cases, a search of private property without proper consent is unreasonable unless it has been authorized by a valid search warrant." 387 U.S. at 529-30 (citations omitted).

The court went on to hold that under the Fourth Amendment a person has the constitutional right to insist that a search warrant be obtained before an administrative inspection of a private residence is allowed.

In *See, supra*, the court was faced with a warrantless inspection of a commercial warehouse in the course of a municipal fire, health and housing program. In expanding its *Camara* holding to include commercial structures as well as private residences, the court stated:

"We therefore conclude that administrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure." 387 U.S. at 545.

In *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970), the court narrowed the scope of the *Camara* holding in upholding the warrantless inspection of the premises of a retail dealer of liquor. In *United States v. Biswell*, 406 U.S. 311 (1972), the *Colonnade* reasoning was expanded to permit warrantless inspections of firearms dealers.

III

It is upon the framework of the above-mentioned cases that we must base our decision. We reject the notion as espoused in *Brennan v. Buckeye Industries, Inc.*, 374 F. Supp. 1590 (S.D. Ga. 1974), that the *Colonnade* and *Biswell* decisions envision a trend of the Supreme Court to generally narrow the holdings of *Camara* and *See*. Instead, we find that the warrantless inspection scheme pursuant to OSHA is more properly aligned with and must be controlled by the holdings in *Camara* and *See, supra*. See *Brennan v. Gibson's Products, Inc. of Plano*, 407 F. Supp. 154 (Three-judge court, E.D. Texas, 1976).

We simply cannot overlook the fact that in *Colonnade* and *Biswell* the court dealt with an "industry long subject to close supervision and inspection" (*Colonnade*, 397 U.S. at 77), and a "permanently defined class of cases." We have found no such industry in this case. OSHA applies to all businesses that affect interstate commerce. 29 U.S.C. § 661 (a).

(3). As such, it applies to a wide variety of over 6,000,000 work places and does not focus on one particular type of business or industry. It cannot be questioned that this broad spectrum of businesses can be distinguished from the heavily-regulated liquor and firearm industries encountered in *Colonnade* and *Biswell, supra*.

We have also had the benefit, not enjoyed by the court in *Brennan v. Buckeye Industries, Inc.*, *supra*, of recent Supreme Court pronouncements which show a continued allegiance to the *Camara* and *See* holdings as expressing the court's views on the scope of the Fourth Amendment. In *Anders-Jones v. United States*, 413 U.S. 366 (1973), the court was faced with a statute and regulations which permitted a wide variety of roving searches by the Immigration and Naturalization Service, finding that such searches "embodied precisely the evil" the court said in *Camara* it intended that the "discretion of the official in the field" be

circumscribed by obtaining a warrant prior to the inspection." 413 U.S. at 270.

The court went on to distinguish *Colonnade* and *Husted* by noting that "businessmen engaged in such federally licensed and regulated enterprises accept the burdens as well as the benefits of their trade." 413 U.S. at 271.

More recently, in *Air Pollution Variance Board v. Western Alfalfa Corp.*, 416 U.S. 861 (1974), an inspector for the Colorado Department of Health conducted daylight visual pollution tests of smoke being emitted from the company's chimney. The inspector had entered the outdoor premises of the business without the owner's consent or having obtained a search warrant. The court expressly reaffirmed the holdings of *Camara* and *See*, but held them inapplicable to the case because of the "open fields" doctrine. See *Hester v. United States*, 380 U.S. 87 (1964).

There is one common thread among these cases that requires the result we reach here. In *Camara*, *See* and *Western Alfalfa*, *supra*, each was involved with statutory and regulatory schemes aimed at promoting and protecting public health and safety. The warrantless inspections authorized under OSHA likewise seek to promote public health and safety and therefore must be controlled by *Camara* and *See*.

The analysis which we have outlined above is consistent with that taken by another three-judge panel in *Brennan v. Gibson's Products, Inc. of Plano*, *supra*. While we adopt, in general, the similar reasoning employed there, we decline the invitation to judicially redraft an enactment of Congress. Unlike the *Gibson's Products* court, we cannot accept the proposition that the language of the OSHA inspection provisions envision the requirement that a warrant be obtained before any inspection is undertaken. Certainly, Congress was able, had it wished to do so, to employ language declaring that a warrant must first be obtained, the procedures under which it is to be obtained, and the necessary regulations. Congress did not do so and we refuse to accept that duty.

We therefore hold that the inspection provisions of OSHA which have attempted to authorize warrantless inspections of those business establishments covered by the Act, are unconstitutional as being violative of the Fourth Amendment.

It is so ordered and judgment shall be entered accordingly.

Dated this 30th day of December, 1976.

M. OLIVER KOELSCH,

Senior Circuit Judge.

J. BLAINE ANDERSON,

U.S. Circuit Judge.

RAY MCNICHOLES,

Chief, U.S. District Judge.

FOOTNOTES

¹ 29 U.S.C. § 657(a) states:

"(a) In order to carry out the purposes of this chapter, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

During the pendency of these proceedings Judge Koelsch took senior status and Judge Anderson was elevated from district judge to circuit judge and continues to participate in this matter by designation of the Chief Judge of the Ninth Circuit.

Amendment IV—Searches and Seizures

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

"The Congressional investigations revealed in the legislative history of the Act (3 U.S. Code Congressional and Administrative News, 91st Congress, Second Session, 1970, p. 5177, et seq.) make a persuasive case for "need" in the health and safety fields. We, of course, do not sit in the vicissitudes of Congress. Our only concern is the alleged affront to the Fourth Amendment. The rationale of an anonymous saying "Expediency is the argument of statesmen. It precedes the loss of every human liberty" seems of forceful application here. That the end result may be laudable and desirable does not justify the means used to accomplish it when constitutional prohibitions are confronted. To paraphrase Burke, *Impeachment of Warren Hastings*, February 16, 1788: "The Constitution (law) and arbitrary power are in eternal enmity." We suggest that there are other less intrusive and oppressive methods of accomplishing the intended result, e.g., employer reporting requirements with provisions for employee contribution and participation; employer-employee safety committees; encouragement of employee complaints; in the

organized management-labor relations field a greater and more forceful input by labor unions as the safety representative of their members; efforts toward better enforcement by the states of their health and safety laws, etc. We subscribe to the *Camara* court holding that warrantless inspections must be confined to "certain carefully defined classes of cases." *Camara*, *supra*, p. 528-9.

A BILL TO REPEAL OSHA—AN UNCONSTITUTIONAL LAW

HON. STEVEN D. SYMMS

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 4, 1977

Mr. SYMMS. Mr. Speaker, on this first day of the 95th Congress my colleague from Idaho, Mr. GEORGE HANSEN, myself, Congressman LARRY McDONALD of Georgia, and Congressman CARLOS MOORHEAD of California are again introducing a bill to repeal the Occupational Safety and Health Act of 1970.

When I first came to Congress in 1973 I raised constitutional arguments against OSHA, but many people, even some conservatives, were of the opinion that the constitutional arguments had no merit and that the law needed to be improved rather than repealed.

But on December 30, 1976, a U.S. three-judge court in Boise, Idaho, ruled OSHA to be unconstitutional declaring that it violated fourth amendment rights. The court also issued an order restraining the enforcing OSHA from carrying out searches and inspections on nonpublic premises pursuant to section 8(a) of the act. This decision was the result of the courageous fight waged against OSHA by Mr. G. (Bill) Barlow the owner of a small business in Pocatello, Idaho. It is my hope that the U.S. Supreme Court will uphold the decision of the three-judge court. This may well be a landmark court decision, upholding the constitutional rights of the individual against the bureaucratic abuses of big government. Let us hope, Mr. Speaker, that this decision will serve as a warning to other Federal Government agencies such as EPA and FDA that the American people do have certain rights guaranteed to them that will be upheld in court.

The Idaho court decision was described as follows in the January 4, 1977, Washington Post:

JOB SAFETY INSPECTION HELD ILLEGAL WITHOUT A WARRANT

A panel of three federal judges in Idaho has declared unconstitutional the 1970 law that authorizes the Labor Department to conduct occupational safety and health inspections without a warrant.

The department fears the decision could strip it of all occupational safety and health enforcement power, and plans to appeal.

We consider the right of inspection to be absolutely vital," Morton Corn, the assistant labor secretary who heads the Occupational Safety and Health Administration, said yesterday. "We will take whatever legal steps are necessary to vindicate that right."

The Idaho ruling, handed down last week, involved an electrical contractor, F. G. Barlow of Pocatello, who refused to let a federal inspector go through his place of business.

He rested his refusal on the Fourth Amendment to the Constitution, which forbids "unreasonable searches and seizures" and says search warrants should only be issued where there is probable cause to suspect a violation of the law.

The 1970 Occupational Safety and Health Act not only authorizes unannounced inspections of workplaces but prohibits anyone from saying that inspections are about to occur. It makes no mention of search warrants, and federal inspectors do not obtain them.

In Texas case earlier last year a three-judge panel said in effect that this failure to mention warrants must have been inadvertent, and ruled that safety inspectors ought to take warrants out in the future. That case is on appeal.

In the Idaho ruling, however, the panel simply said the law is unconstitutional, and left any repairs to Congress.

The Idaho ruling thus left OSHA without any authority to make inspections: the whole authorizing section was struck down as defective.

The Idaho judges then issued an injunction forbidding future inspections of Barlow's place of business and possibly—the panel's meaning is not completely clear—prohibiting all further OSHA inspections nationwide.

OSHA lawyers said they would appeal the constitutional finding and seek a stay of the injunction. An appeal would take the issue directly to the Supreme Court, which in the past has upheld some warrantless government health and safety inspections and struck down others.

In conclusion, Mr. Speaker, I think it is noteworthy that all of the court challenges to OSHA so far have been brought by small independent businesses—not by big corporations. I will close by urging favorable House action on my bill to repeal this unconstitutional law.

January 6, 1977

OSHA INSPECTIONS STOPPED

HON. GEORGE HANSEN

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Thursday, January 6, 1977

Mr. HANSEN. Mr. Speaker, the Occupational Safety and Health Administration has stopped all inspections in Idaho pending legal appeal. Now such inspections should be stopped in all other areas under OSHA's jurisdiction as well in the sense of equal justice for all Americans which is guaranteed every citizen by the U.S. Constitution.

It was in this spirit of equal justice and protection for all citizens that yesterday I sent letters to Secretary of Labor Usery to U.S. Attorney General Levi, and to OSHA Administrator Corn asking for an abatement of all OSHA inspections across the Nation.

Mr. Speaker, I deem it my responsibility to advise my colleagues and constituents that further inspections of a nonuniform nature violate the equal protection of the laws guaranteed by the Constitution. It is in this respect which I submit the contents of my letter to Secretary Usery as well as an article from the Idaho Statesman newspaper of January 6, 1977:

JANUARY 4, 1977.

Hon. W. J. USERY, Secretary of Labor, Washington, D.C.

DEAR SECRETARY USERY: Regarding the decision of a Federal Three Judge Court in Idaho declaring inspection authority. Section 8(a) of the OSHA Act, unconstitutional and void, I commend administrative actions of yesterday causing OSHA inspections in Idaho to cease pending appeal.

However, under the concept of equal justice for all citizens such OSHA inspections should also immediately be terminated for other areas under OSHA's jurisdiction. Not only is this a matter of equal justice but it is a matter of legal reality since precedent exists for individual rejection of warrantless searches or inspections by any citizen in the Nation.

Certainly government activities of this nature should not be enforced only against the acquiescent citizen who is either not informed of his basic rights or who is without the means or determination to protect such rights. I urge you to take this request for equal justice into early and serious consideration and act swiftly to grant proper relief.

I am hopeful of a reply at your earliest convenience.

Sincerely,

GEORGE HANSEN,

Member of Congress.

OSHA INSPECTIONS STOPPED IN IDAHO

WASHINGTON—The Occupational Safety and Health Administration (OSHA) has temporarily halted safety inspections in Idaho after a court ruling that inspections of businesses without their permission violated the Constitution. The Department of Labor announced Wednesday.

OSHA announced it will appeal last week's court ruling to the U.S. Supreme Court and meanwhile will seek a stay in the ruling. The agency said it will halt inspections until the motion for the stay can be heard.

On Dec. 30, a three-man constitutional court in Idaho agreed with Pocatello businessman Bill Barlow that OSHA inspections without his permission violated the Constitution's Fourth Amendment prohibition against unreasonable searches. Congress had given the agency no power to force inspections, the court said.

OSHA administrator Morton Corn, an assistant secretary of Labor, said he is "deeply concerned about the implications of the court's decision. OSHA will actively pursue all legal avenues of recourse open to us."

Rep. George Hansen, R-Idaho, chairman of a national campaign to abolish the safety-inspection law, called the halt in inspections

"entirely proper. . . . Until the Supreme Court rules on this matter. OSHA should cease and desist in all inspections."

Even if the court ruling is immediately stayed, Hansen said, "it is not proper to refuse OSHA inspectors entry, citing the Barlow case. 'That stay won't help them if citizens are brave enough to stand up to OSHA,' Hansen said. 'But for any timid person not willing to stand up to the government, it could be a problem.'"

He said the Dec. 30 decision "is the first time a federal court has put an agency out of business," and said it will have national impact.

Hansen maintains that state and local governments are adequate to regulate industrial safety, and said a ballooning federal bureaucracy under OSHA has performed in a high-handed and arbitrary manner.

The agency, created in 1970 to cut down the number of worker accidents, has been engulfed in controversy and is held up by some congressmen as the prime example of an insensitive government bureaucracy.

Hansen and Rep. Steve Symms, R-Idaho, jointly introduced bills in Congress Wednesday proposing repeal of the Occupational Safety and Health Act and the 1968 Gun Control Act.

Hansen and Symms said in a joint statement: "OSHA has been ruled unconstitutional and this should be added support to our bill to repeal the act."

The representatives said the gun-control act requires, among other things, that records of the purchase of firearms be provided to the U.S. Treasury Department.

"This type of control has proven ineffective as a crime control measure because in ever increasing numbers individual citizens are rejecting all such controls," they said.

Hansen and Symms said the trend is obviously clear and Congress simply must represent the people—these bills do just that."

OSHA'S INSPECTIONS SHOULD NOW CEASE

HON. GEORGE HANSEN

OF IDAHO
IN THE HOUSE OF REPRESENTATIVES
Thursday, January 6, 1977

Mr. HANSEN. Mr. Speaker, the Occupational Safety and Health Administration has run into a legal buzzsaw. Inspection procedures of the 1970 act have been declared unconstitutional and void. I have been very much involved in bringing this long overdue relief for the rights of American citizens and am today introducing a resolution for consideration by this body:

Expressing the sense of the Congress that inspections pursuant to section 8(a) of the Occupational Safety and Health Act of 1970 shall cease pending a determination by the Supreme Court of the United States of the constitutionality of such inspections.

Mr. Speaker, I submit the following news releases for your records and for the interest of my colleagues in this vital matter:

STOP ALL OSHA INSPECTIONS (News release of Congressman George Hansen)

WASHINGTON.—OSHA has stopped inspections in Idaho. Now they should be stopped in the other areas under OSHA jurisdiction. I have written the Secretary of Labor, OSHA Administrator Morton Conn, and the U.S. Attorney General asking that this should be done.

Not only is this a matter of equal justice but it is a matter of legal reality since precedent exists for individual rejection of warrantless searches or inspections by any citizen in the nation.

Certainly government activities of this nature should not be enforced only against the acquiescing citizen who is either not informed of his basic rights or who is without the means or determination to protect such rights.

If such OSHA inspections are not discontinued, I will deem it my responsibility to advise my colleagues and their constituents that further inspections violate the equal protection of the laws guaranteed by the Constitution.

OSHA INSPECTIONS UNCONSTITUTIONAL (News Release of Congressman George Hansen)

BOISE, IDAHO.—Provisions of OSHA, authorizing warrantless inspections of business establishments, were ruled unconstitutional and a violation of the Fourth Amendment of the U.S. Constitution in a three judge court summary judgement filed here late Friday.

The decision, growing out of a case filed by Barlow's Inc., a small Pocatello business, against W. J. Geary, Secretary of Labor, of the United States in his official capacity, is

termed a landmark case. In the decision, filed in U.S. District Court, District of Idaho, the judges ruled that "The Secretary of Labor . . . and all other defendants, in their successive offices, and all other persons acting by, through or under them, are hereby forever and permanently restrained and enjoined from acting or attempting to act . . . or attempting to conduct any general searches or inspections of the non-public portions of the premises . . . pursuant to Section 8(a) of the Occupational Safety and Health Act of 1970.

"We therefore hold that the inspection provisions of OSHA which have attempted to authorize warrantless inspections of those business establishments covered by the Act, are unconstitutional as being violative of the Fourth Amendment," the ruling said.

In Washington, U.S. Rep. George Hansen, long a foe of OSHA regulations, welcomed the decision as a great New Year's present to the businessmen and farmers of the United States.

"I have nothing but praise for the courage of F. G. (Bill) Barlow, the president and manager of Barlow's Inc., which caused him to take on the Federal government in this case," Hansen said. "He is just a businessman with limited means, but his strong feelings about our rights as American citizens to his willingness to speak out in an effort marks him as a patriot in the tradition of our founding fathers whom we hail in this bicentennial era. Barlow's victory over the OSHA Constitution is still a bulwark for human rights in this nation and we not have to bow down to oppressive decrees and acts of government no matter how well intended they may be."

Hansen was instrumental in urging Barlow to take his case to court after he (Barlow) had refused an OSHA inspection of his business location without a warrant. The Idaho Congressman has also provided a legislative and legal clearing house for information to assist those willing to stand up against OSHA and is heading fund-raising drives to give Barlow and others a "war chest" to press their cases. Hansen is Chairman of a Congressional task force working to limit regulatory agencies and reduce the size of government. He also heads a national "STOP OSHA" campaign for the American Conservative Union.

Barlow's case was handled by the Runft and Longest law firm of Boise. It was argued in the U.S. District Court before the three judge panel. The decision that the law was unconstitutional was signed by M. Oliver Koonch, Senior District Judge, J. Blaine Anderson, Circuit Judge, and Ray McNichols, Chief District Judge.

Hansen commended the court for its clear and basic constitutional rights and the Barlow attorneys for their outstanding and successful presentation.

The effect of the decision, the Boise law firm said, is to declare the OSHA section involving inspections as "void and unconstitutionally repugnant to the Fourth Amendment."

With this latest decision, the Hansen-backed fight against OSHA has been successful in Texas, New Mexico, Ohio and other states. He said the broad and sweeping decision handed down in Idaho "is a real landmark case." Hansen said "It not only gives immediate relief from an oppressive OSHA, it deals the Department of Labor and the Congress a big set-back in their incredible support of the big government steamroller running roughshod over individual rights."

OSHA DECLARED UNCONSTITUTIONAL (News release of Congressman George Hansen)

"OSHA is out of business!" declared Congressman George Hansen today.

A December 30th decision for Idaho businessman Bill Barlow by a Federal Three Judge Constitutional Court declared the inspection provisions of the Occupational Safety and Health Act unconstitutional and void.

"For all intents and purposes," Hansen stated, "this unpopular, oppressive and unproductive Act has been repealed unless an appeal to the United States Supreme Court should alter the situation."

"This means the businessmen and farmers no longer need to allow an OSHA inspection," Hansen pointed out.

Barlow, whose office has served as a coordinator and clearing house for legal and legislative efforts to stop OSHA, emphasized that this latest decision is the most significant of a series of Fourth Amendment victories over OSHA. Gibson's Products of Texas scored the first big Court win over OSHA less than a year ago when Three Judge Panel barred OSHA inspections without a search warrant properly secured from a magistrate based on probable cause. Other Court victories over OSHA's warrantless inspections followed.

"Based on the precedent of these cases," Hansen said, "The Barlow decision recognized that the inspection provisions of OSHA violate the Fourth Amendment but, unlike prior cases, it refused to judge and rewrite the law in order to salvage it. Instead the Barlow Court declared the inspection provisions unconstitutional and void thus depriving the Department of Labor of any authority to conduct OSHA inspections of private business premises with or without a warrant."

"The Court observed that Congress could have properly provided acceptable inspection guidelines but it failed to do so," Hansen continued. "In fact, OSHA seems to recognize an intentional end-run around the Constitution by the Congress to authorize warrantless searches and met it head-on in a landmark decision in support of our basic rights as American citizens."

"A reckless Congress caught trying to steal a Constitutional base in the game of bureaucracy-building has thankfully been called out" resoundingly by the umpires in the Court," Hansen concluded.

H. CON. RES. —

Resolved by the House of Representatives (the Senate concurring). That in view of the fact that a recent decision of a Federal three judge court has declared that the inspection authority contained in section 8(a) of the Occupational Safety and Health Act of 1970 is unconstitutional and that inspections under such section within the jurisdiction of that court have been caused to cease pending appeal of such decision, and in view of the principle of equal justice and the dictates of legal reality, in the sense of the Congress that all inspections under such section in all areas of the Nation should immediately cease, and in view of the fact that the United States has determined the question of whether or not any inspections under such section are constitutional.

STOPPING THE NITPICKING CAREER OF OSHA

HON. GEORGE HANSEN

OF IDAHO
IN THE HOUSE OF REPRESENTATIVES
Thursday, January 6, 1977

Mr. HANSEN. Mr. Speaker, since the Occupational Safety and Health Administration has become such a controversy in the past few days I would like to submit an article from the Richmond Times-Dispatch on December 17, 1976, by syndicated columnist John Chamberlain which offers some insight to OSHA and its problems for the benefit of my colleagues:

STOPPING THE NITPICKING CAREER OF OSHA (By John Chamberlain)

Rep. George Hansen of Idaho is putting his neck on the block. He has accepted the founding chairmanship of something called STOP OSHA, a project of the American Conservative Union.

OSHA, of course, is the Occupational Safety and Health Act, and Representative Hansen risks being labeled as being afraid of seeing people maimed or killed by accidents or poisoning in the course of their daily work.

OSHA, however, has been an extremely wasteful and ineffective guardian of the safety and health of the American workman. The law that brought the OSHA administrative bureaucracy into being runs to 31 pages. But the regulations written by OSHA itself total 3,400 and run to 800 pages. It's like the Internal Revenue Code for impenetrability, and what factory boss has time to decipher it?

Hansen figures that compliance with OSHA—or attempted compliance—cost businessmen and consumers \$2.5 billion in 1972 and \$3.2 billion in 1973. The figures for the past three years are probably more horrendous.

Taxpayers have spent \$409.3 million in four years just to maintain the OSHA bureaucracy. And what is there to show for the money? The number of job-related injuries increased by 270,000, or some 8 percent, between 1970 and 1975. Nearly 500 people have been killed by their jobs since OSHA started.

The truth is that OSHA attempts to do the impossible in trying to emulate the eyes of Jehovah. Lacking the resources to inspect everything, it stoops to the most petty sort of nitpicking in the breaking and entry that it does undertake. I say breaking and entry advisedly, for OSHA is addicted to working without search warrants; it acts as prosecutor, judge and jury when it comes to slapping on the fines.

A few employers—in New Mexico, Texas and Ohio—have sided on the Fourth Amendment in refusing to let OSHA inspectors enter without showing "probable cause" for search. And a Maine employer has been paying a fine by standing on the Fifth Amendment, the one that supposedly guarantees a man his day in court. But usually employers go docilely. District courts in New Mexico, Texas and Ohio have upheld the Fourth Amendment in OSHA cases; in Montana and Georgia, however, the rulings have gone the other way.

OSHA can't operate with justice and impartiality without a billion-dollar budget, which wouldn't be worth putting up. So it stumbles along by picking its targets arbitrarily. A Cornell economist, Robert Stewart

A change in the laws so adversely affecting so many American businessmen is in the air. The final blow to the illegality of OSHA suits with Congress, the forum that created the law. With an effective challenge on both fronts—in the Courts and in Congress—we may finally be able to remove that thorn that has so long been nagging at the sides of the free enterprise system.



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House of Representatives Citizens' Rights Upheld OSHA Loses Again



Lawyers meet in Washington with Idaho congressmen to plan strategy for OSHA court cases. Pictured left to right are John Runft (Boise, Idaho), Rep. Steve Symms, Rep. George Hansen, Robert Rader (Dallas, Texas), and McNeill Stokes (Atlanta, Georgia).

OSHA INSPECTIONS IN IDAHO REJECTED BY U.S. SUPREME COURT

HON. GEORGE HANSEN

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 26, 1977

Mr. HANSEN. Mr. Speaker, I call to the attention of my colleagues a Supreme Court order handed down yesterday, January 25, by Justice William H. Rehnquist concerning inspections of the Occupational Safety and Health Administration. I make available for the RECORD a copy of my news release of this date regarding this significant action:

U.S. SUPREME COURT BASS OSHA INSPECTIONS IN IDAHO

WASHINGTON.—"OSHA lost the first round at the Supreme Court level Tuesday (1-25-77) in its battle to continue conducting sneak inspections against American citizens without a warrant," U.S. Rep. George Hansen announced.

"Justice William H. Rehnquist, acting on a request to stay a lower court declaration of unconstitutionality and injunction against the Labor Department's warrantless OSHA inspections until the ruling can be appealed, upheld that court's refusal to grant such a stay in Idaho and opened the door to possible expansion of such a bar to OSHA inspections nationwide," Hansen explained.

Judge Rehnquist's order stated: "Upon consideration of the application of the acting Solicitor General for a stay of the judgment of the U.S. District Court for the District of Idaho in this case, it is ordered that the judgment of that Court entered Dec. 30, 1976, be, and the same is hereby stayed insofar as it purports to restrain the conduct of the applicant outside the District of Idaho, pending receipt of a response from respondent and further order of the Circuit Justice or of the Court."

The request to the Supreme Court by the U.S. Department of Labor and the Occupational Safety and Health Administration appeared to be at least partly prompted by concern arising from a warning to the Secretary of Labor by Idaho Congressmen Hansen and Steve Symms that he could possibly be cited for contempt of court if he were to persist with OSHA inspections in the face of an injunction against such by U.S. District Court action in Idaho.

"The Labor Department's actions contrary to their recent statements confirm my contention and that of the attorneys for Barlow's, Inc., that the declaration of OSHA's unconstitutionality and the injunction against the Secretary by the Idaho court action has nationwide impact," Hansen said.

Hansen pointed out that the Rehnquist order retained the citizens' Fourth Amendment rights against OSHA before the Three Judge Constitutional Panel in Idaho and provided for possible re-affirmation of these rights in other states as well upon receipt of a presentation from the Barlow position.

"In the meantime," Hansen stressed, "citizens across the land in all states can individually reject an OSHA inspection as unconstitutional on the basis of court precedent. No one with proper legal advice should be hesitant and it is only the meek who shall inherit the OSHA inspection."

Hansen explained that OSHA has now lost three federal three-judge court cases—in Texas, New Mexico and Idaho. It also has lost two federal district court rulings in Ohio and Georgia and five state courts have ruled their own state-administered inspection laws in violation of the Fourth Amendment of the Constitution.

OSHA TRACK RECORD POOR

HON. GEORGE HANSEN

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 26, 1977

Mr. HANSEN. Mr. Speaker, I recently received a letter from a Federal safety engineer of 25 years experience which I would like to share with my colleagues and all who are concerned about the effectiveness of the Occupational Safety and Health Administration:

DEAR SIR: I would like to commend you for your "STOP OSHA" campaign. As a Federal safety officer for over 25 years I agree that this needless waste "disguised as accident prevention" must be drastically curtailed. To me, a Federal budget of approximately 5% of OSHA's present budget could "monitor" those areas needing attention and serve the same purpose, thus eliminating this needless spending, i.e. government grants for duplicating existing regulations, re-writing of policies, plus elaborate staffing of Federal agencies.

OSHA - PART III

You are no doubt aware, according to Accident Facts (National Safety Council's yearly publication) industrial accidents kill approximately 13,400 persons yearly. Of this number 4,100 are motor vehicle related, thus leaving 9,300 strictly industrial accidents. OSHA's efforts are solely directed to industrial accidents. Also, according to such national authorities as Dr. Grenslett and Dr. Cutter of New York University, plus Hinrick's text on Industrial Accident Prevention 88% of all industrial accidents are caused by unsafe acts of individuals and only 12% by unsafe conditions and acts of God. OSHA's efforts are directed to unsafe physical conditions, i.e. electrical hazards, unguarded machinery, open pits, etc. Thus the present 130 million yearly budget of OSHA is basically directed at 12% of the problem. Twelve percent of the 9,300 industrial deaths or 1,116 persons killed is about the same number that is killed by "falling objects" or collision with trains yearly. To spend 130 million on such areas is ridiculous.

Sir, my in-depth study of the Bureau of National Affairs document, Occupational Safety and Health Reporter, would conclude that few lives have been saved by OSHA inspectors identifying basically electrical, housekeeping, and violations not in compliance with standards. The real iceberg of OSHA is perhaps the "price increases of personal protective clothing and equipment by industry in 'complying' with OSHA, plus all the 'mechanics' relating that is being sold by universities and 'specialists.' All this again is hid behind the scare tactics of OSHA's "paper tiger." These standards and codes being rewritten and revised at a tremendous cost to the taxpayers are not benefiting the safety professional in the field in making his work place safer.

Also, it should be pointed out that home accidents are killing 25,000+ yearly which is nearly three times that of industrial (less motor vehicle) work accidents. Home injuries exceed work injuries by 3-1. Also, suicides (25,118), pneumonia (30,933), falls (16,500), drownings (8,100) are more numerous than unfunded that numberwise could "demand" OSHA type Federal funding and attention.

Also, during the period 1945-1974 on the job deaths have decreased 19%, while off the job deaths have increased 31%. As OSHA doesn't cover off-the-job accidents perhaps the emphasis is in the wrong place!

Sir, you will find that the major nature of working injuries is sprains, strains, over-exertion, back injuries, hernias, etc. (approximately 41%) while OSHA is inspecting physical equipment and unsafe areas. Unsafe acts of individuals are causing the accidents, not these areas where an amputation (less than 1/3 of 1%) takes place.

It is amusing to read the Safety and Health Report weekly of all the "technical" studies being conducted by the Bureau and the elaborate training that is available, then read what the OSHA inspectors discovered in their surveys, i.e. poor housekeeping, basic electrical hazards, open pits, lack of machine guarding, failure to post regulations, failure to provide personal protective equipment, etc.

Sir, in conclusion I would like to state that the number of workers killed on the job in 1974 about equals the number of over 78 year old drivers killed from traffic in 1972-1974. Would we spend \$30 million a year to look into this problem?

As stated in my opening paragraph, I am a professional Safety Engineer of over 25 years. I sincerely hope that you are not getting into creating a life to save one; however, OSHA in its present form is not the answer.

Sir, you may or may not be aware that OSHA's Form 100 now covers military as well as civilian occupational injuries. Injuries to military are recorded on a 24 hour, seven day a week basis. All military injuries will be shown as occupational; however, 90% will be private vehicle accidents, sports related, altercations both on and off post, training incidents, domestic incidents, recreational accidents over weekends and holidays, etc. Military machine shop type accidents, as cov-

ered under OSHA, are extremely rare. These military statistics, disguised as occupational injuries, will beef up OSHA's reporting indicating additional manpower and monies to monitor the program when in reality it does not touch the problem.

I see your name repeatedly in trade journals as being the leader in the "Stop OSHA" movement. I hope that you will continue your efforts, and be assured that you are not alone in your battle.

Mr. Speaker, OSHA's track record is under fire from all areas of the Nation—where even OSHA and their strongest supporters have difficulty justifying their effectiveness. As proof of this I offer for the Record an article from the January 1977, issue of Allied Industrial Worker:

OSHA IMPACT FEEL; FEWER DIE ON JOB

WASHINGTON—There were 5,900 American workers killed during 1975 in work-related accidents and 1.77 million workers were injured on the job, according to a survey by the Bureau of Labor Statistics.

Both deaths and injuries were less in 1975 than in 1974, partly due to the drop in contract construction and manufacturing employment from 1974 to 1975.

Deaths in 1975 totaled 5,900 and lost work-time injury cases totaled 1.94 million, according to the report.

Following release of the BLS statistics, the Occupational Safety and Health Administration (OSHA) conducted a news conference and issued a statement saying the decline in job deaths and injuries is "a positive indication of the success of national efforts to reduce such tragedies."

OSHA's Deputy Assistant Secretary of Labor Bert Conklin was careful to state that OSHA was not "boasting" nor taking credit for the reduction in deaths and injuries on the job. But, he said, it is safe to say that the reduction can be attributed in part to efforts by OSHA, organized labor, management and safety and health professionals.

"I am confident," he said, "that the climate of awareness of job safety and health hazards prompted by OSHA's activities, coupled with energetic efforts by labor and management, have combined to produce these reductions."

BLS and OSHA both admit that the recording and reporting of occupational illnesses continue to present "measurement problems."

Mr. Speaker, it is amazing that even the administrators of OSHA have not been able to categorically state that OSHA has by itself had a noticeable impact on reducing industrial accidents. To fortify this contention, I call to the attention of my colleagues a Department of Labor news release of December 8, 1976:

OSHA OFFICIAL CITES REDUCTIONS IN JOB DEATHS, INJURIES AND ILLNESSES

A decline in job-related deaths, injuries and illnesses in 1976, according to data released today by the Bureau of Labor Statistics (BLS), is a "positive indication of the success of national efforts to reduce such tragedies," a top Labor Department official said today.

Deputy Assistant Secretary of Labor Bert Conklin, of the Department's Occupational Safety and Health Administration (OSHA), said the reductions clearly show that declines in earlier years are part of a national trend downward in such data.

"While we make no claims that OSHA alone has been responsible for the dramatic reductions we experienced in 1976," Conklin said, "I am confident that the climate of awareness of job safety and health hazards prompted by OSHA's activities, coupled with energetic efforts by labor and management, have combined to produce these reductions."

Comparing data in industries surveyed in 1974 and 1975 shows a 10 percent drop in job-related fatalities—from 5,900 to 5,300. In the area of occupational injuries, Conklin noted the BLS data show a 14 percent decline from 3.7 million in 1974 to 4.8 million in 1975. Also, recognized occupational illnesses were estimated to total 163,300 for 1975 compared with 200,400 for 1974.

Other highlights of the BLS data include: A decline in the number of lost worktime injury cases from 1.94 million to 1.77 million. Also, cases which did not result in lost worktime dropped about 725,000.

A decline in the injury incidence rates, as well as the number of injuries, for all major industry divisions, except mining.

A decline from 30.2 million to 29.8 million workdays lost due to work related injuries.

A decline in incidence rates (the number of recordable deaths, injuries and illnesses per 100 full time workers) from 10.4 in 1974 to 9.1 in 1975.

Conklin also noted that although, compared with national averages, there were generally lower incidence rates in very small and very large establishments, the great majority of the nation's workforce are employed in such establishments, thus the total numbers of cases is a cause of continuing concern despite the lower rates.

Although strictly comparable data for the years 1972 and 1973 were not yet available

(data for 1971, OSHA's first year, covered only six months and are not comparable), Conklin gave these examples of data showing the downward trend of workplace tragedies.

A 17 percent decrease in the incidence rate from 10.9 in 1972 to 9.1 recordable cases per 100 full time workers in 1975. Within these incidence rates, the rate for contract construction declined from 19.0 in 1972 to 16.0 in 1975—a 16 percent decline. Similarly, manufacturing declined from 15.5 in 1972 to 13.0 in 1975—a 17 percent reduction.

A reduction in the rate of injuries alone (excluding illness). 1975 rate was 10.5 compared with 8.8 for 1975—a reduction of 16 percent. Again within this total, contract construction rates declined from 18.4 in 1972 to 15.7 in 1975—a 15 percent decrease; manufacturing from 14.9 in 1972 to 12.5 in 1975—16 percent reduction.

Conklin added that since these early comparisons show such promise, OSHA is undertaking a study to make detailed comparisons among the data for all industries for the period from 1972 through 1976. He pointed out this will mean converting the data for some major industry groups from earlier years.

STOP EMOTIONALIZING OSHA

HON. GEORGE HANSEN

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 26, 1977

Mr. HANSEN. Mr. Speaker, I would like to thank you for the Record and the benefit of my colleagues a recent editorial in the South Idaho Press of January 14 which puts this argument regarding OSHA's effectiveness in proper perspective. It is important to stop emotionalizing and stick to the facts on a matter so vital to the rights and welfare of the citizens of this Nation: The article follows:

OSHA CATERWAULING IS GETTING TIRESOME. It is beginning to be a little tiresome listening to the crying and caterwauling over a recent Idaho court decision which clipped the wings of the Occupational Safety and Health Administration.

It may be assumed that the majority of Idahoans fully support the judges' decision, which effectively only said that the not constitutional for an OSHA minion to walk into a private place of business on a whim and cite the owner for violating agency regulations. After all, the voters did elect archfoe of OSHA, George Hansen.

Some other people have been noisily unhappy about the decision, though. Robert Macfarlane, head of the AFL-CIO in Idaho, blasted the judges' decision saying "nobody has the constitutional right to kill workers. You cannot right the economy of this country in the blood of working people."

OSHA asked for a stay order on the inspection ban so that the agency could continue its operations in Idaho while it appealed its case to the U.S. Supreme Court. An official said the original decision will have "devastating effects" on the workers for whose benefit the Occupational Safety and Health Act was passed.

The second comment is easier to understand than that of the union official. After all, the OSHA man is only doing his best to protect his job, the foremost responsibility of any bureaucrat.

The "devastating effects" bit is somewhat tough to swallow. In spite of the millions spent on OSHA programs to date, not even the agency is claiming there has been any appreciable improvement in worker safety since Congress passed the act creating it. Why Macfarlane and the rest of organized labor are so much in favor of OSHA is harder to explain. Union spokesmen will, of course, say anything good for the workers is to be good for unions. It sounds nice but holding the argument up to light, it proves a little thin.

Unions were formed to protect the welfare of the working man. When they were being organized, there were strong, clear justifications for their existence. Working conditions and wages in some industries were abysmal. One of the main benefits unions fought for was worker safety. One would think union leadership would at least be upset that government is bumbling around in their bailiwick.

One may come to the conclusion that unions these days are interested only in working to stuff their coffers and let someone else do the thinking. Working conditions are still in this case OSHA, take care of all other considerations.

Neither OSHA nor union spokesmen have addressed their comments to the constitutional issues. They seem to be saying that ends justify means whether the means are constitutional or not.

We do not let our traditional law enforcement agencies get away with acting on that kind of thinking, nor should we. Are we to allow one agency to work under one set of legal principles and another to abide by some different set. Our system is not supposed to work this way.

Are workers going to die like flies in Idaho because OSHA has its hands tied for the moment? Not likely.

If for not other reason, the fact that there are plenty of attorneys who will take a personal injury case on contingency, betting their time against the possibility of winning a large jury award, employers will not willingly expose themselves to liability. The legal climate has changed enough in the past dozen or so years that the likelihood of a worker taking an employer to the cleaners where negligence is involved is great. We have had local cases to prove that.

Where there have been recent incidents of injury on the job, such as the well-known Kepone pesticide poisoning case, the federal agencies responsible for monitoring the situation failed to prevent them.

Our judges have not been fooled by specious self-serving arguments. Neither have the people of Idaho.

THE PEOPLE WIN TWO MORE— OSHA LOSSES

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 26, 1977

Mr. HANSEN. Mr. Speaker, OSHA has lost two more cases. Again two more members of the American judicial system have seen fit to strike down the unconstitutional practices of the Occupational Safety and Health Administration.

The first victory came on January 10, when a modern-day patriot named Lofton Smith of Duluth, Ga., represented himself in the U.S. District Court for the Northern District of Georgia.

A copy of my news release of January 18 describes the situation:

NEWS RELEASE, JANUARY 18, 1977

WASHINGTON—U.S. Rep. George Hansen said today "OSHA has lost another battle in the courts in its attempt to invade the basic rights of the businessman and farmer."

"Already having lost major federal court decisions in Idaho, Texas, Ohio and New Mexico," Hansen said, "the Secretary of Labor has again been bound by the U.S. Constitution against inspections without a warrant by a U.S. District Court in Georgia."

Hansen said this was the case of Centrif Air Machine Co., of Duluth, Georgia, decided Jan. 10 in the U.S. District Court for Northern Georgia.

Hansen, whose office has served as a clearing house for legal and legislative efforts to stop OSHA, said, "This is another important step in our biennial era struggle to assure all citizens of the basic rights provided by our founding fathers."

"It's been a long and frustrating fight," Hansen said, "but thankfully the courts are now holding that employers under OSHA are not second class citizens. Even the criminal has rights against warrantless searches, and," Hansen added, "should the nation's businessmen and farmers have less?"

Hansen contends that the courts are more effectively protected at less cost without OSHA by other ongoing programs and positive improvements.

Mr. Speaker, the second victory was especially significant and came on January 19, when a Utah contractor triumphed in his efforts to stop the "Gestapo tactics" of OSHA. Utah has set up a State OSHA plan which caused the case to be heard before Utah's third district judge, Bryant H. Croft. Judge Croft issued a shattering decision which ruled that the Utah law, patterned after the Federal law, involves procedures which are a "violation of constitutional rights and a clear denial of due process of law." This action is described in the following article from the Idaho State Journal of January 20:

UTAH CONTRACTOR GETS ANTI-OSHA COURT

SALT LAKE CITY—A Bountiful contractor who objected to government agents closing down his shop for a safety inspection has won a ruling from 3rd District Judge Bryant H. Croft that the Occupational Safety and Health Act is unconstitutional.

Judge Bryant H. Croft ruled Wednesday that the Utah law involves procedures which are a "violation of constitutional rights and a clear denial of due process of law."

Harry McCoy, assistant Utah attorney general who defended the State agency, said there would be an appeal to the Utah Supreme Court. McCoy said the law's overthrow would merely mean a federal takeover of OSHA functions in Utah.

R. LaMar Baird, owner of South Davis Mill and Cabinet Co., filed the suit in Denver against the State Industrial Commission, its safety and health division and the state OSHA review commission.

"I'm pleased that the court had what it took to make an honest decision," said Baird

in an interview Wednesday. "It shows that the courts maybe are still thinking of the people. But I'm dissatisfied in the people that they won't stand up and be counted."

Baird, who employs from five to six people, said his plant had to close down during an April 3, 1975 OSHA inspection and later had to pay \$500 to make required changes and \$50 as a fine for a violation.

He said the lawsuit would likely cost him several thousand dollars but it was filed as a matter of principle.

Baird said he runs businesses in Utah which had gone out of business or were assessed \$1,600 for barring their doors to OSHA inspectors.

He said he did not disagree with OSHA's safety standards but filed the suit to challenge the agency's methods of implementing them. "A lot of things they ask us to do have nothing to do with safety," he said.

Croft said, in his decision, that while one "cannot find fault with state policy assuring every man and woman a safe and healthful place to work," it should not be achieved in a manner which results in the sacrifice of fundamental constitutional rights.

The judge said he had allowed OSHA to "enact its own laws, to investigate any suspected violation by search without warrant, to institute its own prosecution for any 'believed' violation, to conduct its own hearings thereon and mete out punishments in the guise of civil assessments . . . with or without hearings."

Baird's complaint contends the OSHA act is unconstitutional because it combines legislative, executive and judicial authority into one agency.

It also violates the equal protection clause of the state constitution and denies due process in the penalties it imposes.

Baird's lawyer in the case is Loren D. Martin, former deputy Davis county attorney who ran unsuccessfully for the Republican attorney general nomination.

January 31, 1977

COST-BENEFIT ANALYSIS OF OSHA

HON. GEORGE HANSEN

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Monday, January 31, 1977

MR. HANSEN. Mr. Speaker, currently there is an issue which is being debated by the citizens of our Nation which could have significant impact upon our lives. Quite simply, the question at issue is the preservation of basic constitutional rights as opposed by the future of the Occupational Safety and Health Administration.

There have been claims of pending catastrophic disaster for the working man should the Department of Labor be forced to comply with a U.S. district court ruling in Idaho, a decision which now rests with the U.S. Supreme Court.

However, Mr. Speaker, these forecasts of doom are totally unfounded.

Since the beginning of the 95th Congress I have found it necessary many times to speak out on this issue and I have offered many sources of information for the benefit of my colleagues. Today, I would like to offer further proof that the American public has wasted over \$50 million and have been cheated out of meaningful occupational safety and health protection during these past 6 years.

Mr. Speaker, I call your attention as well as the attention of my colleagues to a January 28, 1977, cost-benefit study of the Occupational Safety and Health Administration by the Congressional Research Service of the Library of Congress written by Mary Jane Bolle, Analyst in Labor and Economic Relations, Economics Division.

The article follows:
BENEFITS AND COSTS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT: A REVIEW OF THE AVAILABLE EVIDENCE
(By Mary Jane Bolle)

INTRODUCTION

In December, 1976, the Department of Labor, Bureau of Labor Statistics (BLS) released its report on occupational injuries and illnesses for 1975. The report indicated that after the first three years of the Occupational Safety and Health Act's history in which, between 10 and 11 out of every 100 full-time workers suffered an occupationally-related illness or injury, the rate had dropped to about 9 injuries per 100 workers in the fourth year. Fully one million fewer workers suffered a job-related illness or injury in 1975 than in 1974. At the same time, the number of workers who were killed on the job or who died as the result of a job-related illness decreased from 5,900 in 1974 to 5,800 in 1975.

Footnotes at end of article.

Does this mean that the money pouring into the Occupational Safety and Health Administration, under heavy criticism for several years for a number of reasons including its failure to produce noticeable results, is finally paying benefits?

Six years after the passage of the Occupational Safety and Health Act of 1970, questions such as this are being asked and answers are being demanded, aside from issues about the constitutionality of the law. Bills are regularly introduced in Congress to amend or repeal the Act. One of the basic questions underlying much of the proposed legislation is: Are the expenses incurred in maintaining research and enforcement programs under the Act justified by the benefits derived?

The purpose of this paper is to examine benefits produced by efforts of the Occupational Safety and Health Administration (OSHA) in terms of lives saved and illnesses and injuries prevented, and then to examine the costs of administering, enforcing, and complying with the program.

There have been no valid, reliable cost-benefit studies conducted on the Occupational Safety and Health Act. Conducting a study is extremely difficult to conduct. The main reason for this is that many of the most important costs and benefits are hard to define and even more difficult to research. Nevertheless, cost-benefit studies generally do not attempt to measure the potential costs incurred, but are lost by not maintaining occupational safety and health programs, which must also be considered as part of the total cost-benefit picture.

Underlying the search for costs and benefits are several basic questions which must be answered to determine the program's effectiveness. These questions will be examined in this paper in the course of presenting available statistics:

(a) Are the standards more strictly enforced and most often cited proportionate to and parallel with the major causes of fatalities, injuries, and occupational illnesses?

(b) How accurate are the statistics depicting numbers of workers killed, injured, and made ill from occupational hazards?

(c) Has the reduction in fatalities and injuries been the direct or indirect result of actions taken by the Occupational Safety and Health Administration, or has it been totally unrelated?

(d) What other reasons could be responsible for the reduction in fatalities and injuries besides occupational safety and health standards and inspections?

BENEFITS

Background: Information gaps

In attempting to gather data to compile an analysis of this type, numerous gaps in the availability of BLS, OSHA and National Institute for Occupational Safety and Health (NIOSH)—the research branch of the established U.S. Department of Labor Occupational Safety and Health Act (OSHA) support information become readily apparent. These gaps in benefit information, aside from a number of other problems, make definitive determination of a cost-benefit ratio an elusive goal.

First, the BLS does not compile statistics on death, illnesses, and injuries according to year. Because of this, although OSHA has published a list of the 100 most commonly cited standards for 1975¹ which account for 90 percent of all standards in which violations that year, it is impossible to determine whether the violations identified had any relationship to the illnesses, injuries, or fatalities occurring from exposure at the workplace.

Second, statistics are not available on the exact number of people who die each year from occupationally-related disease, and the discrepancy between the number of occupational diseases estimated and actually reported is considerable.

According to the Bureau of Labor Statistics, only 300 deaths were reported as due to occupational diseases in 1975. Yet NIOSH estimates that at least 100,000 people die each year from occupational-related illnesses. A 1967 study conducted by the Surge General estimates that 250,000 new cases of occupational disease occur each year. As another indication of the possible magnitude of occupational illnesses, national surveys report that 365,000 people died from cancer in 1975, and the greatest concentrations of deaths were surrounding heavily industrialized areas.

A major reason why statistics are not available on the numbers of people dying from various occupationally-induced diseases is that considerable information is lacking on the cause and effect relationship between various workplace exposures and diseases that may have a number of causes. This is called the "dose-response relationship" and determinations of these functions are the responsibility of NIOSH under the OSHA Act. Yet with a pool of 1,500 suspected cancer-causing agents and 18,000 toxic substances, NIOSH has, as of December 31, 1976, produced major background papers containing varying amounts of dose-response information on only 65 substances. Only three of these, for asbestos, vinyl chloride, and coke oven emissions, have been translated into actual OSHA standards. OSHA has completed full health standards on only 15 substances, and has adopted exposure limits only for about 400 more.

A third problem in assessing the current effect of OSHA enforcement policies is that there is more than a year's lag between the time the accident statistics are collected, the statistics are compiled and made public by OSHA. In addition, there may be as much as a 20 to 30 years' lag between the time workers are exposed to hazardous substances and the time their illnesses become evident.

Available statistics on benefits

The Department of Labor, which calculated some statistics on occupational injuries on the basis of the so-called "216 standard" before the Occupational Safety and Health Act was passed, now uses a different method for calculating its figures. For this reason, the BLS figures collected before the Act was passed are not comparable with those developed since the legislation was enacted, to determine how the legislation has affected injury statistics.

The National Safety Council (NSC)² however, which worked closely with the Bureau of Labor Statistics before OSHA was passed, continues to calculate its statistics according to the 216 standard. Therefore, to a certain extent NSC figures are better and after passage of the Act may be examined to determine historical trends in injury and fatality rates. These long-term trends are discussed later in the paper, after the short-term trends are examined. In addition, NSC figures since 1970 may be used as a comparison with BLS statistics since estimates are available.

Industrial fatalities

(a) BLS and NSC Figures—

Estimates for 1975 by the BLS are that there were 5,900 occupational fatalities—a 10 percent drop from 1974. Estimates by NSC are that there were 12,600 fatalities, a 7 percent decrease from 1974. The BLS issues no fatality rate. The NSC fatality rate indicates a decrease from 16 to 15 deaths per 100,000 workers in 1975 compared with 1974.

(b) Comparison of BLS and NSC Fatality Figures—

The primary reason for the discrepancy between BLS and NSC figures in absolute numbers of fatalities relates to the different methods of defining the employment universe by the two organizations. NSC fatalities (and injuries) include accidents among government, work-related accidents (non-local); BLS figures include only workers in the private sector. BLS does not include in its employment statistics those workers for the self-employed, while the NSC does include this estimate in its figures.

NSC fatalities are compiled from information supplied by State vital statistics agencies which keep death records according to age group, place of death, work, home, etc. The NSC testified that over the years this has been a consistently calculated figure. BLS fatality figures are determined by reports of businesses that fall under the jurisdiction of OSHA and are required to report fatalities to the Department of Labor.

Industrial injuries

(a) BLS and NSC Figures—

Estimates by the Department of Labor for 1975 are that there were 4.8 million industrial injuries. The injury rate dropped 12 percent from 1974, from 10.5 to 9.2 injuries in 1974 to 8.8 injuries per 100 workers in 1975.

Estimates by the NSC, from a poll of National Safety Council members, are that there were 2.2 million injuries in 1975 compared with 2.3 million injuries in 1974. This poll translated into 10.5 million injuries per million man hours in 1974 to 13.1 injuries per million man hours in 1975. However, the National Safety Council tends to point out that its injury statistics, based on the aforementioned 216 standard, are not comparable from year to year because of changes in numbers of reporting firms and increased representation of service, trade, and government reporting firms. The point is made that increased representation of hazardous government services jobs including policemen, firemen, and sanitation plant workers would tend to shift the figures upward. There is no attempt by NSC at any weighting to arrive at injury estimates which are totally comparable from year to year.

(b) Comparison of BLS and NSC Injury Figures—

The discrepancy between BLS and NSC figures in the basic numbers of workers reported injured results from different methods of defining the employment universe mentioned earlier. It also results from the fact that NSC counts only injuries that are disabling beyond the day of the accident, whereas BLS includes all accidents other than very minor ones that require only first-aid treatment.

BLS illness figures

The BLS emphasizes that the recording and reporting of illness continue to present measurement problems, and indicates that there were 790 reported deaths from occupational illnesses in 1974 and 300 cases in 1975. Reports filed with BLS also indicate 163,300 recognized occupational illnesses in 1975, compared with 200,400 in 1974, or a decrease in incidence rate from 4.1 to 3.4 per 100 workers in 1975. Because these figures are estimated through a sampling mechanism, BLS reports, there is little statistical meaning to be derived from this difference between the two figures. It does suggest that the science of identifying occupationally-induced illnesses is still in its infancy. The NSC makes no estimates on occupational illnesses.

OSHA and non-OSHA contributions to decline in injury, fatality, and illness rates

There are several possible causes contributing to the decrease in fatality and injury rates between 1974 and 1975 in addition to OSHA efforts.

Both the BLS and NSC indicate that part of the decrease in the injury and fatality rates between 1974 and 1975 can be attributed to a decrease in the general employment rate. Both organizations report that the last people hired are generally the greatest safety risks and, since they are less experienced than workers with more seniority, they frequently contribute to higher injury and fatality rates. Similarly, the last hired are frequently the first fired or laid off in times of employment cutbacks. Therefore, when the same group of people is removed from the employment picture, the injury and fatality rates are expected to decline somewhat, as a result.

The BLS also indicates that part of this decrease in fatality and injury rates may be attributed to the disproportionate drop in manufacturing and contract construction employment from 1974 to 1975. Both of these industries have relatively higher rates of injuries and fatalities than the rest of the private economy.

At the same time, however, the broader, more subtle influence of the Occupational Safety and Health Act and other health and safety legislation, together with numerous environmental protection laws may be symptoms of a growing national preoccupation with personal survival. These Acts of Congress taken as a group may in turn insure an even greater degree of health and safety caution and effort on the part of workers and employers in protecting themselves and their environment.

A recent Harris poll indicates that 73 percent of the general population consider it "very important" to actively enforce safe and healthful working conditions.

A study released by the BLS reports that 98 percent of major collective bargaining agreements (those covering 1,000 or more workers) in effect in mid-1974 contain safety and health provisions.

In addition, efforts by various research organizations and private individuals to ferret out, and efforts of the media to publicize, such epidemics of occupational illnesses as those resulting from Kepone, Vinyl Chloride, and Asbestos poisoning, have also contributed their share to greater awareness and concern on the part of individuals for the healthiness of their workplace environments. Finally, the law and all these factors may have awakened management to a lot of problems that in the past may have been overlooked or ignored.

Long-range trends in fatality and injury rates—NSC figures

Statistics compiled by the NSC show death rates among the Nation's workers dating back to 1933, and injury estimates going back to 1920.

The industrial accident death rate, which as indicated before is considered by the NSC to be considerably more accurate than its injury rate statistics, had decreased more or less steadily and progressively from a high of 48 deaths per 100,000 workers in 1937, down to 17 fatalities per 100,000 workers in 1974 through 1975 inclusive, and down further to the previously-mentioned 16 fatalities in 1974, and 15 fatalities per 100,000 workers in 1975.

Statistics on the injury rate over time suggest that the frequency rates have decreased from a high of nearly 32 injuries per million man hours in 1926 to a low of 6 injuries per million man hours in 1961 when the working population was about 60 percent of its current level, and have then gradually and slightly increased. At the same time, the NSC reports that the severity rates have steadily decreased from a high of the NSC scale (no units listed) of 2,500 in 1926 to a low of 611 in 1971, and 614 in 1974.

NSC stresses, however, that one reason why the injury frequency and severity rates have gone up slightly since 1971 is probably because of the OSHA reporting requirements. As a result, firms are keeping more complete records of injuries. It should also be stressed and reemphasized that NSC statistics are not fully representative of the body of firms included under the OSHA umbrella, as the businesses falling under OSHA jurisdiction are only 75 percent of all workers and are not parallel in manufacturing/service government industry makeup.

A major reason for the long-term decreases in fatality, injury, and severity rates

The main reason for the long-range decreases in fatality, injury and severity rates relates to the changing mix of industries comprising the U.S. economy. As automation has swept through heavy industry over the course of the century, the employment population has swung from a concentration in manufacturing where there are typically high injury frequencies and severities to a concentration in service industries, where injuries are fewer and the severity is comparatively light. Moreover, automation has reduced accidents and the severity of accidents within heavy industry.

costs

Broadly defined, costs of the Occupational Safety and Health Act fall into three main

categories: a) costs to the Federal and State governments to administer and enforce the Act; b) costs to businesses to bring them into compliance with standards and regulations; and c) costs to consumers for purchasing products made under safer and possibly more expensive conditions.

Following is a brief overview of these various OSHA cost components. As with benefits, there are a number of gaps in information available from the Occupational Safety and Health Administration.

Federal and State costs

Federal costs for administering and enforcing the Act for the 1977 fiscal year amount to \$193.3 million appropriated for the Occupational Safety and Health Administration in the Department of Labor and \$48.8 million appropriated to the National Institute for Occupational Safety and Health, the research branch of OSHA.

Following is a breakdown of the OSHA budget:

	Actual ¹	Estimate ²
Standards	\$3,210	\$3,338
Training	4,210	18,897
State programs	32,696	35,805
Federal enforcement	59,500	59,500
Statistics	5,448	6,206
Executive direction and administration	3,980	3,671
Total budget.....	114,080	130,333

¹ Fiscal year 1976, 12 months.

² Fiscal year 1977.

Offsetting Federal costs will be a contribution to the U.S. Treasury from penalties collected for violations cited during Federal inspection of workplaces. Penalties assessed are expected to equal \$11.5 million for the 1977 fiscal year. Penalties actually collected are expected to the U.S. Treasury are expected to equal about \$7 million for FY '77.

In addition to Federal funds appropriated for OSHA, the 25 States (plus the Virgin Islands) administering their own State OSHA plans have budgeted a total of \$32.1 million for the 1977 fiscal year. States without OSHA State plans have budgeted another \$3.5 million for possible construction. All these funds are matched by Federal funds earmarked for State programs as indicated in the previous chart.

Industry costs

The credit to the U.S. Treasury represents the penalty costs to businesses under the Act. Other industry costs are legal costs connected with protesting a citation or penalty for which no reliable estimates appear available at the present time, and costs of technological changes made by businesses to bring them into compliance.

Industry sources offer estimates on the amount of money businesses spend to comply with the OSHA Act. The Fourth Annual McGraw-Hill Economics Department Survey of businesses to determine the amount of money devoted to OSHA compliance, estimated that \$2.3 billion was expended for business on health and safety protection for employees in 1976.³ This figure represents an increase over the \$2.5 billion estimated for 1975, and a decrease from the \$3 billion estimated for the industry in 1972. There are no indications on how much would have been spent for occupational safety and health protection in the absence of the OSHA Act.

To many, these dollar figures appear to be a substantial investment. However, the cost paid on the amount companies lost in 1975 because of work accidents alone is nearly five times these yearly amounts, or \$16.0 billion.⁴

Another survey, conducted in 1974, suggests the amount of money individual companies may have spent to comply with the OSHA Act. A National Association of Manufacturers (NAM) survey estimated expenditures for businesses generally for safety and health compliance at \$35,000 for firms of 1-100 employees, \$73,500 for companies of 101-500 employees, and \$350,000 for establishments of 501-1,000 employees.⁵

These figures were derived by surveying business establishments which had not actually made the improvements yet, but for which employers were estimating what costs of compliance might be if they were to make them, the number might not represent the actual costs of compliance. Another indication of dollars spent by businesses on compliance might be gleaned from the dollar value of loans granted to "small businesses" to accomplish technological changes required for compliance. In the first four years of the program, between 1971 and 1975, 1312 loans totaling \$28.8 million were granted. This averages out to about \$20,000 per loan.

Costs to consumers

Figures on the contribution to the Consumer Price Index resulting from business expenditures for safety and health technologies to implement, and penalties paid for violations cited are difficult to estimate.

However, indications are that the total costs contributed to the CPI by OSHA costs is not particularly great in total national impact. The vinyl chloride standard was one of the more expensive OSHA standards to implement. Before it was promulgated, industry witnesses testified that the entire vinyl chloride production industry was close down because of unmanageable costs of meeting a "zero parts per million" exposure level for vinyl chloride workers. A follow-up study estimates that the actual

economic impact of the vinyl chloride standard after implementation has been to raise prices of items made from the vinyl chloride plastic approximately 5 percent. However, the follow-up study has shown that machinery developed and utilized by industry to meet the standard was more efficient and will ultimately cut rather than raise production costs.⁶

SUMMARY AND CONCLUSIONS

It can be argued that the greatest benefits from the Occupational Safety and Health Act, in relation to cost expenditures, come from enforcing standards which when violated cause the greatest injury. Yet, as indicated earlier, the Department of Labor has no statistical information to affirm or deny whether the 100 standards most strictly enforced and most often cited are most directly related to the major causes of fatalities, injuries, and illnesses.

Both the National Safety Council and the Bureau of Labor Statistics figures have indicated a decrease in occupational injury and fatality rates since the Occupational Safety and Health Act was passed. However, other causes besides OSHA may have been partly responsible for the decrease. There is no historical record before the Act's passage, and reached its lowest level so far in 1975.

These include the direct and indirect influence of the Occupational Safety and Health Administration as well as outside economic factors—especially the continued shift of workers from high safety risk manufacturing to low safety risk service industries, and the continuing impact of modernization and automation of the workplace.

Health benefits so far from the Occupational Safety and Health Act appear to be few. Scientists estimate that as much as 83 percent of our Nation's high rate of cancer may be environmentally caused. Development of effective standards for health hazards continues to lag behind that for safety hazards. Health regulations cannot be promulgated and enforced until the necessary research information is available. The Department of Labor has no statutory authority over the research conducted by the National Institute for Occupational Safety and Health (NIOSH) conducts. Coordination between the two agencies in the prompt response to relationships on the 1,600 suspected cancer-causing agents and translate them quickly into OSHA standards is not complete.

The Department of Labor has, however, undertaken a number of projects to speed up the information-gathering and standards-promulgation process. One of these undertaken in conjunction with NIOSH is the Standards Completion Project which aims to write full standards for the 400 toxic substances for which exposure limits alone (many now outdated) were incorporated from the American Conference of Governmental Industrial Hygienists (ACGIH) listing soon after the Act was passed. These limits have not been updated by OSHA one by one in accordance with new ACGIH levels because of the lengthy promulgation procedure mandated by the Act.

It seems apparent that the real benefits of the Occupational Safety and Health Act must come in the health area, rather than killing and injuring people singly as industrial accidents frequently do, have an almost universal harmful effect on the human organisms inhaling and absorbing them into their systems. Where the potential for human harm is the greatest, the potential for health salvation, through promulgation and enforcement of much-needed standards is also at its maximum.

FOOTNOTES

¹ F.L. 91-596.

² Reprinted in the Bureau of National Affairs' Occupational Safety and Health Report, vol. 5, no. 41, March 11, 1956, p. 1387.

³ The Job Safety and Health Act of 1970, Washington, D.C. Bureau of National Affairs, 1971, p. 13.

⁴ The 210 standard was developed by the American National Standards Institute as a method of recording basic facts relating to the nature and occurrence of work injuries.

⁵ Charted by the Bureau of National Affairs' Source of NSC statistics: Annotated Facts, 1976, Chicago, Illinois, National Safety Council, p. 23-29.

⁶ 44 Percent Think Quality of Life Has Worsened in Decade, the Washington Post, Monday, No. 6, 1976, p. A-6.

⁷ New Publications: Daily Labor Report, The Bureau of National Affairs, Jan. 5, 1977, p. A-11.

⁸ Occupational Health and Safety Letter, Washington, D.C., Gershon W. Fishbein, Vol. 6, no. 11, June 8, 1976, p. 6.

⁹ Accident Facts, 1976 Edition, Chicago, National Safety Council, 1976, p. 4.

¹⁰ "What's Its Costing Industry to Comply with OSHA," Occupational Hazards, Fall 1974, pp. 8-9.

¹¹ "Small businesses" is defined by a number of parameters under the Small Business Act.

¹² Vinyl Chloride Industrial Abstract of Case Study Center for Policy Alternatives, Massachusetts Institute of Technology, Boston, 1976, xl pp.

EPA and OSHA's conflicting requirements have forced the closing of some 350 foundries and thousands of small businesses without substantially improving air quality or reducing work-related injuries.

The Federal Trade Commission says regulatory overkill (situations where costs exceed benefits) cost Americans \$80 billion a year. The General Accounting Office says the figure is \$130 billion in direct and indirect costs to consumers, or over \$2,000 a year for every American family, according to the President's Council of Economic Advisors. Certainly OSHA has to share the blame for much of this cost.

The largest state University in Iowa, the University of Iowa at Iowa City, says OSHA requirements for comprehensive safety and health standards have cost the University \$25 million in capital costs alone. It's estimated that minor repair, renovation, and value of total University man-hours may add up to an equal amount over the next 20 years. Of course, these costs are borne by the taxpayers.

In 1975, according to research by New York Senator James Buckley, OSHA inspectors made unannounced visits to 88,800 establishments, finding violations in 66,000, and levying \$9.5 million in penalties--an average of \$145 per employer. Only five percent of those cited appealed their fines. But undoubtedly the remaining 95% paid only because it was far cheaper to do so than to hire lawyers to fight.

Congress is still waiting for OSHA's report, due in April of 1974, as per Section 4(b) (3) of the Occupational Safety and Health Act of 1970. There's no word yet on when it will be prepared.

Through the Federal Register OSHA has published, at last count, some 800 pages of regulations, setting forth 4,400 safety standards--2,100 devoted to business generally, 23,000 focusing on the maritime and construction trades. Many of those regulations are simply gobbledygook. The Federation of American Scientists says OSHA regulations are "voluminous and complex, the language convoluted beyond recognition except by a scientist or lawyer."

There is no provision for OSHA to give advisory opinions on whether an operation meets its standards.

According to the National Association of Manufacturers, OSHA compliance costs range from \$35,000 (for businesses with up to 1,000 employees). The first 33 businesses obtaining small business loans for OSHA compliance averaged loans of \$200,000 apiece.

Total costs of compliance with OSHA came to \$2.5 billion in 1972, \$3.2 billion in 1973. Full compliance with OSHA noise standards would cost \$13.5 billion, and under one proposed noise standard it would cost \$31.6 billion. (This doesn't count the additional millions in levied fines.)

According to Robert Stewart Smith, formerly in charge of safety and health evaluation for the Department of Labor, injury rates were higher in industries with good OSHA compliance rates. Between 1970 and 1973, industrial accidents in OSHA's "target industries" fell by less than 1% more than they would have without the program.

Smith says costs of OSHA are heavy, the benefits are negligible. He concludes, "At the very least, the results cast serious doubt on the effectiveness of the target program... Osha, whether because of its standards or because of its failure to discover violations, may not be affecting the conditions which cause injury."

2. OSHA STATISTICS

Regulations by OSHA and the Environmental Protection Agency combined have put about 350 American metal foundries out of business since 1972, according to Heritage Foundation.

OSHA has been challenged in courts for violating the constitutional freedom from warrantless searches, self-incrimination, right to due process, and trial by jury. Thus far, no major decision has been made favoring OSHA.

The overwhelming number of OSHA inspections have been in the field of safety despite reports by the Administration that deaths due to occupational health problems exceed 100,000 per year while problems involving safety account for 11,000 deaths a year.

The Conference Committee on Appropriations recommended the Department of Labor take the following steps in the area of OSHA:

- 1) Immediately upgrade the skills of OSHA inspectors through intensive retraining (including providing each inspector with a clear sense of priorities as to which workplace hazards pose the greatest threat to workers; ensuring that citations, fines and abatement orders are based on these priorities; providing a clear understanding of each OSHA standard)
- 2) Review and simplify existing OSHA standards and eliminate standards not dealing with workplace conditions that are clearly hazardous or more properly under the jurisdiction of State Department of Public Health..
- 3) Redirect enforcement program to place increased emphasis on problems related to worker health
- 4) Substantially redirect inspections away from industries with good worker health and safety records to permit increased inspection in greatest problem areas
- 5) Develop fine-free on-site consultation programs

For 1977 OSHA has requested \$127,970,000--an increase of \$18,127,000 over 1976.

OSHA wants 80 positions and \$1,725,000 for additional industrial hygienists and related health professionals.

10 positions and \$4,725,000 would be used to expand and extend to all states OSHA consultation and educational services

30 positions and \$2,175,000 would be used to upgrade the skills and training of OSHA's field compliance staff

15 positions and \$4,338,000 would be used to accelerate the rate of health standards development and conduct inflationary and economic impact studies for new permanent standards

OSHA says the overall incidence rate (number of illnesses and injuries per 100 full-time workers) declined from 11 in 1973 to 10.4 in 1974. Recordable cases totaled about 5.9 million injuries and illnesses in 1974, about 163,000 less than in 1973.

**STATEMENT OF HON. GEORGE V. HANSEN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF IDAHO**

Mr. HANSEN. Thank you, Mr. Chairman, I am pleased to be here this morning. I appreciate this opportunity. I appreciate especially the fact that your opening the Occupational Safety and Health law to some scrutiny and deliberation because I think that many things have developed which make this absolutely necessary.

I apologize for having a cold so if my voice runs out before we are through, maybe you will be lucky. I suppose I am going to be taking an adversary position this morning. I know that the Occupational Safety and Health Act was passed with the best of intentions.

It certainly was passed almost unanimously. I do not think anyone envisioned the problems at the time that seem to have transpired since. I think we are going to have to have a very objective look at what is going on with an effort, as Mr. Sarasin said, toward repairing and undoing or you are going to lose anything you are attempting to accomplish.

I would like to read my statement and go over it in-depth rather than paraphrase and summarize so it won't be that long, I don't think. We will move through it.

Mr. Chairman, one of the oldest enduring issues in government is the constant fight against bureaucratic growth and waste, and the abuse of power and citizens' rights.

It is this overkill in size and use of authority which leaves the individual with a helpless feeling and creates the impression of government being a master over, rather than a servant to the people.

The administration of the Occupational Safety and Health Act, OSHA, is a prime example of these abuses and the need for regulatory reform.

I might say, Mr. Chairman, I know in our good share of the world, it has become synonymous with feelings of abuse in government. I think this is very unfortunate. It seems ironic that during an era when we are celebrating the 200th anniversary of our forefathers who fought for relief from oppression, entry without notice, fines without consultation, and many other so-called "Tory" tactics, that the same ugly things are again happening to many small businessmen across the Nation at this very moment.

I refer to the practices and tactics of the Government of the United States, in such programs as these being administered by the Department of Labor, Occupational Safety and Health Administration.

These very same acts against a citizen's basic rights helped precipitate the American Revolution over 200 years ago. We are talking about entry without a warrant, trial by jury and a number of things in this regard.

OSHA is one of the most unpopular acts ever passed and is presently being challenged on all sides. Several key cases are pending before the Supreme Court and many more are pending in Federal district courts and circuit courts of appeal.

The constitutional challenges are sound, i.e., freedom from warrantless searches, freedom from self-incrimination, right to due process, right to trial by jury, separation of powers doctrine, and equal application of the law.

In the past year's time there have been 10 major court decisions against OSHA's practices in violation of constitutional rights. Courts in Idaho and Utah have even gone so far as to declare key portions of the OSHA Act unconstitutional and void.

A Federal three-judge constitutional panel in the *Barlow* case in Idaho declared—

That Section 8(a) of Public Law 91-596, December 29, 1970, 84 Stat. 1598 (29 U.S.C. 657(a)), is unconstitutional and void in that it directly offends against the prohibitions of the Fourth Amendment of the Constitution of the United States of America.

In the case of the Rupp Forge Co. of Cleveland, a Federal court found that—

Upon review of the Act and the relevant case authority, the Court is constrained to conclude that Congress did not intend to enact, nor did it in fact enact, proceedings encouraging or authorizing broad, arbitrary administrative searches such as that herein suggested by petitioner.

Clearly such unbridled authority is not cognizable under the Fourth Amendment of the United States Constitution.

This has been the case in many of the court decisions, that they cannot believe that Congress would enact such broad administrative searches and yet this seems to be the intent as envisioned by the Administrator of OSHA in some of his declarations and some Members of Congress. I think it needs to be clarified.

I cannot help but believe the Secretary of Labor realizes as I do that OSHA is on constitutionally unsound ground. OSHA's current plight is pointedly apparent in light of the fact that the Congress is still waiting for a progress and oversight report from OSHA due in April of 1974 as per section 4(b) (3) of the Occupational Safety and Health Act of 1970.

The report is now over 2 years overdue with no indication as to when it will be prepared.

The agency's credibility is sadly lacking. Recently, in a letter dated January 12, 1974, to all Members of Congress from former OSHA Administrator Morton Corn the agency even went so far as to mislead the entire Congress.

I specifically refer to the statement contained in the second to the last paragraph of the letter:

For these reasons one court of appeals has recently overturned a similar district court ruling, concluding that "prompt, unannounced inspections without delay" are crucial to "prevent subversion of the program and encourage consistent compliance."

The case referred to is *Usery v. Godfrey Brake and Supply Service* where the court specifically stated that fourth amendment questions were not under consideration. However, the statement contained in Dr. Corn's letter is misquoted and used in such a way as to imply that this case had somehow approved OSHA's warrantless searches.

When contacted the Department of Labor has been considerably less than forthright on this matter and has consistently avoided or refused to clear up these serious misstatements which can be harmfully misleading to other public officials and present real problems to the individual citizen who is trying to establish what his rights and responsibilities really are.

In fact, Mr. Chairman, there are very valid horror stories clearly showing OSHA efforts to actually deprive people of due process; push

them into jail; impose huge fines; penalties, and compliance costs; mistreat their own employees; and then cover up.

The stated object of this agency is to improve safety conditions for American workers. There is precious little proof that it has done so—but plenty of proof that it has caused immeasurable grief for their employers and resultantly for the citizens and consumers of the Nation.

Consider, first of all, OSHA's records of metastatic growth. The law that gave it birth runs to a modest 31 pages, which could, of course, be troublesome but not impossible for average citizens to master.

As usually occurs, however, Congress permitted executive agents in the Department of Labor to run amok—pumping out an endless batch of OSHA regulations in the Federal Register.

At last count, there were some 800 pages of such regulations, setting forth the safety standards that strike the bureaucrats as proper. These standards number no less than 4,400—2,100 devoted to business generally, 2,300 focused on the maritime and construction trades.

They are enforced by an army of 1,000-plus inspectors with more due to be added.

These standards are not only voluminous, they are often of eye-glazing complexity. One of the most notable, isolated by Prof. Murray Weidenbaum of Washington University in St. Louis, consists of gobbledegook on ladders, including this delectable specimen:

The angle (a) between the loaded and unloaded rails and the horizontal is to be calculated from the trigonometric equation: $\text{Sine } a = \frac{\text{difference in defection}}{9 \text{ divided by ladder width}}$.

You put that one together, I can't.

Small wonder that the Federation of American Scientists says:

Regulations are voluminous and complex, the language convoluted beyond recognition except by a scientist or lawyer * * * Businessmen who have no legal or scientific training are unable to understand OSHA regulations.

Unfortunately, few efforts are being made to translate the information into readable language * * * Equally unnerving to the businesses is the sheer volume of the regulations—thousands of them apply to one small operation.

That the average citizen doesn't understand the mumbo jumbo is of small concern to OSHA. The important thing is that you be in compliance. OSHA agents make unannounced pop inspections and issue citations on the spot that can lead to fines of hundreds or thousands of dollars.

There is no provision for advisory opinions on whether a given ladder, an exit, or trash can is out of sync with OSHA's mysteries. In fact, it is a criminal offense for anyone without authority to do so to give you notice of an OSHA inspection.

Even assuming the standards can be understood and met, the costs can be prohibitive. Robert Stewart Smith, formerly in charge of safety and health evaluations for the Department of Labor, has examined the costs and benefits of OSHA in an excellent analysis for the American Enterprise Institute, Washington, D.C.

On his showing, the costs are heavy, the benefits negligible. Smith quotes findings by the National Association of Manufacturers that OSHA compliance costs range from \$35,000 for businesses with 100 employees or fewer, to \$350,000 for businesses with up to 1,000 employees.

This estimate is confirmed by the fact that the first 33 businesses obtaining small business loans for the purpose of OSHA compliance averaged loans of \$200,000 apiece.

Such costs are reflected in prices charged to consumers—if we are talking about the little man, the consumer, this ought to be of prime importance—and they are growing rapidly. Total costs of compliance came to \$2.5 billion in 1972, and \$3.2 billion in 1973.

And this is just for openers. Full compliance with existing OSHA noise standards would cost \$13.5 billion and under one proposed noise standard it would cost \$31.6 billion. This does not count the additional millions in levied fines.

Over against these heavy costs are Smith's findings that OSHA had apparently done little or nothing to improve the industrial accident record. Sifting OSHA's own inadequate data with other figures, Smith discovered (a) that injury rates were higher, not lower, in industries with good compliance ratings, that is a little bit inverse, and (b) that between 1970 and 1973, industrial accidents in OSHA's so-called "target industries" fell by less than 1 percent more than they would have in the absence of the program.

Smith concludes,

At the very least, the results cast serious doubt on the effectiveness of the target program . . . A more ominous, but still speculative, implication is that OSHA whether because of its standards or because of its failure to discover violations, may not be affecting the conditions which cause injury.

Then he goes on to quote,

Given the limited potential of a perfectly enforced set of standards and the likelihood that inspectors discover only the most obvious violations, it is perhaps not surprising that the estimated effects on injuries are so small that they cannot be distinguished from zero.

The question of effectiveness is even more glaring when the National Safety Council's injury rates are checked. Since OSHA's inception, the previous improvement trend leveled off and stagnated.

In other words, we have not improved the trend; we have actually stagnated it.

The net of it is that we are administering a vast bureaucracy armed with constitutionally questionable powers which imposes an unacceptable burden on the employers and cost consumers and taxpayers untold billions—to achieve a statistically insignificant impact on the safety record of American industry.

I find sad parallel between the 1777 problem of "regulation without reason" and the 1776 problem of "taxation without representation."

It is clearly time for the Congress to relieve American businesses, farms, and individuals from random searches, arbitrary enforcement and fines, and unnecessary and repetitive regulations and reports.

Congress should reappraise each Federal agency with a view to outright abolition of those which are nonproductive or which have obviously outlived their usefulness. It should withdraw from the others the vast grants of arbitrary power which it has bestowed.

And Congress should define the powers left to bureaucracies in language so clear and explicit that no officials can expand their authority beyond congressional intent. I hope this is what is coming up, is what is intended by this administration, as far as this goes.

Broad national policies required to protect consumers, workers, minorities, and the environment should be implemented very sparingly with an eye toward preserving basic individual rights and only through specific legislation, rather than allowing nonelected bureaucrats to write the laws through the Federal Register.

Certainly every effort should be made to solve problems through the private sector and at the State and local levels of government as envisioned by the 10th amendment.

I strongly believe that there are viable alternatives to OSHA. It is imperative that the Federal Government get back to an "incentive" system toward American business rather than the "punitive" system which is presently being pursued.

Stationing a Federal policeman on everyone's doorstep just won't work and it certainly isn't the American way. A broadening of liability insurance, workmen's compensation, and other ongoing State and local inspection and licensing programs which have proved themselves to be far more effective than OSHA in the past could likely accomplish the same goals of OSHA and in much more effective and acceptable fashion.

It is a fact that insurance inspectors, and health authorities, State and local inspection programs, and employee benefit agreements already carry the major burden of assuring health and safety on the job.

Insurance inspectors alone outnumber OSHA compliance officers by approximately 3 to 1—and they've never had the foul image of OSHA. In fact, we have in the total health and safety business in the country—4 to 1—and it is around 35,000 people served.

It shows that private enterprise is making a whale of an effort and certainly more than Government, and their production has actually been more productive. Their approach is different and effective—it's incentive, not punitive.

I am repulsed by the fact that as OSHA grows, so grows its distorted opinion that most American workers are terribly exploited by employers and need the all-encompassing protection of the Federal bureaucracy.

This is indeed a sad commentary on the attitudes of bureaucrats and their understanding of the American enterprise system.

OSHA's unrealistic attitude is demonstrated in its compliance techniques and utilizations of inspectors too often not familiar with the types of businesses that they inspect and no comprehension of the individual needs and circumstances of each company.

The very concept of sending inspectors armed with rule books to examine workplaces for potential hazards is, in a way, as odd as an insurance company personally inspecting every home for which it writes a policy.

A more modern approach, and one well proven by the insurance industry, is to utilize statistical science and adjust an employer's workmen's compensation and liability rates according to his actual safety record.

OSHA, however, relies on its rules and, in the process, has compiled a litany of offenses against good sense. A few examples:

Companies have been ordered to remove guardrails 41 or 43 inches high and replace them with rails exactly 42 inches high. This costs money.

One firm provided more fire extinguishers than required and hung them carefully at the required height. It was slapped with a fine for setting an extra unit on the floor.

Regulations required a shorter turning radius for some forklifts. Their wheel bases were shortened to comply, and the vehicles were rendered dangerously unstable.

The point I am getting to is that these are not the silly ones you have been reading about in the press; these are actually regulations they have been pushing.

The burden of these OSHA regulations falls most heavily on small businesses, who are least able to pay the compliance costs and fines imposed.

And it might be added wryly that while OSHA was spacing coat-hooks and splitting hairs over the height of guardrails, Kepone blew into a major scandal right under their noses, and I understand the faces at the Labor Department are still mighty red over this.

The *Barlow* case, protesting warrantless searches, has on fourth amendment grounds joined the seventh amendment trial-by-jury cases against OSHA before the Supreme Court, and the decisions will most assuredly determine much of the future and direction of the agency.

For the committee's information I am enclosing reprints of several Congressional Record entries on these matters. Certainly no review of OSHA would be effective or complete without considering in-depth the problems prompting such legal action.

OSHA is a product of the tired old idea that Government can solve everything, and it has typically become just another nonproductive, expensive bully that has closed thousands of small businesses and created high costs and shortages and increased unemployment without producing any significant improvement in the health and safety of workers.

I ask that a new concept in occupational health and safety be designed which would basically rely on the proven methods of private enterprise with compliance induced by incentive rather than punitive measures.

The taxpayers and consumers would be most grateful as would employers and workmen.

On the basis of considerations presented before you, I have been the sponsor of legislation to repeal the Occupational Safety and Health Act or at least halt its efforts pending the court's decision on its constitutionality.

I believe OSHA has not only been nonproductive in providing improved health and safety conditions for America's work force, but it has even been counterproductive by causing other health and safety groups to stand back and not perform to their best ability.

This is obvious in viewing the stagnant progress since OSHA went into business.

Safety and health is everybody's business, and with some imagination and proper application it can be accomplished without violating anyone's rights and in ways which would assure lower costs, abundant supplies, increased employment, and more prosperous business operations.

The time to do something is now, while you have the opportunity before you. Thank you.

Mr. GAYDOS. I want to thank you, Mr. Hansen, for taking time out of what is a very busy schedule to make your appearance here and to make your opinions known. I hope that more members will be able to appear before our committee.

I know you are sincere in your feelings about the legislation, and we want you to know that the committee has very critically analyzed many of your entries into the Congressional Record.

In short, whether I as a person or the committee in general agrees with your position or not is extraneous. I do want to compliment you for your activity in this area and your sincerity.

Let me assure you, and I speak on behalf of the committee, that the administration will be called before this committee in completing these oversight hearings.

We will ask the administration where that report is and why it is 2 or 3 years late. I think you do us and also your constituents a service by making reference to that, and we are going to keep after the administration as to their inadequacies in not filing that report.

I think you made a salient point, a very sensitive one. If your appearance before the committee does nothing else, I want to assure you that you have hit on a very sensitive area in that the administration has not reported, and I want to thank you for your assistance in pointing that out to us.

I will ask you some questions a little later, but I would like to defer at this time to the ranking minority member of this committee, Mr. Sarasin.

Mr. SARASIN. Thank you. Mr. Hansen, thank you very much; I join with the chairman in thanking you for being here with us this morning and giving us the benefit of your feelings. There is no question you feel rather strongly about this issue, I think.

Mr. HANSEN. I represent some people, Mr. Sarasin, who feel rather strongly.

Mr. SARASIN. I would also point out, as the chairman has, that you have done an excellent job in making the world at large aware of your feelings and those who feel strongly as you do.

In your statement, Mr. Hansen, you point obviously to the *Barlow* case and the fact that that case reached the Federal court in Idaho, which did say that the ability to search was in violation of fourth amendment rights.

The Supreme Court has narrowed the area, at this point, pending its decision. Justice Rhenquist was the first in saying that the decision would apply only to Idaho, then a few days later limiting it really to the *Barlow* cite itself.

So OSHA could go on unimpeded by that decision.

Mr. HANSEN. May I interrupt the gentleman? I would say that this was not based on the merits of OSHA; it was based on the consideration of precedent; it was cited in the statement of Justice Rhenquist that they normally do not put a law or agency out of business until they have passed final review in the Supreme Court.

They said, on that basis, they would allow it to continue to search. I do not think that had anything to do with the merits of OSHA itself.

Mr. SARASIN. In the decision in the *Barlow* case, Mr. Hansen, the

court narrowly treats what might be exceptions to the case, those dealing with liquor or firearms.

How would you handle a situation with regard to the Environmental Protection Act, Clean Air Act, and so forth, which have similar powers as are granted in OSHA in an administrative review and so forth?

It is your feeling that all of those acts are unconstitutional?

Mr. HANSEN. I think that the court has delineated very well in the *Barlow* case, as to the distinction between random general inspections in areas that do not qualify for those distinctions of being somewhat hazardous or otherwise.

I think they drew a very careful delineation in arriving at their decision in the *Barlow* case. I think that the same analysis could be used and arrived at in looking at distinctions in the operations of the EPA or any other organization as to where it would be necessary, because of some kind of peril or hazard, or whatever, that you dispense with some of those basic rights and other, as according to precedent and tradition and other places where you adhere to them.

I think that OSHA has been far too general and has not defined which type of inspections would apply and has gotten itself into a can of worms.

Mr. SARASIN. You mentioned OSHA's delay in providing the report required by section 4(b)(3) of the act. Possibly the fact that there have been four Administrators in the last 6 years has something to do with it.

Were you able to get any response from OSHA as to when this report might be forthcoming?

Mr. HANSEN. They keep saying soon.

Mr. SARASIN. You refer to the *Usury v. Godfrey Brake* case. Can you tell us what that case involved and what the decision was based on?

Mr. HANSEN. That is a case in the Dakotas where basically the case involved the employer insisting that the OSHA inspector identify himself and made him sit down and fill out a form and so forth, which may have been a little excessive, and, of course, the district court upheld his right to do so within certain limitations.

Then the court of appeals came back and said no that this violated the intent of the law, to be able to go in early and so forth, but the court did also state very emphatically, because they had attempted to inject a fourth amendment consideration on appeal, to bolster the employer's case and the court said that according to Supreme Court precedents that they could not inject a new issue at that time when they were not considering the fourth amendment situation at that time.

So it was solely on the basis of how much harassment he could give the OSHA inspector in coming in to search.

Mr. SARASIN. The fourth amendment question was not at issue.

Mr. HANSEN. The fourth amendment was not at issue. It was stated very succinctly at two points in the decision of the court of appeals.

Mr. SARASIN. You refer to the Smith study and you make a statement, "Fines of hundreds of thousands of dollars received from cita-

tions." Did not Smith say, in his study that fines are ridiculously low and provide no incentive for compliance?

I think that, specifically, nonserious violations which according to him, comprise 98.7 percent of all violations draw fines of about \$16 and the average noncomplying firm is fined about \$170 for serious violations.

The fines average \$648 and can account for 1.2 percent of all violations?

Mr. HANSEN. Smith, I think, had an economic idea of how to take care of certain matters and he came to that conclusion based on certain adjustments of the workmen's compensation law and so forth.

I would say this. I think that he very clearly laid out the fact that the compliance method of trying to induce health and safety was not productive under any circumstance and that there was no way they could charge enough to do it.

I think that was part of what he was trying to point out. I think also it is important to point out—we will just stop there.

Mr. SARASIN. You referred to the worker's comp situation as being an incentive method and a better way to handle it. In 1973, I polled 1,100 businesses in my district to inquire as to their experience with OSHA in an exhaustive questionnaire.

Response was very high. Almost 90 percent of the small businesses in my State, in my district, had not received inspection from a comp carrier. It did seem that the larger premium payers were the ones that were getting the safety and health expertise from the insurance carriers.

The smaller ones simply paid the premiums; they never saw any one. What bothers me, of course, is that small businesses do have serious hazards; they are 85 percent of all businesses. What should we do to resolve that situation?

Mr. HANSEN. Knowing the workmen's compensation, you pay a basic rate to get a 100 and then you are tagged by basically your experience and whether you can qualify or not, just workman's compensation.

There is liability insurance, licensing requirements at the local level, State and local health and other types of inspectors, businessmen and all types of programs with which they have to comply, not just workmen's compensation.

I think they are more than in abundance to compliance. If they cannot do proper, they cannot even get the insurance. They cannot get a decent rate that they can afford to live with, they cannot get the licenses, they cannot get in business.

There are all sorts of incentives for them to do it right, so that they can either get into business or stay in business and keep their costs down. I think that the incentives are there much more so than for a man to come in on a surprise inspection and try to catch you in some kind of a lax period.

I think this is totally unacceptable and certainly it just inflames people to think they have to operate this way. It has proven itself to be totally nonproductive. OSHA would have to have a work force of a hundred times larger than it has to be able to induce compliance on that basis.

I think this is totally unworkable. The insurance companies of the United States have cast that off years ago as a means of trying to determine whether a person is complying with the ground rules to get and hold insurance.

Mr. SARASIN. I do not think anyone would argue that safety is not good business from the employer's point of view as well. Injuries are expensive and the safer the workplace, the better off you are.

Is there not a competitive advantage to the smaller operation overlooking some minimum safety standards as opposed to even another small business who is trying to adhere to safe practices?

Mr. HANSEN. Mr. Sarasin, I have looked into this very carefully because I knew I would be asked many times; of course I want some answers too. Those factors I stated to you before, I think are incentives for the man to do the job right, plus a very big spectre that has entered the scene in the past few years.

The fact that a worker can take an employer to the cleaners on a liability suit if he wants if something happens; I do not think there is any reason to believe that under the incentive system, the pirate system, the system that says do it right or you are really going to get clobbered, and more I mean under a liability suit than OSHA could ever do, I think the incentives are there.

I do not think with that we need to have a big, expensive Federal program that arbitrarily walks in on everybody and violates his rights in the process.

Mr. SARASIN. The employee in an employee-employer situation is precluded from bringing any action other than his rights under workmen's comp.

What we have seen a great increase in, and I am also pretty concerned about the multiplicity of product liability suits, third-party actions which are creating a great cost, I think, to the country.

Worker's comp is also under study by this committee. There is a bill that has been filed by the chairman to federalize the workman's compensation system; without getting into exhaustive response, I wonder if you have any feelings about that?

Mr. HANSEN. I do not think it needs to be federalized.

Mr. SARASIN. That's a short and nonexhaustive response. There is a report, I understand, in Idaho that there has been a marked decline in accidents. It is the only place I am aware where worker's comp premiums have actually gone down.

Do you attribute this to the success of the Occupational Safety and Health Act?

Mr. HANSEN. Not necessarily; in fact, there was some increase, some improvements in the Bureau of Labor Statistics nationally which they were talking about, but OSHA was very careful not to claim any credit for it.

In the first place, they do not keep a very good record as to what they are doing so it is very hard to determine. In the second place, there are so many forces entering into this type of thing, the changes in the complexity of industry, the changes in the way that you take statistics, any number of things, and of course, all of the various sources planning on improving health and safety.

I do not think there was any way for them to determine with any degree of finality that they have been any significant part in it. In

fact, the greatest claim they would make is that maybe some of their efforts at education might have been somewhat productive.

That is as far as they would go.

Mr. SARASIN. We have not talked very much about the occupational safety and health side of the question. Obviously, OSHA, in its beginning years, did not pay much attention to it.

They did point out the Kepone situation in Hopewell, Va. This committee held hearings in Hopewell when that story broke. You are right; there should be some red faces all around at all levels of government. I do not think any one area can accept all the blame here.

They all apparently assumed the other guy was going to take care of the problems. What do we do about that? Do we not have a serious situation with regard to those chemicals or products which are used in the manufacturing process which can in fact cause long-term health damage?

If we do not have an Occupational Safety and Health Administration, how are we going to deal with it?

Mr. HANSEN. That goes back to Mr. Smith's report. He concluded there was not really much need for a safety program, but he could see some possibilities for a health program because health deaths are considerably higher than safety deaths.

There are safety engineers and studies which have stated that there is no way you can remove hazards in a job enough that you can stop the accidents, because anywhere from 60 to 80 percent of the accidents are because of the unpredictability of employees, and not because of the physical surroundings that you could change by some kind of an inspection.

I think that as far as safety circumstances are concerned, you might have the problem of throwing good money after bad to improve on something that might be very difficult to improve upon.

In health, I think there could very possibly be a place—I think there possibly could be a place for the Government in the sense that there might be some punitives with the negligent and gross situations occurring.

I think this perhaps should be explored, but not in the general warrantless, unheralded searches.

Mr. SARASIN. Would the administration, whatever it was called, have the power to make warrantless searches to try and determine violations?

Mr. HANSEN. I do not think that is necessary. I think all you need is if you find a gross situation, because of statistics or because of any number of factors obvious to the public, I think you can go in and get a search warrant, go right in, inspect, you find out what the dickens is going on, you can have a hearing, you can investigate; any number of things that are already available to the Government.

I do not see any way where the warrantless search on a random basis is productive in the area about which you are talking.

Mr. SARASIN. If the Supreme Court decides the *Barlow* case in favor of the Occupational Safety and Health Administration or Act, do you feel that a penalty-free onsite consultation program would relieve some of the pressures and improve our safety and health record?

Mr. HANSEN. I can tell you that, certainly, that type of an attitude would probably have kept OSHA out of a lot of the pitfalls it has

been in so far. I am not sure that it is totally necessary in view of all of the other areas that an employer has to comply with, but, certainly, I think this would keep the employer from getting so concerned as to the way OSHA has been administered on that kind of sneak, hard-hitting approach.

In fact, strangely enough, I suppose because of the fact that I have been very strong about the fact that OSHA has, in my opinion, been nonproductive, it has been dictatorial, a number of things on which you could put adjectives, I have had all sorts of people working for the Occupational Safety and Health Administration across the country, they are safety inspectors, any number of people who have come in and said that we are with you, we feel this is the problem of the program.

We do not like to play this kind of a bad guy when we walk in, that we cannot even advise a person how we can improve it so we can go back later and see if he has done his job. They feel very badly.

I have one inspector in Idaho who—his job has been abolished and he has been pushed back to be an inspector but he was a consultant. He submitted a whole pile of affidavits about how pleased people were that they had that kind of a service.

There is something to be said for that; yes. In fact, I have three men in the field who submitted out of probably obviously a pretty small workforce in a State that does not have much population, a pretty high percentage; they have had tremendous turnover.

The OSHA employees are not happy; they generally speaking, I think, think the Act is nonproductive, and it is very difficult for them to live with personally.

I feel obviously rather strongly about the subject of onsite inspections. I think it is a small business without the in-house counsel and house safety procedures that end up with the bad rap.

I know the gentleman has introduced legislation to this effect. I think it is well directed. My concern for it, if I might say, is one thing. That is, as long as the punitive exists behind it on the random inspection and the arbitrariness of inspection, I do not know how many people would invite a consultant because they would be afraid they would be followed by the other guy.

Mr. SARASIN. This would clearly have to be handled within the Department itself, if such legislation were to be passed. I think one other thing needs to be mentioned here. That is, OSHA is an act that relies on voluntary compliance.

There are never going to be enough inspectors for every workplace in the United States to be inspected. They are not going to be inspected. It is really the threat, if you will, that there might be an inspection that tends to get these various industries and businesses into form.

Mr. HANSEN. I would like to submit something for your final record, whatever the chairman sees fits, which would be the testimony of one of these inspectors who states what the problem is that you are talking about.

The fact that there is still an administrative arbitrariness as to whether they would separate the consultation situation from the inspection situation, he found that he was being betrayed.

Mr. SARASIN. Of course, OSHA now, at least under the Federal Act, cannot provide onsite consultation or consultation at all, but under the—does Idaho have a State plan?

Mr. HANSEN. Idaho has a Federal plan. They were providing the service for a time; then of course they abandoned it. The complaint this man had was (1) that they should abandon it which was in your favor, and (2) that he could not keep it honorable because the administrator of the program just could not resist the idea of sending the inspector in behind the consultant.

Mr. GAYDOS. Would my colleague yield at that point? Mr. Hansen, would you make available this individual's name and possibly, if you could intercede on behalf of the committee, ask him if he would be so kind as to make an appearance before this committee. We would like to accommodate him.

I have some personal questions and I know the committee does generally, to ask this individual. Do you think he would be available?

Mr. HANSEN. I am sure that he would.

Mr. GAYDOS. If you would leave his name, you will be doing the committee a good service. We will plan to contact him.

Mr. HANSEN. I would be pleased to.

Mr. GAYDOS. Mr. Sarasin?

Mr. SARASIN. I have no further questions. I would like to thank Mr. Hansen again for being here this morning.

Mr. GAYDOS. Thank you, Mr. Sarasin. One very quick question before I call on Mr. LeFante. You mentioned kepone and the incident down at Hopewell. That is a sore spot with this committee generally.

I imagine as you say in your statement a lot of red faces did result, but let me ask you, Mr. Hansen, you cite the kepone incident; do you cite that as a factor that would justify doing away with OSHA?

Mr. HANSEN. I cite it two ways. I suppose if you are still a strong advocate of a Federal inspection system, then maybe you had better be geared to work so I could cite it that way.

I do not happen to be a strong advocate of the Federal inspection system so I guess I would not use it that way. I would say that I think it was evidence that probably some other areas that could have stepped in to stop this sort of thing may have done so if they had not stayed back waiting for OSHA or some other Federal agency to act.

However, I did concede one thing earlier, that is that there may be a purpose for a Federal agency to look in on activity where there may be criminal negligence. Certainly I cannot fault that.

Mr. GAYDOS. If you are suggesting penalties only in cases of criminal negligence, I think you are probably ignoring 99.9 percent of all the accidents and how they occur.

That is the exception—the criminal aspect—is it not?

Mr. HANSEN. I think you are saying you cannot prove intent sometimes?

Mr. GAYDOS. That would be one of the difficult elements of it. We did have last year and the year before, 12,000 to 14,000 people who died.

We have another 200,000 to 300,000 that have been injured and some permanently. We have to do something about those statistics.

Mr. HANSEN. Let me throw that back to you, Mr. Chairman.

Mr. GAYDOS. Sure.

Mr. HANSEN. We had an improvement from back in the thirties of over the 43 per 100,000 deaths until 1970 when it became 17, now it is about 15 to 17. In the period when we should have had the best opportunities to make further improvements, we have stagnated.

I guess I believe that instead of OSHA really doing something to help us continue the decline, it has helped us to level off. I think we had better be looking at how we can make that statistic continue to improve so that we can save the lives you are talking about.

Mr. GAYDOS. Would you make available to this committee those statistics to which you refer?

Mr. HANSEN. Yes, sir. In fact they are available to the committee in these enclosures on the testimony.

Mr. GAYDOS. Are you familiar with the statistics involving your State of Idaho?

Mr. HANSEN. Yes.

Mr. GAYDOS. Do you know the injury figures? Have you had an opportunity to look at them?

Mr. HANSEN. Yes.

Mr. GAYDOS. Is it good or bad; has there been an improvement or not?

Mr. HANSEN. There has been an improvement this past year. Would you like me to give you one of the—

Mr. GAYDOS. Sure, we might as well get to it while you are here.

Mr. HANSEN. From the testimony or statement of Mr. T. Daniels Sanger, who has been very concerned about the methods and the results and who is an inspector for OSHA currently, I would like to just tell you this.

On page 2 of his statement, and I will submit this for the record, if you would care.

Mr. GAYDOS. Would he be willing to testify before this committee?

Mr. HANSEN. I think he certainly would. He feels very strongly about the shortcomings of this agency. He is a long time inspector. He is not a Johnny-come-lately. He is very serious about it.

He says:

The Bureau of Labor statistics regarding the job injuries are often tendered as justifying OSHA's existence. I seriously question the validity of these statistics because when OSHA began almost all OSHA inspectors were telling employers to list all accidents on the necessary forms.

These would include minor cuts and scratches, dust in the eyes and so forth. Later OSHA told employers to no longer list these first aid cases. By simply not recording these minor cases anymore, many employers showed a substantial accident rate reduction on paper.

There is more to it here but I think the contention that perhaps the Bureau of Labor statistics have been almost to the point of being phoney—

Mr. GAYDOS. Mr. Hansen, are you implying then that the employers in some fashion or other have been fluctuating in their compliance as to the types of accidents that they do report?

Do you not think the culprit, if there is one, just raising the question with you, lies with the employer and the way they report?

Mr. HANSEN. No, sir, Mr. Chairman, they were doing it according to instructions from the Department of Labor. If there is a culprit, I think you should call the Government people here and ask them why.

Mr. GAYDOS. We are going to have the Government people in.

Mr. HANSEN. OK.

Mr. GAYDOS. I do want to remind you—Mr. Le Fante?

Mr. LE FANTE. Thank you, Mr. Chairman. Mr. Hansen, on page 6 of your prepared statement, midway through, you refer to OSHA as "a product of the old idea that government can solve anything and this quickly just became another nonproductive expensive agency that has closed out many small businesses."

Are you able to provide more details establishing a cause-effect relationship between OSHA requirements and small business failure? That is a very interesting statement.

Mr. HANSEN. By OSHA's own statistics, they do not keep those; the Environmental Protection Agency has kept a fatality list of what has happened because of the compliance that they have demanded.

They are very similar. As far as what they are demanding and what they do demand, there are some indications from that—there are indications from other sources, which I would be happy to make available to the committee for inclusion in the record of the files which I think would substantiate appreciably my contention.

Mr. LE FANTE. Is it accurate?

Mr. HANSEN. It is as accurate as anything unofficial would be. It is observant.

Mr. LE FANTE. Let us assume that the courts upheld the constitutionality of OSHA. Do you suggest we go into reform?

Mr. HANSEN. You go into reform?

Mr. LE FANTE. Yes.

Mr. HANSEN. I think we have to look towards some way. I said in my statement that we need to do something to continue to increase the safety and the health aspects of the men at the working place, the men or women.

I do not think that we should let up on this. I just happen to think that OSHA is the method to accomplish it. I do not think it has demonstrated that it can. I think there are some ways we can do it, as I mentioned, through the incentive system and other things.

I would encourage the committee to look into it. I would like to be a part of some of the suggestions to do so. At this point, I think OSHA is just going in the wrong direction.

Mr. LE FANTE. Off the top of your head, in addition to what is included in your testimony, do you have any suggestions for priorities with regard to OSHA?

Mr. HANSEN. In what way?

Mr. LE FANTE. In the way of reform. For example, do you think that perhaps the American public, particularly the working public, would be best served if the States were to assume the responsibility for this area? Hypothetically, what if we were to place the entire thing under State inspection and enforcement, and control it with regulation, oversight, and guidelines at the Federal level?

Do you think that would be a step toward reform?

Mr. HANSEN. Mr. Le Fante, I think the approach of OSHA, whether administered federally or statewide is wrong. It has been declared unconstitutional at the Federal level. The inspection section has also been declared unconstitutional in some of the State courts.

I think you have the same problem either way. I think the challenge to you and to all of us is to find a new thrust that will be compatible with citizen rights and still cause some improvement in health and safety statistics.

OSHA has done neither.

Mr. LE FANTE. Thank you.

Mr. GAYDOS. Mr. Hansen, I asked in hearings last year and the year before of every witness that appeared before this committee, "Can you give me an instance and a name where a small business was closed or went out of business because of OSHA?"

In every instance, without exception, all of those witnesses who testified both pro and con testified that they knew of none. I am now asking you.

In your statement, you state that OSHA "is an expensive bully that has closed thousands of businesses." Can you give me a name, one business? Would you provide that for the committee's consideration or investigation?

Mr. HANSEN. Mr. Chairman, I will be happy to submit not one but several for your consideration.

Mr. GAYDOS. Please.

Mr. HANSEN. I do not have them right at my fingertips but I am fully aware of those who have either been so severely penalized and put upon that they certainly would bear scrutiny by this committee, some who have been investigated eight times in a 1-year period while others got no investigations.

The arbitrariness, the expense, why the horror case. There is one in Nebraska I can tell you where the man was cited \$244 in a fine. He appealed to his U.S. Senator, the Senator brought it back to the Department of Labor as we do, and it went back to the fox and chicken coop.

What happened when he got there was that the thing had become rather old and he said well, you are 42 days past due, \$750 or so a day, my memory is not completely certain. That is \$32,500 that you owe in delinquent charges.

I also see some additional violations that will run it up to \$35,000 or \$38,000 from \$244. Now that is shocking. They did go, of course, on to appeal and it was thrown out, but nobody reimbursed the man for having to stand the legal charges to defend himself.

I can tell you horror story after horror story the same way and some of them do deal with these cases that are before the Circuit courts now.

Mr. GAYDOS. If you know, is that man still in business.

Mr. HANSEN. Yes; I think so.

Mr. GAYDOS. Mr. Shuster?

Mr. SHUSTER. Thank you, Mr. Chairman. I certainly want to compliment you, Congressman Hansen, for taking the time to come before this committee. I am new on this committee but I come to it

fortified with very strong feelings on the part of many small businessmen and farmers from central Pennsylvania.

While much of what you have presented, quite naturally reflects the views from your part of America, I must endorse your concern, based on the feelings of people from my congressional district and their feelings are not ones of concern, Mr. Hansen, not ones of displeasure, but rather feelings of outrage at a bureaucracy run amuck. I am very much interested in learning more as we have these hearings. I would like to check a couple of points you made.

I certainly understand your feelings and in large measure share your feelings, but more important than your feelings are the facts.

I think there is a body of facts here. First, let me understand, is it really true that OSHA, under the statute, was required to submit a report to the Congress in April 1974, an oversight report and they have not yet done that today?

Mr. HANSEN. This is true.

Mr. SHUSTER. Let me ask you this. What does metastatic mean?

Mr. HANSEN. Fast geometric progression; rapid. I am not a very good dictionary.

Mr. SHUSTER. You refer to Steward Smith, formerly in charge of Health Evaluation for the Department of Labor for many of your statistics. On the one hand, is Mr. Smith a distinguished civil servant or is he a malcontent?

What is the credibility of this man?

Mr. HANSEN. I think it is easy to put labels—

Mr. SHUSTER. Is he still with the Government?

Mr. HANSEN. No; he is not with the Government; I think that is what made him free to talk. He apparently has pretty good credentials. May I recommend to you this book put out as part of the evaluative studies of the American Enterprise Institute called "The Occupational Safety and Health Act, Its Goals and Achievements," by Robert Steward Smith.

I think that you would have to read the publication in its entirety to appreciate what the gentleman is saying. I do not think he is against Federal Occupational Safety and Health Administration as I am.

In fact, he makes some strong recommendations as to how perhaps an effective program could be accomplished through, maybe more economic pressure or incentive.

Mr. SHUSTER. Mr. Chairman, I would like to respectfully request that Mr. Smith be called before this committee to testify.

Mr. GAYDOS. The Chair will honor your request. Let the record so indicate, we will at the earliest convenience make those arrangements. If the gentleman would yield?

Mr. SHUSTER. Certainly.

Mr. GAYDOS. The committee is familiar with the publication. We have had it for approximately a year and we have studied it in detail. We do appreciate the content, but we have some serious questions of the author.

Mr. HANSEN. I do not agree with everything he says either, Mr. Chairman, but I think it would probably be interesting to talk with him.

Mr. SHUSTER. I would, in conclusion, like to make a point that I have a lot to learn on this committee concerning OSHA. I have some very deep concerns. I think there is a proper place for the Federal Government's role in safety and health.

From what I have seen in my own congressional district, this is an agency run amuck. I would like very much to be educated along the way and find a way either to clean up or get rid of this agency, if we cannot clean it up.

Thank you very much, Mr. Chairman.

Mr. GAYDOS. For the record, the Chair would like to insert a reference to the existing act, section 4, subsection B(3). I would like the record to show that there has been some reference, of course, made to the Secretary and what the Secretary is responsible to do.

In the last 2 or 3 years, regarding the report, we are talking about 2 or 3 years delay. Let the record show that the act requires:

The Secretary shall within 3 years after the effective date of this act, report to the Congress his recommendations for legislation to avoid unnecessary duplication and to achieve coordination between this act and other Federal laws.

I just want the record to show that under the act, the Secretary is not required to conduct oversight as such and the terms or words of the legislation will speak for itself.

Mr. Zeferetti?

Mr. ZEFERETTI. Thank you, Mr. Chairman. Nice to have you and your expert testimony with us this morning, Mr. Hansen. One thing concerns me though. I think every one of us shares the same concerns about safety standards being upgraded along with the health standards for each employee and employer.

We know there have been abuses in various areas of employment, which resulted in injuries, safety hazards, death. You remarked before something about even if we had, in your opinion, some voluntary on-site consultation, that the employer, even with that benefit, would not call anybody in for fear of having to comply with somebody else's second visit.

We must find some way of rectifying this. Unfortunately we do not have a report that shows any reduction in the number of accidents or deaths. Since we do not have a report, we cannot look at it.

There has to be a better way of doing things. There must be a better way of finding out, other than just waiting for this oversight report to come which may never come in the true sense.

We feel, I think the committee feels, that when the legislation first came out, something had to be done to protect the employee. The fines that were punishment, as you put it, were so miniscule in themselves that we could not see the justification for going out of business, even the small businessman, if in fact there was compliance with that particular type of change that was required.

Give us an off-the-cuff type of incident that possibly you have walked into involving that type of compliance or that type of cost—I know you mentioned the case of the 200-and-some dollars.

When you look at some of these fines, the average fine is about \$14. Where is the real impact on that small businessman who makes that change to make it a little bit better for that employee? Where does he really lose?

Mr. HANSEN. Mr. Zeferetti, I do not think you ever lose by doing the right thing for your employees, but OSHA's requirements for employers are often not necessarily in the area of health and safety.

It could be quibbling between 43 and 44 and 42 inches in the height of a guardrail; it could be any number of things. It is sometimes in the requirement for a cover for a saw that will not take a cover and in fact, you end up putting hands into the shielding to lift it to get the material, the wood through, in order to do it and you are in greater danger than you were before because in fact, these people do not understand the nature of the industry they are inspecting.

It is the compliance cost, not the fines. The fines are in the millions of dollars; the compliance costs are in the billions of dollars. You have a small firm maybe in an older building, they come in and say they have to have all three wire plugs in here and the only electrical equipment they may have is an adding machine.

They make them wire hundreds or even thousands of dollars worth of electrical wiring to accommodate something that has never electrocuted anyone anyway. That is what I am getting to. It is ridiculous, the compliance cost.

I think I can measure very close by statistics that has been around \$15 to \$20 billion since OSHA's inception. That is a whale of a lot of money. Of course in the big businesses, they pass it on to the consumer. In the small businesses, they are not able to do this.

They have to swallow it; when they cannot swallow, it puts them in a condition where they either go out of business or are in severe debt or something else.

Mr. ZEFERETTI. Do we know whether the inspectors themselves follow any guidelines for employment? In other words, whether they have to have an experience factor in *x*, *y*, and *z* to get that particular type of employment?

Mr. HANSEN. Very little.

Mr. ZEFERETTI. Do they have to reach some area of standard for themselves?

Mr. HANSEN. What they are doing is inspecting in such a broad range anything from the power takeoffs on tractors over to a garment factory or something. It is such a broad range, there is no way anyone could have that kind of expertise really when you get down to it.

They make some stupid bumbles, severe mistakes. There is no question about it. For instance, I can tell you that in a small automobile shop, one inspector went through, he gave them a complete clean bill of health and later on he added a second exhaust fan in the paint department to make sure; the employees thought there should be added ventilation so he added a second one.

They came back and cited him because he had a second one there because somehow he had not vented according to the way he wanted it, even though it fit city and national fire codes and everything else.

Here, for trying to do something for his employees, they actually penalized him. This is why I am saying that I actually believe that OSHA stood in the way of health and safety in many respects.

Mr. ZEFERETTI. I am just concerned with whether or not it is the implementation of the individual rather than OSHA itself. I am just concerned about whether or not we should be looking at some

sort of employee standards for OSHA inspectors. Perhaps we should be looking at some sort of standards that he should have before he can get that job, or some sort of training institute for them before they go out in the field.

Maybe that is an end that we could look toward.

Mr. HANSEN. I certainly agree if you are going to make it work at all, I do not think you will because I think it is too broad; I think you certainly have to have that kind of expertise.

However, it is ironic that they are moving away from that because there has been a trend in this Congress this past few years to try to move, for instance, the Mine Inspection Act, MESA, over under the Department of Labor to the general area along with OSHA, not necessarily to combine, but to be able to interchange or whatever.

I think you are actually moving into the opposite direction to what you are suggesting, which I think is completely foolhardy.

Mr. ZEFERETTI. Thank you very much.

Mr. GAYDOS. Mr. Hansen, I think all of us ought to pause for a second to go back to when OSHA was first enacted.

You know, OSHA inherited a lot of the deficiencies that you are referring to.

There were already industrial standards promulgated by insurance companies and the industries themselves. There were consensus standards, the very definition of the word "consensus" meant the ongoing type of standard that custom had concluded should cover the particular industry. We inherited all of this.

If there is someone to be criticized, it should be industry itself. I do pledge to you, I say it sincerely on behalf of the committee and myself personally, we are going to find out how we can improve upon these standards.

We did not put together these standards, they were there; most of the people today active in OSHA came from industry; I have the statistics on it and I would say 99 percent of them, they are all industrial people.

I do appreciate your position but I think you are unwarranted in some of the criticism that you level in that particular area. That is my personal feeling and I do respect yours.

Mr. HANSEN. May I respond? I would like to say that I cannot share your view. I will tell you why. The fact that standards existed did not mean that the Government in its wisdom would adopt the proper standards.

I guess you have seen how the Government has not exercised its wisdom too well. On one hand, you have cyclamates, they are in, then they are out. There is not infallibility in Government.

I think sometimes that we assume there is fallibility in the private sector and infallibility in Government and I cannot buy that.

What OSHA did, for instance, they came in and quickly gobbled up all of the regulations and rules they could find; they put them in and some of them were tremendously outdated. For instance, in one place, you were fined for having ice in the water barrels or water for the workers because of an old regulation that ice was not necessarily pure in those days.

They picked up this one, an old, antiquated one. On the other hand, they were finding they were not having ice in for the convenience of

the workers, so you get it both ways. I guess what I am saying—

Mr. GAYDOS. Would you yield on that point? Where did they get that standard, the ice and where it was made available—where did it come from?

Mr. HANSEN. You've got me.

Mr. GAYDOS. Was that the established practice?

Mr. HANSEN. Where did they get the idea that they had to have a comfort station 5 minutes from all of the farm workers. Sure, they got it from the orchards of California; they picked it up from—

Mr. GAYDOS. Industry—say the word; it is not going to bite you—industry.

Mr. HANSEN. That came from the State of California; that is not industry. The point I am trying to get to is that they not only picked it up where maybe it would have worked for an orchard but the Bureau applied it to a wheat field that might have 10,000 acres in it and the only way you can have an outhouse anywhere near the worker there was to put it on a little trailer and carry it along behind the plow.

This is how these things are applied.

Mr. Gaydos, they worked before, those statistics show until 1970 that we had a real increase in the health and safety of workers. It was when OSHA came in and misapplied all of these things that the thing blew up.

If you want to really put a finger on somebody, it is on the ridiculous interpretation that bureaucrats put on something that private enterprise has been using. I do not understand.

Mr. GAYDOS. Do I understand you correctly to suggest that because of OSHA and its methods of enforcement—and about which I have some serious questions, since they have only 1,000 inspectors—that there is not too much enforcement going on. Are you concluding that the incidence of injury has increased rather than decreased; is that what you are telling this committee?

Mr. HANSEN. No, what I am saying is that I think you have ended up with a stagnated situation of uncertainty where a lot of health and safety-inducing agencies have held off from doing their job.

My guess is because the Government is so overwhelming when it does something, they have not been able to move into new areas that might have been helpful.

You cannot get OSHA because of this 22-step process of adopting a regulation to move fast enough to keep up with the times. They are always behind the fire codes and everything else.

They were still adopting regulations that were 100 years out of date. All of this, Mr. Chairman, I think is the problem that we are talking about, the inflexibility of Government.

Mr. GAYDOS. I do want to let the record show and for your information, you probably know, Mr. Hansen, but OSHA, in its internal review and self-analysis, does now have under consideration over 35 percent of the rules, regulations, and standards.

It is going to be a long drawnout process. I want you to know that if deficiencies in that area do exist, they are cognizant as a group and we are too.

We hope that with your help and the help of other people like you, we can put this thing in proper perspective and ferret out some of these things.

Mr. Cornell?

Mr. CORNELL. Thank you. Mr. Hansen, your testimony has been a little disillusioning. I thought we were infallible but perhaps we are not.

Did OSHA contact you and ask for your State, what type of factories or manufacturing places should be inspected?

Mr. HANSEN. I have not had the courtesy of any such contact from people from OSHA.

Mr. CORNELL. I am sure we are all aware that we have had complaints about so-called nitpicking by OSHA. You will recall that a little over a year ago, the Subcommittee on Appropriations was taking up the budget of OSHA.

They instructed that OSHA was to place emphasis on major threats to health and safety to the workers and report back before they submitted the next budget. This was done. Have you seen any improvement as a consequence?

Mr. HANSEN. You can get two sets of statistics and they really do not correlate and you have not done anything that you can establish, some improvement by one, no improvement on the other.

In fact, on a per capita basis, by National Safety Council statistics, the act has been negative.

Mr. CORNELL. I have found some evidence. At least, in my district, I have had a lot of complaints from feedmill operators. One of our Congressmen who was here at the time of enactment of this legislation, was asked by OSHA what should be inspected?

Apparently they misinterpreted what he said and placed their emphasis on the small feedmills that we find in almost every little town.

What you said was true, of course. It was not so much the fines as the compliance. When they were ordered to rewire the whole place, where you might have two people working, and put in new motors that cost \$25,000 or \$30,000, they are not capable of doing it.

I note you made the statement that you thought that only through specific legislation could we hope to make any improvement if we do not do away with it entirely. How in the world would you be able to make specific legislation to consider the areas that would be covered here?

How could Congress do that?

Mr. HANSEN. One of the problems that came in the Barlow decision in Idaho regarding inspection, section 8(a) of OSHA, was that it was not specific; they did not define between a warranted and warrantless search.

The court said they were not going to do Congress' job for them, then they declared it unconstitutional and void. I think that was a case of lack of being specific. That was on inspection process.

Another would be on what you mean exactly by the adoption of certain standards. OSHA went out with *carte blanche* authority—they just picked it up, 100 years old, recent, anything, pull it in and again you had a hodgepodge, you had a mass of conflicting standards.

You had all sorts of things that were ridiculous, out of date, almost even laughable, Dick and Jane stuff, and everything else.

The chairman mentioned something about having 35 percent adoption so far. At this rate, they've been in business about 6 years. It is going to be 1985 or something before you ever get OSHA in business.

I think that is a pretty sad commentary on the speed of which government can operate effectively.

Mr. SHUSTER. Would the gentleman yield?

Mr. CORNELL. Surely.

Mr. SHUSTER. There has to be a test of reasonableness in all of this, it seems to me; an example to me is one of OSHA's regulations that says that cuspidors are to be discouraged but where you must have them, they should be cleaned daily.

As a young boy who had to clean the cuspidor in my grandfather's store in Plattsburg, Pa., that one really struck me, it is really absurd. What does cleaning a cuspidor have to do really with health and safety?

It seems to me we should be able to write some kind of language that would apply some rule so we do not put cuspidors into the whole process.

Mr. CORNELL. I think it might have something to do with health.

Mr. HANSEN. If you use it at all.

Mr. CORNELL. If you belong to a religious community where some of the older men engaged in that, it does have something to do with health.

Mr. Hansen, one thing that particularly strikes me, it seems to me that the whole objective of any type of legislation like this would not be punitive but preventive. Yet from what you said today, I cannot conclude that any of the suggestions that you have made would be any more preventive and less punitive.

Certainly we do not post factum, that is, to get workmen's compensation subsequent to an accident; could you respond to that?

Mr. HANSEN. All I can say, Mr. Cornell, is that for years and years, liability insurance, workmen's compensation, health inspections, all of the other means of controlling health and safety that we have, these things brought us from the abominable days of the early stages of the industrial revolution up to a plateau in 1970 that we have not exceeded since we put in OSHA.

They showed improvement; OSHA has not. What I am suggesting is an improvement on a system that showed improvement and doing away with the system that has shown stagnation. I think that I am in a better position to prove that my methods would be productive than you are to prove that OSHA would be productive.

Mr. CORNELL. How do you account then for the enactment of the legislation?

Mr. HANSEN. I think that legislation sometimes is done in passion and emotion. I remember several pieces of legislation that have gone through here that people have cited, maybe an extreme or a certain instance.

They decided to generalize a piece of legislation to cure a certain instance that was of a peculiar nature. I do not think that is ever good legislation to try to deal with a peculiarity through general disciplines.

It is the same thing as a child in a classroom. If you have a problem child, you do not discipline the whole class.

Mr. ZEFERETTI. Will the gentleman yield for a question?

Mr. CORNELL. Surely.

Mr. ZEFERETTI. You mentioned compensation; I think you heard earlier mentioned that we are going to have hearings on compensation.

One of the reasons is because employers again are screaming about the high cost that the carriers have for that type of liability.

Again it is a catch-22 type of situation where we have on one hand, high rates of insurance and not even the ability to carry insurance in some instances on a compensation level and again, OSHA is trying to—I would just like to get a comment related to that.

Mr. HANSEN. Of course, people are screaming about a lot of things. They scream about high insurance rates, but they also scream about high taxes, about high cost of operations, high fines, and everything else.

It is one thing for them to scream about one thing, but when you impose two or three other elements on them, then you break his back.

Mr. ZEFERETTI. Thank you.

Mr. CORNELL. Thank you, Mr. Chairman.

Mr. HANSEN. Mr. Chairman, may I say one thing? I appreciate your indulgence. We have had a long colloquy here. It has been productive for me; I hope it has been for you. I think it boils down to one thing, the whole fight for this country was over rights, as you well know.

I do not think we have to solve the rights and benefits of one group of people by stealing from another group. I think there must be enough wisdom here that we can balance this. If you start to think about what got our Founding Fathers, John Hancock and some of these people into it, it was other seventh amendment-type things, trial by jury.

It was unwarranted searches, it was any number of things that caused them to rise up and cast us loose from the mother country, Great Britain. Here we are, 200 years later, in many cases slipping just a little bit into an area.

You cannot go into any home of any criminal suspect without a search warrant. I guess I would just like to leave this one question for the committee.

Is the American farmer and American businessman to have fewer rights than the common criminal?

Mr. GAYDOS. I appreciate your appearance here Mr. Hansen. I do want to leave you with this understanding. I think you and I have some agreements. Administratively, there has been some need for improvement as far as OSHA is concerned.

I can understand, going back to what Mr. Sarasin had to say, that there was a change of Secretaries three or four times, so I am sure we would have to have some of these problems. I would hope that you would leave this committee with maybe the concept or idea that basically OSHA is proper, basically OSHA is right, because if you did not have OSHA, you would not have anything in its place.

It is our hope that maybe you will come around to that thinking of ours, of the committee, as a group. As far as administration, I think you and I agree—

Mr. HANSEN. Mr. Chairman, we did not have anything in OSHA's place before you got it, and we were doing better in progression than we are now. I hope the committee will come up with something that will be productive.

Mr. GAYDOS. I just do not want to get into the facts and statistics, but for the record, if you want to refer to that aspect which you raised, I want you to know that the statistics do not support your position.

The statistics as a matter of fact are just the opposite. There are statistics that are very affirmative from reliable sources.

Mr. HANSEN. Mr. Chairman, I have submitted figures in my testimony and otherwise that I think are supportable, and I guess I would have to leave on a note of challenge to what you just said.

Mr. GAYDOS. Thank you very much for your appearance. The next witness will be another Representative from the great State of Idaho, Mr. Steve Symms. Welcome to the committee, Mr. Symms.

I think you have probably had the benefit of our disagreement in some areas and agreement between the previous witness and the committee. I want to welcome you and again appreciate your appearance before this committee.

You appeared 2 years ago. Your information was most valuable. We are looking forward to hearing you again today.

[The prepared statement of Hon. Steven D. Symms follows:]

STATEMENT OF THE HONORABLE STEVEN D. SYMMS OF IDAHO
BEFORE THE SUBCOMMITTEE ON COMPENSATION, HEALTH AND SAFETY
OF THE HOUSE EDUCATION AND LABOR COMMITTEE

Tuesday March 1, 1977

Mr. Chairman and members of the committee, thank you for giving me the opportunity to express my views on the Occupational Safety and Health Administration. As you know I have been quite critical of OSHA both in structure and method of operation. [Since coming to Congress in 1973, it has been my contention that the Act was largely unconstitutional due to its conflicts with the Fourth and Seventh Amendments to the Constitution. Consequently, I have introduced bills to repeal OSHA in the 93rd, 94th, and 95th Congress. I might add that it was my pleasure to be joined in this effort by ^{the Honorable} George Hansen from Idaho's 2nd District in the 94th and 95th Congress.

During the past year there have been a dozen or so prominent court cases challenging OSHA and resulting in varying degrees of success. Of particular interest are the Fourth Amendment cases of Gibson in Dallas, Hertzler in Albuquerque, and Barlow in Idaho. In each of these cases Three-Judge federal courts have held the warrantless searches and inspections of private establishments to be in violation of the Fourth Amendment. Probably the most far reaching of these was the decision in the case of Barlow vs The Secretary of Labor where a Three-Judge Panel in Boise, Idaho, found:

"That Section 8(a) of Public Law 91-596 is unconstitutional and void in that it directly offends against

the prohibitions of the Fourth Amendment of the Constitution of the United States of America.¹

and

"That defendant, the Secretary of Labor of the United States of America, and all other defendants, and their successors in office, and all other persons acting by, through or under them, are hereby forever and permanently RESTRAINED and ENJOINED from acting or attempting to act pursuant to or in furtherance of Section 8(a) of OSHA...."¹

This case is now pending before the Supreme Court of the United States.

In the case of Frank Irey vs Occupational Safety and Health Review Commission ^{U.S.} the/Court of Appeals in Georgia questioned OSHA's ability to "provide any more than limited judicial review." It was on this basis that Irey appealed to the Supreme Court, challenging OSHA on the grounds of Seventh Amendment violations.

Mr. Chairman, I would now like to take a few moments to reflect on the implications of all this. It seems to me that OSHA is the kind of law that the Bill of Rights was designed to protect the American people against. Here is a law that permits government agents to enter a private establishment to look for possible violations of federal regulations so complicated that most lawyers could not

¹ Judgement in the case of Barlow's vs W.J. Usery in the United States District Court for the District of Idaho Civil No. 1-76-3, December 30, 1976.

(text of the judgement is attached)

understand them, not to mention a small businessman, without probable cause or any reason to suspect that violations exist. This is a right that is not afforded the police even in a capital felony case--and for good reason. Yet, it is construed as proper by some for government to operate in this fashion in the name of safety, health or some other public good.

Furthermore, Mr. Chairman, the enforcement structure of OSHA is unique. The most obvious consequence of this is that the U.S. government is seeking fines against its citizens administratively without the right to jury trial during any point during the proceedings. An OSHA inspector enforces the law with self-executing citations and fines termed "civil penalties." A citizen may contest the citations and penalties to another administrative agency, the Occupational Safety and Health Review Commission, which is still part of the Executive Branch of government.

OSHA, unlike other penalty enforcement schemes, provides for only limited judicial review in the Court of Appeals and the statute stipulates that all facts which are determined in the administrative proceedings are conclusive if supported by substantial evidence. Thus, it appears that the OSHA legislation grants to an executive agency greater powers than is constitutionally permissible. In my opinion, and I hope in the opinion of the Supreme Court, OSHA sets a precedent that violates a fundamental principle of the Constitution—that the Government of the United States, regardless of the form in which it chooses to do so, may

not impose a penalty upon its citizens without affording them the right to jury trial.

Mr. Chairman, I urge you and the members of this sub-committee to seriously consider the implications of a law like OSHA, consider the precedent it sets. Again, if all of this--the warrantless searches and self executing citations--can be carried out in the name of occupational safety what is the next step? By the way, I would like to say now that job safety is really not at issue here. What is at issue is whether or not the United States/^{Government} will continue to remain a government of relatively limited powers or will it usurp the basic rights of the people in the name of some noble cause.

Any governmental body, including the Congress of the United States, can always come up with what some people would consider a justifiable reason--be it economic egalitarianism, the environment, national security, or occupational safety--to restrict the freedoms of the people in the name of the public interest. That is precisely the reason for the Bill of Rights; to try and insure that such usurpation, regardless of how noble the cause, would not happen in America.

The authors of the Constitution and the Bill of Rights had first hand experience with a repressive government. Two of the grievances against the King of England enumerated in the Declaration of Independence were as follows:

--"He has erected a Multitude of new Offices, and sent hither Swarms of Officers to harrass our People, and eat out their Substance." ①

--"For depriving us, in many Cases, of the Benefits of Trial by Jury."

Consequently, Mr. Chairman, I have introduced H.R. 1348, a bill to repeal the Occupational Safety and Health Act of 1970, with Representatives Hansen, Moorhead, and McDonald as co-sponsors. I urge your favorable consideration of this legislation.

In conclusion, I would like to enter into the record the text of the Three-Judge Court decision in the Idaho case discussed previously. A copy is attached to my statement for the review of the members of the subcommittee. (2)

Thank you.

STATEMENT OF HON. STEVE SYMMS, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF IDAHO

Mr. SYMMS. Thank you very much, Mr. Chairman and members of the committee. I appreciate the opportunity to express my views on the Occupational Safety and Health Administration.

As you know, I have been quite critical of OSHA both in structure and method of operation. Since coming to Congress in 1973, it has been my contention that the act was largely unconstitutional due to its conflicts with the fourth and seventh amendments to the Constitution.

Consequently, I have introduced bills to repeal OSHA in the 93d, 94th, and 95th Congresses. I might add that it was my pleasure to be joined in this effort by the Honorable George Hansen, from Idaho's Second District, in the 94th and 95th Congresses.

During the past year there have been a dozen or so prominent court cases challenging OSHA and resulting in varying degrees of success. Of particular interest are the fourth amendment cases of *Gibson* in Dallas, *Hertzler* in Albuquerque, and *Barlow* in Idaho.

In each of these cases, three-judge Federal courts have held the warrantless searches and inspections of private establishments to be in violation of the fourth amendment.

Probably the most far reaching of these was the decision in the case of *Barlow v. The Secretary of Labor* where a three-judge panel in Boise, Idaho, found:

That Section 8(a) of Public Law 91-596 is unconstitutional and void in that it directly offends against the prohibitions of the Fourth Amendment of the Constitution of the United States of America and;

That defendant, the Secretary of Labor of the United States of America, and all other defendants, and their successors in office, and all other persons acting by, through or under them, are hereby forever and permanently "restrained and enjoined" from acting or attempting to act pursuant to or in furtherance of section 8(a) of OSHA * * *

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In the case of *Frank Irey v. Occupational Safety and Health Review Commission*, the U.S. Court of Appeals in Georgia questioned OSHA's ability to "provide any more than limited judicial review."

It was on this basis that Irey appealed to the Supreme Court, challenging OSHA on the grounds of seventh amendment violations.

Mr. Chairman, I would now like to take a few moments to reflect on the implications of all this. It seems to me that OSHA is the kind of law that the Bill of Rights was designed to protect the American people against.

Here is a law that permits Government agents to enter a private establishment to look for possible violations of Federal regulations so complicated that most lawyers could not understand them, not to mention a small businessman, without probable cause or any reason to suspect that violations exist.

This is a right that is not afforded the police even in a capital felony case—and for good reason. Yet, it is construed as proper by some for Government to operate in this fashion in the name of safety, health, or some other public good.

Further, Mr. Chairman, the enforcement structure of OSHA is

unique. The most obvious consequence of this is that the U.S. Government is seeking fines against its citizens administratively without the right to jury trial during any point of the proceedings.

An OSHA inspector enforces the law with self-executing citations and fines termed "civil penalties." A citizen may contest the citations and penalties to another administrative agency, the Occupational Safety and Health Review Commission, which is still a part of the executive branch of Government.

OSHA, like other penalty enforcement schemes, provides for only limited judicial review in the court of appeals and the statute stipulates that all facts which are determined in the administrative proceedings are conclusive if supported by substantial evidence.

Thus, it appears that the OSHA legislation grants to an executive agency greater power than is constitutionally permissible.

In my opinion, and I hope in the opinion of the Supreme Court, OSHA sets a precedent that violates a fundamental principle of the Constitution—that the Government of the United States, regardless of the form in which it chooses to do so, may not impose a penalty upon its citizens without affording them the right to jury trial.

Mr. Chairman, I urge you and the members of this subcommittee to seriously consider the implications of a law like OSHA, consider the precedent it sets.

Again, if all of this—the warrantless searches and self-executing citations—can be carried out in the name of occupational safety what is the next step? By the way, I would like to say now that job safety is really not at issue here.

What is at issue is whether or not the U.S. Government will continue to remain a government of relatively limited powers or will it usurp the basic rights of the people in the name of some noble cause.

Any governmental body, including the Congress of the United States, can always come up with what some people would consider a justifiable reason—be it economic egalitarianism, the environment, national security, or occupational safety—to restrict the freedoms of the people in the name of the public interest.

That is precisely the reason for the Bill of Rights; to try and insure that such usurpation, regardless of how noble the cause, would not happen in America.

The authors of the Constitution and the Bill of Rights had first-hand experience with a repressive government. Two of the grievances against the King of England enumerated in the Declaration of Independence were as follows:

He has erected a multitude of new offices, and sent hither swarms of officers to harass our People, and eat out their substance.

Another grievance was listed as follows:

For depriving us, in many cases, of the benefits of trial by jury.

I would also like to say in closing that opponents of OSHA, in the opinion of people who raise constitutional arguments against it, come from the far right of the political spectrum.

It is my pleasure to announce at this time that the American Civil Liberties Union has joined the fourth amendment challenge to OSHA in the Supreme Court by filing an amicus curiae brief in the *Barlow* case.

I would like to add that the labor unions should take a more active part in job safety by making a safe workplace an integral part of their contract negotiations with management. After all, the unions are in existence for the purpose of representing the interest of the working men and women that pay their dues.

I would hope that the unions would not attempt to relinquish this responsibility to the Federal Government. Negotiation would be a more constructive solution to this problem than an unconstitutional law like OSHA.

Consequently, Mr. Chairman, I have introduced H.R. 1348, a bill to repeal the Occupational Safety and Health Act of 1970, with Representatives Hansen, Moorhead, and McDonald as cosponsors.

I urge your favorable consideration of this legislation.

In conclusion, I would like to enter into the record the text of the three-judge court decision in the Idaho case discussed previously. A copy is attached to my statement for the review of the members of the subcommittee.

[The information referred to follows:]

RECEIVED

DEC 31 1976

VFT & LONGTEIG

U. S. DISTRICT COURT
DISTRICT OF IDAHO
Filed at Idaho

DEC 30 1976

JERRY E. CLAPP, Clerk
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO DeputyBARLOW'S, INC., an
Idaho corporation,

Plaintiff,

vs.

W. J. USERY, Secretary of
Labor of the United States
of America, in his official
capacity, et al.,

Defendants.

Civil No. 1-76-3

(Three-Judge Court)

SUMMARY JUDGMENT

The cross motions of the parties for summary judgment having been heard and submitted and the court having heretofore entered its memorandum decision and order, and it appearing that there are no genuine material issues of fact and that the record in this cause presents only questions of law, and the court having concluded that plaintiff is entitled to the relief prayed for in its complaint on file herein,

IT IS HEREBY ORDERED, ADJUDGED and DECLARED as follows:

That Section 8(a) of Public Law 91-596, December 29, 1970, 84 Stat. 1598 (29 U.S.C. 657(a)), is unconstitutional and void in that it directly offends against the prohibitions of the Fourth Amendment of the Constitution of the United States of America.

II.

That defendant, the Secretary of Labor of the United States of America, and all other defendants, and their successors

in office, and all other persons acting by, through or under them, are hereby forever and permanently RESTRAINED and ENJOINED from acting or attempting to act pursuant to or in furtherance of Section 8(a) of OSHA (29 U.S.C. 657(a)) and from conducting or attempting to conduct any general searches or inspections of the non-public portions of the premises of the plaintiff herein pursuant to Section 8(a) of the Occupational Safety and Health Act of 1970.

III.

No costs or attorneys' fees are allowed.

DATED this 30th day of December, 1976.

M. Oliver Koelsch
M. OLIVER KOELSCH *per JGA*
Senior Circuit Judge

Blaine Anderson
J. BLAINE ANDERSON
Circuit Judge

Ray McNichols
RAY McNICHOLS *per JGA*
Chief District Judge

RECEIVED

DEC 31 1976

RUNFT & LONGETEIG

U. S. DISTRICT COURT
DISTRICT OF IDAHO
Filed at 44-45-8

DEC 30 1976

By JERRY L. CLAPP Clerk
JK DeputyIN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHOBARLOW'S, INC., an
Idaho corporation,

Plaintiff,

v.

W. J. USERY, Secretary of
Labor of the United States
of America, in his official
capacity, et al.,

Defendants.

Civil No. 1-76-3

(Three-Judge Court)

MEMORANDUM DECISION
AND
ORDERBefore: KOELSCH and ANDERSON, Circuit Judges, and McNICHOLS,
Chief District Judge.

ANDERSON, Circuit Judge:

Plaintiff is an Idaho corporation in good standing situated in Pocatello, Idaho. Its business is the installation of electrical and plumbing fixtures, heating and air conditioning units. The corporation is engaged in interstate commerce in that it purchases and uses materials such as sheet metal which are made without the State of Idaho.

On September 11, 1975, Occupational Safety and Health Compliance Officer Daniel T. Sanger arrived at plaintiff's business premises for the purpose of conducting a safety and health inspection pursuant to Section 8(a) of the Occupational Safety and Health Act. 29 U.S.C. § 657(a).¹ Mr. Sanger properly iden-

public area of the premises. Mr. Ferrel S. "Bill" Barlow, President and Manager of Barlow's, Inc., refused to allow the inspection, basing his refusal on the absence of a search warrant. It is undisputed that Mr. Sanger did not have any cause, probable or otherwise, to believe a violation existed nor was he in possession of any complaints by any employee of Barlow's, Inc.

As a result of Mr. Barlow's refusal, the Secretary petitioned this court on December 13, 1975, for an order compelling entry, inspection and investigation. A show cause order was thereafter issued and subsequent to the show cause hearing the Secretary's petition was granted on December 30, 1976.

On January 5, 1976, the court's order was presented to Mr. Barlow. Mr. Barlow again declined to permit the inspection. The next day the plaintiff filed the instant action requesting that a three-judge court be convened to enjoin the enforcement of the Act on the ground of repugnance to the Fourth Amendment and, further, requesting a temporary restraining order. The present three-judge court² was empaneled and the temporary restraining order was denied on the ground of an inadequate showing of immediate and irreparable injury.

This case squarely presents the issue of whether the entry and inspection provisions of the Occupational Safety and Health Act (OSHA), 29 U.S.C. § 651, et seq., are consistent and compatible with the dictates of the Fourth Amendment.³

Preliminarily, the Secretary advances two grounds to preclude this panel from reaching a decision on the merits. First, it is contended that this court lacks subject matter jurisdiction. This argument is premised on two principles: First, that judicial review is improper because Congress has designated an exclusive forum - the Occupational Safety and Health Administration, and, second, that plaintiff is not entitled to challenge agency action for a supposed or threatened injury until prescribed administrative proceedings have been exhausted. In short, the Secretary contends that plaintiff should simply have permitted a full inspection under protest, thereby preserving its objections for the Commission and appellate courts, if and when a citation resulting from the inspection is actually issued against it.

The purposes served by the exhaustion doctrine, as set forth in McKart v. United States, 395 U.S. 185 (1969), are absent from this case and we therefore will not apply the rule to this case. It is beyond question that the administrative channels of OSHA lack the expertise to consider and determine the constitutional question presented by this case. We also find, after a consideration of the factors set forth in Abbott Laboratories v. Gardner, 387 U.S. 136 (1967), that the issue presented by this case is ripe for judicial determination. The issue presented is one of constitutional law only and, further, the plaintiff is placed in a dilemma of being forced to give up his asserted right of privacy or potentially finding himself in contempt of court. We therefore reject the Secretary's contention that this court lacks subject matter jurisdiction.

The second ground urged in support of dismissal is that plaintiff's failure to appeal the order of December 30, 1976, requiring the inspection bars the present action on res judicata grounds. Our review of the transcript of that hearing convinces us that the presiding judge reserved the constitutional issue on the basis that it was premature. The ruling in that case, Civil 4-75-58, clearly left open the door for subsequent litigation of the Fourth Amendment claim. We thus proceed to the merits.

II.

In Frank v. Maryland, 359 U.S. 360 (1959), the Supreme Court upheld the conviction of Aaron D. Frank who refused to permit a Baltimore City health inspector to enter and inspect his premises without a search warrant. This holding was expressly overruled by the Supreme Court in Camara v. Municipal Court of

San Francisco, 387 U.S. 523 (1967), and its companion case, See v. City of Seattle, 387 U.S. 541 (1967). In Camara appellant was awaiting trial on a criminal charge of violating the San Francisco Housing Code by refusing to give permission to a city housing inspector who sought to inspect appellant's residence without a warrant. The court, in tracing the history and scope of the Fourth Amendment, stated:

"Nevertheless, one governing principle, justified by history and by current experience, has consistently been followed: except in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant."

387 U.S. at 528-29 [citations omitted].

The court went on to hold that under the Fourth Amendment a person has the constitutional right to insist that a search warrant be obtained before an administrative inspection of a private residence is allowed.

Western Alfalfa Corp., 416 U.S. 411 (1974). An inspector of the Colorado Department of Health conducted daylight visual pollution tests of smoke being emitted from the company's chimney. The inspector had entered the outdoor premises of the business without the owner's consent or having obtained a search warrant. The court expressly reaffirmed the holdings of Camara and See, but held them inapplicable to the case because of the "open fields" doctrine. See Hester v. United States, 265 U.S. 57 (1924).

There is one common thread among these cases that requires the result we reach here. In Camara, See and Western Alfalfa, supra, each was involved with statutory and regulatory schemes aimed at promoting and protecting public health and safety. The warrantless inspections authorized under OSHA likewise seek to promote public health and safety and therefore must be controlled by Camara and See.

The analysis which we have outlined above is consistent with that taken by another three-judge panel in Brennan v. Gibson's Products, Inc. of Plano, supra. While we adopt, in general, the similar reasoning employed there, we decline the invitation to judicially redraft an enactment of Congress. Unlike

the Gibson's Products court, we cannot accept the proposition that the language of the OSHA inspection provisions envision the requirement that a warrant be obtained before any inspection is undertaken. Certainly, Congress was able, had it wished to do so, to employ language declaring that a warrant must first be obtained, the procedures under which it is to be obtained, and other necessary regulations. Congress did not do so and we refuse to accept that duty.

316). We believe that both of these cases fit with the Camara categorization of "certain carefully defined classes of cases." We have no such industry in this case. OSHA applies to all businesses that affect interstate commerce. 29 U.S.C. § 651 (a) (3). As such, it applies to a wide variety of over 6,000,000 work places and does not focus on one particular type of business or industry. It cannot be questioned that this broad spectrum of businesses can be distinguished from the heavily-regulated liquor and firearm industries encountered in Colonnade and Biswell, supra.

We have also had the benefit, not enjoyed by the court in Brennan v. Buckeye Industries, Inc., supra, of recent Supreme Court pronouncements which show a continued allegiance to the Camara and See holdings as expressing the court's views on the scope of the Fourth Amendment. In Almeida-Sanchez v. United States, 413 U.S. 266 (1973), the court was faced with a statute and regulations which permitted warrantless searches for aliens, without probable cause, within a one hundred mile zone along the international border. The court invalidated these roving searches by the Immigration and Naturalization Service, finding that such searches:

"embodied precisely the evil the court saw in Camara when it insisted that the 'discretion of the official in the field' be circumscribed by obtaining a warrant prior to the inspection."
413 U.S. at 270.

The court went on to distinguish Colonnade and Biswell by noting that "businessmen engaged in such federally licensed and regulated enterprises accept the burdens as well as the benefits of their trade, . . ." 413 U.S. at 271.

More recently, in Air Pollution Variance Board v.

inspection of a commercial warehouse in the course of a municipal fire, health and housing program. In expanding its Camara holding to include commercial structures as well as private residences, the court stated:

"We therefore conclude that administrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure."
387 U.S. at 545.

In Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970), the court narrowed the scope of its Camara holding in upholding the warrantless inspection of the premises of a retail dealer of liquor. In United States v. Biswell, 406 U.S. 311 (1972), the Colonnade reasoning was expanded to permit warrantless inspections of firearms dealers.

III.

It is upon the framework of the above-mentioned cases that we must base our decision. We reject the notion as espoused in Brennan v. Buckeye Industries, Inc., 374 F. Supp. 1350 (S.D. Ga. 1974), that the Colonnade and Biswell decisions envision a trend of the Supreme Court to generally narrow the holdings of Camara and See. Instead, we find that the warrantless inspection scheme pursuant to OSHA is more properly aligned with and must be controlled by the holdings in Camara and See, *supra*. See Brennan v. Gibson's Products, Inc. of Plano, 407 F. Supp. 154 (Three-judge court, E. D. Texas, 1976).

We simply cannot overlook the fact that in Colonnade and Biswell the court dealt with an "industry long subject to close supervision and inspection" (Colonnade, 397 U.S. at 77), and a "pervasively regulated business" (Biswell, 406 U.S. at

IV.

We therefore hold that the inspection provisions of OSHA which have attempted to authorize warrantless inspections of those business establishments covered by the Act, are unconstitutional as being violative of the Fourth Amendment.

IT IS SO ORDERED and judgment shall be entered accordingly.

DATED this 30th day of December, 1976.

M. Oliver Koelsch
M. OLIVER KOELSCH *per gsa*
Senior Circuit Judge

Blaine Anderson
J. BLAINE ANDERSON
United States Circuit Judge

Ray Mc Nichols
RAY MCNICHOLS, Chief *per gsa*
United States District Judge

FOOTNOTES

1. 29 U.S.C. § 657(a) states:

"(a) In order to carry out the purposes of this chapter, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized -

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee."

2. During the pendency of these proceedings Judge Koelsch took senior status and Judge Anderson was elevated from district judge to circuit judge and continues to participate in this matter by designation of the Chief Judge of the Ninth Circuit.
3. AMENDMENT IV - SEARCHES AND SEIZURES

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

4. The Congressional investigations revealed in the legislative history of the Act (3 U.S. Code Congressional and Administrative News, 91st Congress, Second Session, 1970, p. 5177, et seq.) make a persuasive case for "need" in the health and safety fields. We, of course, do not sit in judgment of the wisdom of Congress. Our only concern is the alleged affront to the Fourth Amendment. The rationale of an anonymous saying "Expediency is the argument of tyrants, it precedes the loss of every human liberty" seems of forceful application here. That the end result may be laudable and desirable does not justify the means used to accomplish it when constitutional prohibitions are confronted. To paraphrase Burke, Impeachment of Warren Hastings, February 16, 1788; "The Constitution (law) and arbitrary power are in eternal enmity." We suggest that there are other less

intrusive and oppressive methods of accomplishing the intended result, e.g., employer reporting requirements with provisions for employee contribution and participation; employer-employee safety committees; encouragement of employee complaints; in the organized management-labor relations field a greater and more forceful input by labor unions as the safety representative of their members; efforts toward better enforcement by the states of their health and safety laws, etc. We subscribe to the Camara court holding that warrantless inspections must be confined to "certain carefully defined classes of cases."

I thank you very much for the opportunity to be here this morning.

Mr. GAYDOS. Mr. Symms, do you have another appointment?

Mr. SYMMS. I have an appointment at 11 o'clock.

Mr. GAYDOS. You raised one very interesting proposition. You mentioned that you would suggest that the unions in their collective bargaining sessions include safety for employees; is that what you are saying?

Mr. SYMMS. Yes, sir.

Mr. GAYDOS. What about the enforcement of it; the cost involved? Would that be a matter of bargaining?

Mr. SYMMS. Mr. Chairman, we haven't discussed this in the past. My contention has been that in the United States of America, because of the economic system that we have allowed to work, we have created the best job safety record of any place in the world that has as many men working and as much productivity.

I think it has been due largely because of the accumulation of capital and the new tools and technology that have been developed through our system, not because of Government rules and regulations.

If this committee would not see fit to repeal OSHA, then I would think that OSHA should be severely restricted to being an informative agency and by that, I mean to make available information of better ways to do things.

So the unions would have facts and figures of what they should be negotiating for and keep this outside of the scope of having police officers, although they do not wear swastikas and black boots, they appear to be Gestapo type in their activities.

Mr. GAYDOS. What would you do with those individuals that were employed in a work area that had no union? Who would bargain for them?

Mr. SYMMS. In a free country?

Mr. GAYDOS. Like Idaho?

Mr. SYMMS. We have unions in Idaho.

Mr. GAYDOS. Not so many though.

Mr. SYMMS. There are quite a few, seven. We actually have very strong unions in my State and in my district.

Mr. GAYDOS. I would hope so.

Mr. SYMMS. I am very happy that I have enjoyed a great deal of support by many of the locals not from the hierarchy.

Mr. GAYDOS. Have they read your testimony? I ask the question in all seriousness. Let me ask this. Who would assume the obligation of bargaining for that person that does not have the opportunity or privilege of belonging to one of the unions?

Mr. SYMMS. Mr. Chairman, you got right to the point of where job safety can be best addressed. It is at an individual level. When I say individual, that would include management and the employee. I would think if we had an OSHA program, if it worked as well as the "Smokey the Bear" program does, that is conducted by the U.S. Forest Service, I would not be here today.

The U.S. Forest Service has the "fight forest fires" program of which we are all aware. They have made their basic thrust, not a punitive thrust, but one of individual responsibility from a public relations standpoint.

I believe in the case of the individual who works for a company, there are methods, if the job working conditions are unsafe, the insurance rates are going to be high. People, if they know it is an unsafe plant, they can tell, they do not have to work there; they can go somewhere else.

There are all kinds of incentives in our system to want to have good business, those that tell you should have a good, safe working place.

We are in a situation in the United States where nearly half the earnings in the country are confiscated from private citizens and given to the Government. This is a direct drain on job safety, not OSHA per se, but all government in general takes money away from the private sector and puts it over where the bureaucrats and politicians make the determinations about how to spend it.

We do not have the money available for plant improvements, new capital tools for working conditions in general. I think that is my basic—

Mr. GAYDOS. I want to understand my colleague's position because I think it has some value to us. I would like to understand it. Let me see if I could rephrase it.

Mr. SYMMS. Let me say one thing. I have the Coeur d'Alene mining district in my congressional district. We have the Lucky Friday, the Sun Shine, in which we had this tragic accident, Galena mine is a union mine and the Sunshine is a union mine; there are several others that are union mines.

The Hecla Mining Co. is also there. They have the Lucky Friday mine which is a union mine, and was one when they bought it. They had old Mother Hecla which was the Star mine that operates at Berg; they mine lead, zinc, sulfur; it is down to the 8,000-foot level.

It is a hard rock mine underground. They have an excellent safety record and no union in that mine. Everytime they bring up the thing for a vote, the crew always votes it down. That is not to say that they do not have a say—I think the point is that they seem to manage their safety situation, without having a union, to answer your question directly but I think it is a proper place for representatives of working people to make the case, in job safety.

Mr. GAYDOS. I would like to call my colleague's attention to the fact that the Mine Safety Act does pertain in that instance and there are rules and regulations.

Mr. SYMMS. Yes, sir.

Mr. GAYDOS. Let us get back, I do not want to lose my trend of thinking. The legislation that you introduced, if it were successful, as a consequence thereof, OSHA would be repealed.

In that case, in that hypothetical, how would you respond to the needs of millions of workers in this country who do not belong to a union? Who would be protecting their rights?

Mr. SYMMS. The same people who are protecting their rights for safety now and before OSHA.

Mr. GAYDOS. Let me carry it one step further, if I may. I think you will agree with me that the main reason, one of the main reasons for the existence of a union, is job security. You are suggesting, if I understand you correctly, that an individual be he in a group or as a person, would have the obligation, if he did not belong to a union, he would have an obligation to bargain.

I ask you the question, do you—would you expect reasonably that individual or group of people that were not unionized to be in a position to bargain with an employer about their safety?

They would be fired unless you can give me another example of that not occurring. That is a natural consequence.

Mr. SYMMS. I have had quite a bit of experience in business and employment and working with people personally in my lifetime. I have never known an employer who would fire somebody for pointing out an unsafe working condition.

Mr. GAYDOS. We had 14,000 people killed last year and 300,000 maimed and injured; how do you deal with those statistics?

Mr. SYMMS. I know that, Mr. Chairman. That is certainly tragic, particularly for the 14,000 people who died and the 300,000 who were maimed. However, if you look at the other side of it, how many people were working out of a work force of 80 million people.

Mr. GAYDOS. Are you suggesting then that we have to, as an intelligent, supposedly modernistic Nation, have to accept these fatality figures and injury figures and do nothing about them and they will go away if we close our eyes?

Mr. SYMMS. What I am saying, sir, is that we have gotten it down to where there were only 14,000 people killed and 300,000 maimed by the fact that we have improved the working conditions up to this point.

I would hope that if we do not confiscate all of the capital out of the private sector, by the growth and expansion of Government, that we will be able to reinvest more money back into capital tools and improve the working conditions even better so that some year I could be back here before your committee and you would say there were only 7,000 people killed.

Ultimately we would be striving for zero which of course neglects the basic problem that the problem of job safety, if you get right down to the bottom line, is lack of individual responsibility, sloppy workmanship, carelessness of operators of equipment. This is the point where we have to focus our attention so that each person feels it incumbent upon himself not only to work safely for himself but for all of the people that he works with.

I think that is where I would like to see the emphasis placed. I do not believe that OSHA, being a punitive type operation, although it was certainly well intended by the Congress when it was put into effect, approaches the problem from the right aspect.

I believe the part that is often neglected is that in the United States we have done so well. There is no other country that produces as much, has as many people working, has as good working conditions or safe working conditions that we have in this country.

I think that many things have contributed to this. One of the things that certainly has contributed to it has been the advancement of technology in the tools and equipment and the capital that has been accumulated in our society since the industrial revolution. There is no question about that.

I would also say that I think we are at a point which obviously needs to be continually improved, but I do not believe that OSHA is making a contribution to this. It is making people cynical of the Government.

Mr. GAYDOS. Would you share the opinion of our colleague, Mr. Hansen, to the effect that the administration of OSHA leaves something to be desired?

Mr. SYMMS. Yes, I think it does.

Mr. GAYDOS. Do you think efforts in that area would be fruitful and practical?

Mr. SYMMS. Mr. Chairman, if you could not see fit to repeal OSHA, you certainly should have OSHA go out and do onsite consultations where they would try to show people better ways to improve things.

My own personal experience in business is we always used our insurance company inspectors voluntarily, asked them to come out and go through our plant equipment and so forth and show us what we could do to improve job safety and we made remarkable improvements.

This, I think is more proper.

Mr. GAYDOS. We went down to Hopewell in connection with the kepone incident. I was appalled at what I saw—the small filling station that was converted into a manufacturing unit.

Several times, the insurer made personal inspection trips to that particular facility. That is one of the areas toward which this legislation has been directed over the past year. I just wanted to point that out for your consideration.

Mr. Sarasin?

Mr. SARASIN. I have no questions, Mr. Chairman. I apologize for having to run off to another meeting very quickly. I would like to join you in thanking our colleague, Mr. Symms, for coming before us and giving us the benefit of his long interest in this area.

I would hope that his bill is not passed, frankly.

Mr. SYMMS. Mr. Sarasin, if you would allow me to interrupt, you notice the chairman said hypothetically if this passed.

Mr. GAYDOS. If you would yield, I think our colleague has already committed himself, as a matter of record. If it does not pass, he is committed to help us make this thing work a little bit better.

Mr. SYMMS. One of the reasons why I introduced this is that I believe ideas truly have consequences on our society in the long range.

I think the ideas that I have set forth here and that the Founding Fathers put into the Declaration of Independence were true then and are true today and so, I think that we have to keep rekindling that spirit or our society will not continue on as it has in the past.

I do think that sometimes, we, as Members of Congress, begin to think, that somehow we have the solutions to all of the problems. I recognize your sincerity in trying to be strong advocates for improved job safety and I respect you for that.

It is my contention, however, that I have a sincere appreciation for job safety also. I do not believe that the expansion of the Federal Government is the reason why we have good working conditions in the United States today.

The expansion of private technology and incentives to do a better job for the overall good of our society, I believe that is my primary purpose. Knowing the makeup of the Congress, I am not naive enough to believe that with this Congress, this legislation will pass.

You can never tell what will happen in the future, of course.

Mr. SARASIN. I think there is no question the gentleman is helping to cause the kind of dialog that the Occupational Safety and Health Act needs to be effective and I appreciate his endorsement of the concept of on-site consultation which I think is a necessity.

Mr. SYMMS. I would just say that in the State of Wyoming this year, as you know, a cowboy was elected to the U.S. Senate. One of the contributing factors to that election was that there has been a great deal of effort in the Western States by groups like Nix-on-OSHA and other groups that have resulted in a great deal of public arousement over the problems of OSHA.

This cowboy, who is now Senator Wallop, came galloping along on a TV screen and all you could see was a cloud of dust in the background. As he got closer, you could see it was a cowboy on a horse with a lasso and dragging an outhouse on wheels.

He pulled up to the side of the television camera, kicked his hat back and said, "Yup, folks, that is the kind of regulations that are coming from Washington, D.C." He is now a U.S. Senator and they contend that that television commercial was largely responsible for his election.

This shows how people are responding to an excess of government intervention through regulations. I will not belabor you with horror stories but I am sure you probably have more expertise in this field than anyone else in the Congress. You know the horror stories of OSHA.

Mr. SARASIN. Does that mean, Mr. Symms, that if you are going to run for U.S. Senate, you are supposed to bring your own outhouse with you?

Mr. SYMMS. You have to bring your own outhouse and horse.

Mr. SARASIN. I have no further questions. I would like to thank the gentleman again for his testimony here this morning. I think he has been very helpful.

Mr. GAYDOS. Just let me ask you this, Mr. Symms, is there anything good about OSHA that you can see as of this time, anything constructive?

Mr. SYMMS. I would say that if there is anything good about it, it is the intention of the Congress when it was passed.

Mr. GAYDOS. Do you think if we improved upon the administration and had some stability there, do you think that would be a positive factor?

Mr. SYMMS. If the court should uphold the *Barlow* case and the others that I mentioned, so that it would definitely abolish the police powers of OSHA, then I think from a Federal standpoint, Federal safety programs based on education and driving the point home for individual responsibility, probably it could be overall, and it would be hard to measure, but it could make some contribution to job safety in the country to improve people's attitudes toward safety.

It is like safe driving programs; driving 55 miles an hour, things like this. There is no question but we can improve our personal responsibility. I think the Forest Service program has been one Federal program aimed at stopping a specific problem, forest fires, burning up the national forests, that has been successful, because they pinned the responsibility on the individual.

Mr. GAYDOS. It is always good to remember too that when you exceed the 55 mile speed limit, you are fined too. Mr. Zeferetti?

Mr. ZEFERETTI. Thank you. I guess it is commendable when we think of the incentive to do a better job. Unfortunately, sometimes you work in areas where you may have that as a feeling but you do not have the opportunity to implement it by virtue of not having an establishment that is safe or that is healthy.

The other thing is related to the unions' taking a role in the safety standard of the work performance. Any time you get involved in collective bargaining and you use that argument as an instrument in your bargaining dialog, any employer that uses it when there is a dollar-for-a-cost factor involved is going to use that as a benefit for you and it will be held against something else you are looking for.

I think we have to get involved in the intent of providing safety and health for our employees; what direction we are to go. I think we still have not learned all of it, and I think we are going to ask for your assistance at that time, too. I think it is something we all have to look at in depth in order to come up with some guidelines that could be better administrated, to provide for better safety and health.

Thank you.

Mr. GAYDOS. Did you have a question, Mr. Sarasin?

Mr. SARASIN. I do not.

Mr. GAYDOS. Mr. Shuster?

Mr. SHUSTER. Thank you. As the gentleman from Idaho knows, I am sympathetic with many of the points that he has made. I know that much of the thrust of your testimony deals with the unconstitutionality of OSHA.

If that is the case, why should this not be pursued in the courts?

Mr. SYMMS. It is being pursued in the courts. It is pending before the Supreme Court presently.

Mr. SHUSTER. Then why should not the Congress be guided by the decisions in those court cases?

Mr. SYMMS. Mr. Shuster, that is exactly my point. If the Supreme Court upholds the *Barlow* case, for example, on the fourth amendment grounds, then this would be absolutely essential, that the Congress would then act to correct the situation.

One way we could correct it would be my suggestion that we just get rid of OSHA and allow this thing to be handled at the State level which I think would be very proper. That would not mean that the Members of Congress were opposed to job safety.

I have often suggested to people in jest, but seriously, that one of the ways that Congress could be beneficial to the public with respect to safety would be to adjourn for a 2-week period and go out across the country and have all of the Members of Congress concentrate on giving speeches on the necessity for job safety in this country and make it a national congressional effort for safety.

That way we would not be down here in Washington passing rules, regulations, and laws which do violence to our society and the very people we are supposed to be representing by raising their taxes and increasing regulations.

We would also be out promoting job safety and doing some good. I think that would do more than hiring a bunch of inspectors to go out

who could be the judge, jury, and police and arresting officer, all in the same situation.

This, I think, is the reason why we should reconsider this legislation at this time.

Mr. SHUSTER. Thank you very much. That is all I have.

Mr. GAYDOS. I would like to make a comment for your edification. We did have prior hearings at which we had a representative from the Liberty Mutual Insurance Co. which handles approximately 9 to 10 percent of all of the workmen's comp insurance around the whole country.

I thought that qualified him to make an expert observation on the subject matter. He did testify before the committee and told us that in addition to their business of selling insurance to industrial employers throughout the country, they also offered various services, educational services, and their responses statistically were negligible.

The existence of that enterprise depended on the response from the employers that they were protecting and they got a very poor response.

I want to suggest to you that here you have a business firm in operation over a period of many, many years complaining to this committee as a matter of record that their efforts were fruitless, that they tried to educate the employers, tried to tell them about improvements in their workplace and were unsuccessful.

I do not know how you could expect, you or all of us could expect, in this area any type of improvement other than to legislate it. That is one of the reasons why we did legislate.

Mr. SYMMS. The point that I hope I leave with you and I would say to the gentleman from the insurance company, if he were here, first off, the risks of violating the fourth and seventh amendments to the Constitution are much greater than the risks of the issue per se of job safety or whatever other issue we want to make of it.

I think there are some things in our society, the Constitution is one of them, that we just cannot overlook or else we will not have the kind of society that you and I have grown up to enjoy.

Mr. GAYDOS. Are you telling me that the constitutional right is more important in your way of thinking than a man's life, 14,000 or 300,000 lives?

Mr. SYMMS. In the long run, the job safety will be taken care of without having a police officer go in and without having to give up all of our other freedoms.

I say that the fourth and seventh amendments are more important than some specific cause, no matter how humanitarian it sounds. That is not to say that I am not for job safety because I think my personal record in this in private life shows that I am for job safety.

I do not believe that the use of Federal police officers to go in and harass the citizenry and eat out their substance, as the Declaration of Independence pointed out is worth the sacrifice of those sacred amendments to the Constitution.

Mr. GAYDOS. I hear these terms of gestapo and things like that thrown around indiscriminately. We are in the process now of constitutional appeal to the Supreme Court of the United States. We have had other circuit and district judicial considerations of different aspects of OSHA. I do not think anybody is being railroaded.

Mr. SYMMS. I will tell you back in the 93d Congress, I offered on the House floor an amendment which cut the funds for OSHA from \$105 million to \$70 million. That amendment got 179 votes from Members of Congress who voted for the amendment to not add \$35 million additional for OSHA.

I was called on the next day by the Department of Labor asking me what could they do to improve the attitude of people like myself who had gone in there and voted not to increase their money.

Mr. GAYDOS. You mean the administrative costs or—you lost me somewhere.

Mr. SYMMS. In the appropriations bill on the House floor, there was an increase from the fiscal year preceding from \$70 million up to \$105 million. I offered an amendment to hold that level at \$70 million.

In other words, do not give them any more money because they were causing too much harassment of the citizens out in the hinterlands.

Mr. Camp, our colleague from Oklahoma, offered the day after that an amendment to cut it out completely and it received 98 votes, so it shows there is substantial opposition to this.

I told them that one of their problems was that you have these officers who go out and harass these small business people. I personally believe there has been an improvement since that vote on the House floor.

The one thing the bureaucrats downtown understand is how much money they are going to get to run their agency. At any time that the Congress wants to make any agency in the Government representative of the needs of the American people, and sensitive to their public relations aspect of it, all we have to do is cut their appropriations in the Congress by any measure from what they want and they are going to pay attention to the Congress again.

I think that is one of the best ways to go about it; don't give them a free rein, do not give them a carte blanche about the amount of money they want.

Mr. GAYDOS. Since you have suggested that they have performed in an admirable way—

Mr. SYMMS. It has been better.

Mr. GAYDOS. Would you support the proposition whereby we would ask for additional funding to better train our inspectors?

Mr. SYMMS. The problem of it is, that still does not answer the fourth and seventh amendment rights, so I am roadblocked there. My whole argument with you is that this whole legislation is unconstitutional.

I am siding with the court.

Mr. GAYDOS. After the court decision.

Mr. SYMMS. After the court decision, I'll come back and talk with you.

Mr. GAYDOS. I will look forward to it.

Mr. SYMMS. I have an appointment I am supposed to keep. I appreciate very much the opportunity to be here before your committee. I appreciate your efforts on behalf of improving this particular area of the Government.

Mr. GAYDOS. Any further questions?

Mr. SARASIN. One. There is a danger this bill will be lost in the appropriations process; unless some improvement is made, the act will be lost.

Mr. SYMMS. We will give it the opportunity this year, I assure you, Mr. Sarasin.

I have more faith in the law than that but I am concerned. I frankly think this committee should be concerned.

Mr. GAYDOS. Thank you, Mr. Symms for your appearance here.

Mr. SYMMS. Thank you, I appreciate the chance to be here.

Mr. GAYDOS. The committee had scheduled one more member to testify. We have been informed he has asked permission to insert his testimony in toto for the record as he will be unable to attend to present his testimony.

[The prepared statement of Hon. William M. Ketchum follows:]

BEFORE THE SUBCOMMITTEE ON COMPENSATION,
HEALTH AND SAFETY
COMMITTEE ON EDUCATION AND LABOR
HON. JOSEPH M. GAYDOS, CHAIRMAN

STATEMENT OF HON. WILLIAM M. KETCHUM
U.S. CONGRESSMAN
18th DISTRICT - CALIFORNIA
MARCH 1, 1977

Mr. Chairman and Members of the Subcommittee, it is my pleasure to present to you my views on the Occupational Safety and Health Administration.

In January, I introduced legislation to repeal OSHA. The movement to abolish or at least meaningfully reform what is without a doubt one of the most abusive and tyrannical of the regulatory agencies gained new momentum when a panel of three judges in Idaho declared unconstitutional the 1970 law authorizing OSHA to conduct its inspections without a warrant.

The judges' decision has focused national attention on the practices of this agency, which has been described by one Idaho newspaper as the "closest thing to the Gestapo and SS this country has ever seen." OSHA inspectors may descend on a place of business without warning - in fact, the law prohibits advance warnings of inspections - issue citations and levy penalties. It costs time and money to fight back so most employers are reluctant to do so, thus leaving OSHA in the role of judge, jury and executioner.

I want OSHA repealed because I believe it's unconstitutional. This is a sentiment I hear expressed by small businessmen and farmers and by citizens who are appalled that their tax money should be used to support a government agency, the purpose of which appears to be the subversion of individual rights and freedoms as guaranteed in the Bill of Rights. I am pleased to say that there are a number of citizens in this country whose faith in the Constitution have given them the courage and determination to stand up for their rights, all the way to the Supreme Court. One such individual is Bill Barlow, whose belief that OSHA's inspection tactics violated his rights under the 4th Amendment, which forbids unreasonable search and seizure, led to the landmark Idaho decision. Also at issue is OSHA's practice of levying fines on alleged violators without benefit

Statement of Hon. William M. Ketchum
Page 2

of trial by jury. This has been challenged under the 7th Amendment.

The 7th Amendment challenge has been heard by the Supreme Court and a decision is pending. Bill Barlow's 4th Amendment suit will be heard by the Supreme Court in the spring. While I am hopeful that the highest court in our land will rule that OSHA's practices violate the Constitutional rights of our citizens, we must remember that it was Congress which created OSHA in the first place and consequently Congress which can and must remedy the flagrant abuses which have occurred.

It is hard to imagine how a body of men and women who have been elected as representatives of the people could have given their approval to the creation of a government agency which operates like a secret police. That, no doubt, can be explained by the noble enough purpose behind OSHA - to protect the health and safety of America's working people. However, it is my contention that OSHA has done precious little to promote that goal and has instead embarked on a course of petty harassment of the nation's employers, focusing its energies on trivialities that are virtually meaningless in the context of a safe and healthy working environment.

The Occupational Safety and Health Administration was enacted into law in 1970. The Bureau of Labor Statistics' figures on employment, injuries, illnesses and fatalities for 1972 through 1974 indicate a steady rise in the employment population and a steady rise in the number of occupational injuries, illnesses and fatalities. On the other hand, the 1975 figures, just recently released by the Department of Labor, indicate that job-related injuries (including deaths) dropped 16% in 1975 from the previous year's total of 5,915,300 and job-related fatalities decreased from 5,900 in 1974 to 5,300 in 1975.

Before patting OSHA on the back for its marvelous accomplishments in reducing occupational injuries and deaths, it should be noted that the number of individuals employed in 1975 was less than in 1974. It is a generally recognized fact that the newest employees, by virtue

Statement of Hon. William M. Ketchum
Page 3

of their inexperience, are the greatest safety risks. Also, at a time of unemployment cutbacks, the rule is usually last hired, first fired. Consequently, when this group is reduced in the employment force, it can be expected that injuries and fatalities will decline. In addition, 1975 witnessed a drop in manufacturing and contract construction employment. Since the rate of injuries and fatalities in these industries is above average, this fact also may have contributed to the decline.

OSHA's budget for FY 77 is \$130 million. What does OSHA do with the taxpayers' money? It has, since its inception, written 3,400 regulations which run to 800 pages, mainly dealing with safety as opposed to health standards. The majority of citations issued have been for fire extinguishers, guard rails, exit markings, bathroom facilities and lack of first-aid stations. It is estimated that \$7 million will find its way into the U.S. Treasury in FY 77 from penalties collected for violations of OSHA standards. The Department of Labor has conveniently published a list of the 100 standards most often cited but cannot present any information to determine if these standards are the ones most directly related to the major causes of job-related injuries, illnesses and deaths.

Incidents of industrial poisoning have recently made front page headlines from coast to coast yet this is an area barely acknowledged by OSHA in its six years of existence. The National Institute for Occupational Safety and Health (NIOSH), established by the original law as the research arm of OSHA, has identified 13,000 toxic substances, some 1,500 of which are suspected cancer-causing agents. As of December 31, 1976 NIOSH has produced background papers on only 65 of these substances while OSHA has managed to turn exactly three of these reports - on asbestos, vinyl chloride and coke oven emissions - into health standards. In fact, OSHA regulations have set health standards for only 17 toxic substances and exposure limits for 400 more.

Statement of Hon. William M. Ketchum
Page 4

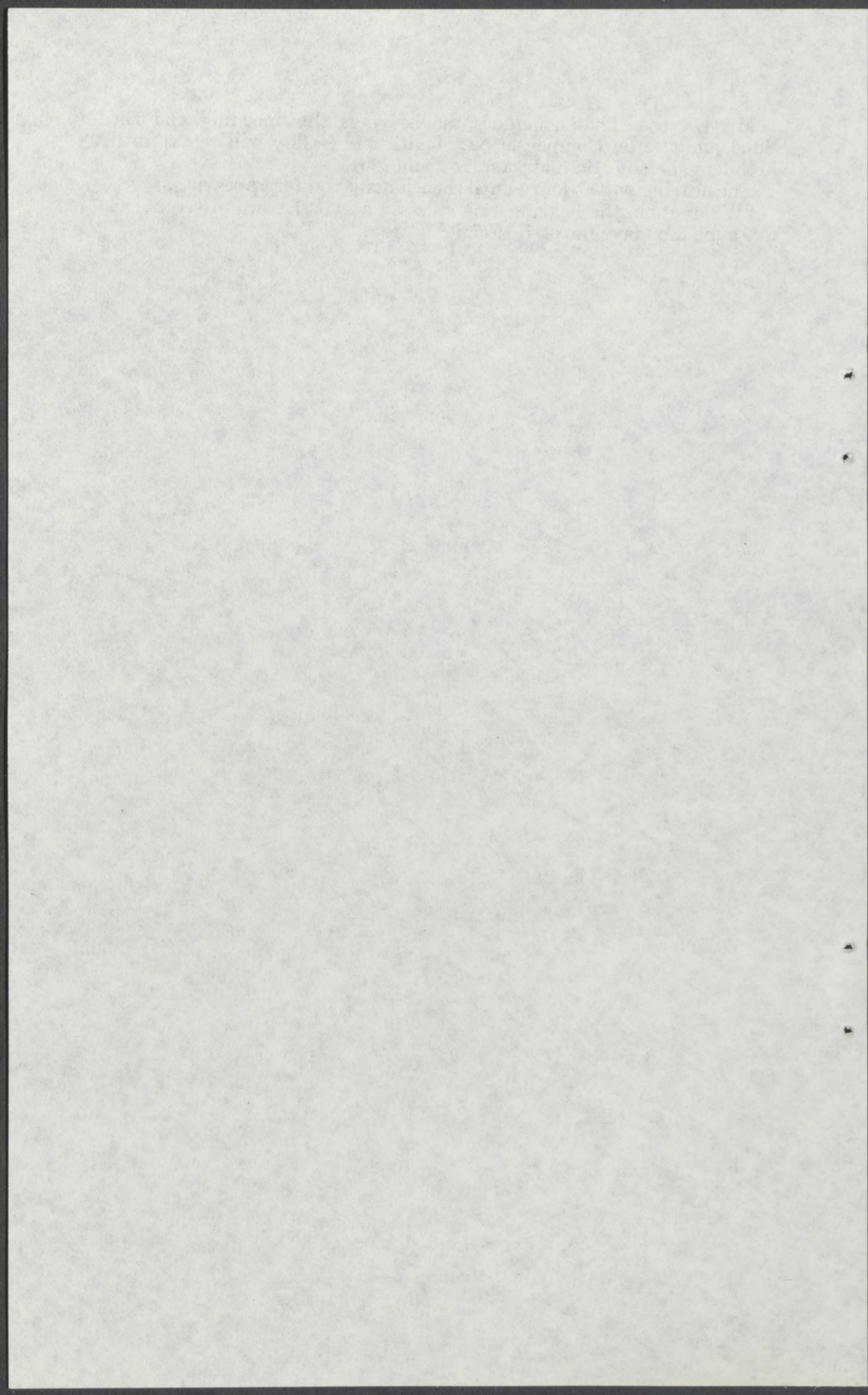
I am sure that my colleagues on this Subcommittee have all heard OSHA horror stories from their constituents - stories of incomprehensible regulations, of inability to penetrate the implacable wall of bureaucracy with common sense, of innumerable forms to be filled out in triplicate. To my way of thinking, there is no issue which concerns the American people more than big government entwining its tentacles into every facet of their lives. And there is no federal agency which symbolizes big brother government more than the Occupational Health and Safety Administration. I hope that the Members of this Subcommittee will join me in the fight to curb the size and scope of big government and agree that the first target of reform should be OSHA!

I appreciate having this opportunity to share my views with you today.

Mr. GAYDOS. That concludes the hearings this morning and the Subcommittee on Compensation, Health and Safety will recess until Monday, March 7, 1977, at 9 a.m. in room 2261.

The hearing will adjourn until then. Thank you for appearing.

[Whereupon, the hearing was recessed at 11:07 a.m., to reconvene at 9 a.m., Monday, March 7, 1977.]



OVERSIGHT HEARINGS ON THE OCCUPATIONAL SAFETY AND HEALTH ACT

MONDAY, MARCH 7, 1977

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMPENSATION,
HEALTH AND SAFETY OF THE
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:10 a.m. in room 2261, Rayburn House Office Building, Hon. Joseph M. Gaydos (chairman of the subcommittee) presiding.

Members present: Representatives Gaydos, Sarasin, and Buchanan.

Staff present: Paul F. Dwyer, counsel; Bernard Mandella, staff director; Denny Medlin, executive secretary; Terre Belt, research/writer; Marsha Gray, secretary; and Edie Baum, minority counsel for labor.

Mr. GAYDOS. The Subcommittee on Compensation, Health and Safety will be in order.

I wish to welcome a former member of this committee, Congressman Steiger who was so active with the committee and regrettably, we lost him as a member of this committee. I think it was a serious loss. He went on to other areas to make his name.

It is my pleasure on behalf of the committee to once again welcome Mr. Steiger back. I think his first love lies with the committee, otherwise he would not be here this morning.

We welcome you back, Mr. Steiger.

Mr. STEIGER. It is not necessarily my first love, at all. It is just that I had no choice. There is a degree of self-protection involved.

Mr. SARASIN. If the gentleman would yield?

Mr. Chairman, I would like to join in your commendation of Bill Steiger at this ungodly hour of the morning. I think we should all be commended for being here.

There is no question that Bill Steiger has done more, not only in the initial creation of the OSHA legislation, for which he gets praise and blame, but for following through and offering many great suggestions for improvement as the bill has been implemented. I think the committee would do well to heed his advice very carefully this morning.

Mr. BUCHANAN. If the gentleman would yield?

Mr. Chairman, just because it is early in the morning, is no reason to be ungodly.

Mr. GAYDOS. Mr. Steiger, in accordance with the practice and procedure under the rules of the committee and because of your full knowledge of how we operate in the committee, you may proceed in any fashion that you deem advisable.

[The prepared statement of Hon. William Steiger follows:]

TESTIMONY OF CONGRESSMAN WILLIAM A. STEIGER BEFORE THE SUB-COMMITTEE ON COMPENSATION AND HEALTH AND SAFETY, MARCH 7, 1977

Mr. Chairman and members of the committee. Many thanks for giving me this opportunity to appear before you today. As this committee knows, I have more than a passing interest in the Occupational Safety and Health Act of 1970. I commend you, Mr. Chairman, for initiating these hearings early in this session of the Congress.

The whole idea of government regulation is increasingly a subject of political rhetoric and campaigns. Thus, it is imperative that we take a full and fair look at the implementation of OSHA. I specify its implementation because I strongly feel the Act itself is workable and fair. There are two modifications which I think the Act requires: on-site consultation and extending coverage of the Act to state and local employees.

Much of what needs to be done, however, can and should be done administratively. I must say in all honesty the record of the Education and Labor Committee in examining the implementation of the Act has not been good. You've not followed through on what you've learned. The Small Business Committee has been far more effective in examining the Act and in making specific recommendations to the Department of Labor on changes that can, and in many cases should, be made in the administration of this law.

One needs only to pick up trade publications and daily newspapers to see and understand the continuing controversy which surrounds OSHA. The controversy should not surprise anybody; it is a continuation of the conflicts that were apparent to all of us involved in this field since 1968. A part of my criticism of the press coverage I've seen relating to the Act is that news reports tend to be Washington oriented. Few reporters get into the field. Consequently they cannot assess the full impact the Act has had. I am convinced that the passage of the Occupational Safety and Health Act of 1970 -- despite the frustrations, and in spite of some problems -- has produced for the first time in our history a profound awareness of safety and health problems in the workplace environment. There is, moreover, a growing recognition of this progress in the business community. More and more business people with whom I visit, in Wisconsin's Sixth District and across the country, now make a point of describing to me the help that the Act has been to them. These effects are not reflected in much of what we see, in part because a kind of public vision is often exhibited by spokesmen for both labor and business. It is human nature to write to a member with a complaint but not when something goes well. If labor and management exhibited as much attention and time to helping in the implementation of the Act and in helping to guide the administration of the Act as they do in criticizing the Department of Labor, I venture to say the cause of worker safety and health would be much further along than it is today. As mentioned earlier, I find more and more people pointing to the benefits that have flowed from the Act. An increasing number of business people who've been inspected have praised the competence and common sense approach taken by the compliance officers.

The incredible number of joint labor-management safety committees that have been established in business places large and small throughout the United States have produced benefits not readily ascertainable. The number of companies that have seen a reduction in their workmen's compensation costs and in their accident rate is the best evidence that I know of that in fact the Act is working.

What we're dealing with now, however, is how do we make the Act do its job effectively without continuing to give ammunition

to those who want to simply repeal the Occupational Safety and Health Act. The campaign against OSHA is well financed and continues to get much attention. It's now up to you, Mr. Chairman and members of this committee, as well as to all members of the House and Senate who bear a responsibility for the Act and its implementation to assist the Labor Department in doing a better job. Often the criticism of Labor Department officials frankly has been their own fault for not having been careful enough to use common sense and good judgment.

After listening to representatives of labor and business, and after carefully considering the views of the safety and health professionals, if you then go further and translate the various recommendations you've received into some specific suggestions and guidelines for the Department of Labor, then I believe you will contribute a great deal. Too often a number of very thoughtful ideas from some very, very informed people have been ignored by this committee. If you continue to not follow through on your oversight, if you continue to not push the Department in its efforts, and if you fail to help educate our colleagues in Congress and the American people about the Act, then the future of workplace health and safety may be in danger.

At times, business and labor have done more to frustrate the program than have all of those who wish to repeal the Act put together. Thus, I urge you, Mr. Chairman, to most thoughtfully consider tackling the necessary work of overcoming the misinformation, the distrust and the adversarial relationships that exist between labor and management, between government and industry, and between government and labor -- the strained relations which are the source of much of the confusion in the implementation of OSHA. Granted, the Act by its very nature creates a kind of adversarial atmosphere, and the natural result of such a situation is criticism and controversy -- too much government regulation, too few health standards, standards that are too complicated, inconsistent, infeasible, inflationary, and too little, too late. I don't raise these points to argue their validity; I raise them to make another point. From the very beginning it has been clear that if OSHA is going to be successful it will require the cooperation of government, business and labor. All other considerations aside, the Act by itself or standards by themselves cannot stop the injuries, illnesses or deaths which are a part of the workplace.

If business and labor do indeed support the intent of the Act, as they say, then I think they frankly are going to have to change their attitude and approach each of the issues on a more rational and cooperative basis. After all, the area of safety and health in the workplace is one in which labor and management have a shared responsibility and a shared goal -- mainly a reduction in the deaths and illnesses and accidents that now take place. Yet, this shared responsibility also has come to involve a degree of dispute between labor and management. As with much in the labor field, government has become the arbitrator of a dispute. Far too often labor has sought to avoid its obligation to develop an awareness of safe work habits among workers by attempting to shift this burden to government. Business, on the other hand, too often has abdicated the responsibility of management to regulate the safety and health conditions of the workplace by attacking rather than assisting in the development of the standards which government, under the law, must promulgate. It's easy, for example, to attack the complex ladder standard, but why this was not done at the time that specific standard was developed by the voluntary standard-setting groups representing both business and industry, I don't understand. I noted with some interest that the head of the Building Trades Council of the AFL-CIO is now seeking, correctly in my view, to have a demand inspection made of the workplace as the last step, not the first step, in settling safety and health matters for his members.

Both sides frequently are guilty of escapism and I think it's time for the Congress to call responsible parties to task for their neglect. Business and labor should make a more concerted effort to: (1) understand the problems involved in the complex and relatively new area of health-standards development, (2) be more responsible for controlling exposure to chemicals and chemical processes in the workplace, (3) take greater responsibility for their own safe conduct, and (4) be fully cooperative in sharing technical information as well as research information with NIOSH and with OSHA.

At this point, Mr. Chairman, let me urge the Subcommittee to report out H.R. 1327 sponsored by Congressman Ron Sarasin, the ranking minority member of this Subcommittee. I have joined in cosponsoring this bill and I continue to believe it should be passed and signed into law. It's a bill that passed the House in the 94th Congress only to die in the Senate. It would alleviate much of the fear and misinformation which has so surrounded the development of the Occupational Safety and Health Act.

I fully recognize the position of the AFL-CIO and some in the business community who do not support on-site consultation for very different reasons. Both are wrong. Both do a disservice to the goal of the Act and its successful implementation. OSHA's effectiveness will not be diminished with the passage of this amendment. Reduction of effectiveness lies in exemption proposals which smack of total disregard for particular classifications of employees -- especially those employed in small businesses. The full Committee's report on on-site consultation in the last Congress emphasized a firm commitment to first instance sanctions and all of the other enforcement procedures of the Act. I do not seek to dilute OSHA's enforcement procedures. Of the 24 states with approved state plans, 23 now provide on-site consultation. Thirteen other states have applied for federal funds under OSHA's 7(c)(1) contract procedure. Twenty states/territories have no consultation programs whatsoever.

I have also, Mr. Chairman, reintroduced my bill to provide for federal authority to help assure safe and healthful working conditions for state and local employees where an imminent danger or a pattern or practice of unsafe or unhealthful working conditions exists. Attached to this statement is an analysis of this proposal, H.R. 1335, and I hope the Subcommittee will give this matter careful consideration in this session of Congress.

Finally, there are a number of specific issues which I believe merit the attention of this Subcommittee:

As you know, one of the issues that is raised in the transition document submitted to the Carter administration by the Occupational Safety and Health Administration is that of the relationship between NIOSH and OSHA. I am as yet unpersuaded that it is in the best interest of either federal agency or of business and labor, to transfer the National Institute of Occupational Safety and Health to the Department of Labor. Yet I recognize there are problems in the relationship between the two agencies. Those problems tend to be rooted in the bureaucratic infighting that unfortunately tends to bog down much of the federal government. I raise the issue because the transition document indicates that the Labor Department recommends it is "useful to start thinking of such a transfer." It's an issue you ought to examine and I hope this subcommittee does so prudently.

The second issue, related to bureaucratic infighting, is the continuing problem of jurisdiction between OSHA and other federal agencies. I am frankly distressed at the inability of the Labor Department and all of the other agencies involved to come to a resolution of these problems. The effect of the fighting continues to deny many workers the opportunity for adequate protection on the job. One of the high priorities of the new Administration should

be to better resolve these jurisdictional disputes. As you know, Mr. Chairman, the 4(b)(3) report to Congress has not been made. I hope that glaring defect also is overcome soon.

Number three, Mr. Chairman, the constitutional challenges and their implications should be watched carefully by this subcommittee. I am attaching as part of this statement the Jurisdictional Statement filed by the Department of Labor in the Barlow case. The brief is a good one and it warrants review by all Members of Congress. I'll not go into detail, since I've spelled out my own position on the Barlow decision. My hope is the Supreme Court will take on an expedited basis, in this term, the appeal on this case so that the uncertainty that hangs over so much of the Act and the efforts on the part of some of the business community to require warrants can be clarified once and for all.

Number four, Mr. Chairman, would be to indicate my hope that the Subcommittee will follow very closely the "generic standard" concept proposed by Dr. Corn just prior to his departure as the Assistant Secretary for OSHA. This concept, I think, has great merit but does need to be watched carefully to insure at all times that all affected have an opportunity for full and fair comment. The idea that Dr. Corn has proposed is an effort to make it easier to develop health criteria documents and health standards on a more rational basis than the individual chemical or carcinogen approach that has been used in the past.

Number five, among the recommendations of the Presidential Task Force submitted to President Ford is recommendation Number 5 that there be a closer working relationship between OSHA and the legal staff of the Department of Labor. I hope this Subcommittee will urge the new Assistant Secretary to promptly seek this closer relationship in order to speed up the standard-setting process.

The Occupational Safety and Health Administration has been beset by deeply committed individuals in the field, here in Washington, and in the legal staff of the Labor Department. Still, it is clear that a bottle neck exists in terms of the heavy workload of the Department of Labor's legal staff.

Number six, the full status report on OSHA submitted by Dr. Corn to Secretary of Labor W. J. Usery on January 12, 1976 ought to be a part of this record, and I'm sure Mr. Chairman, you and other members of the Subcommittee have the report. If you don't I would urge you to avail yourself of Dr. Corn's very thoughtful presentation on the status of OSHA. The full report might be made a part of this record, and I would encourage you to have the Members and the staff go through it with an eye to the perspective and issues raised.

Number seven, the revision of standards, that is those standards that were promulgated initially under the Act in 1971, must be the number one priority of the Department of Labor. That does not deflect from the health standards issue but it has become increasingly clear that until such time as the initial standards package is revised, clarified, modified and made more rational, much of the criticism of the Act, much of the detraction from the Act's effectiveness will continue because of the confusion over standards.

The time delays by the Department of Labor in the handling of modifications is unconscionable. As an attachment to this testimony, Mr. Chairman, I have tried to make available some of the background on specific standards with which I've dealt which have been pending for incredible lengths of time in the Labor Department, and which have not been dealt with well.

Number eight, trouble is clearly brewing in the National Emphasis Program. NEP was, as you know Mr. Chairman, originally

conceived as a special effort involving both foundries and metal stamping operations. The program has foundered from the very beginning. At the outset it was only going to be a beefed up inspection program, but the Labor Department wisely, in my view, broadened its scope so that it included information, education and consultation. The initial involvement by outside groups helped to develop what I thought was a very promising approach, but the Department of Labor unfortunately rejected many of the recommendations of the participants. As a consequence we've seen the American Foundrymen Society move from a position of endorsing NEP to, at this point, suggesting that their members require warrants before allowing OSHA people in their plants. The information and education efforts have been substantially reduced and the consulting effort is far smaller than originally contemplated.

The Department's experience with its NEP program is not a good beginning. I must say I'm disappointed at the way the Labor Department handled what I thought at the outset was a pretty good way of attempting to deal with a specific industry in an effective manner. It hasn't worked that way at all.

Number nine, a continuing concern that I've raised with the Labor Department has been the impact of the Review Commission decision on Department of Labor activities. In an effort to help both agencies do their work more effectively, I would urge the Subcommittee to take a very careful look at how the Department of Labor responds to the decisions of the Review Commission.

Number ten, the Committee on Government Operations last year issued two reports, "Chemical Dangers in the Workplace" and "Safety in the Federal Workplace." Each of these reports contains a list of findings, conclusions and recommendations which, although in the jurisdiction of the Government Operations Committee, nonetheless warrant the attention of this Subcommittee. My information from the Manpower and Housing Subcommittee of the Committee on Government Operations is that to date there has been no response to either report from the Labor Department. Concern for federal employee coverage and for health standards development prompts me to urge this Subcommittee to consult with the appropriate Government Operations Subcommittee in the possibility that a joint effort by both Subcommittees will get action on the recommendations by the Department of Labor.

The noise standard has the possibility of making or breaking the Act. This very complex standard with all of its implications must, in my view, be handled with great prudence by the Department and if done well can assure a stronger agency. If not done responsibly it can assure the destruction of this whole effort. The Department will need the wisdom of Job to do its job well and it will also need the constructive advice of this Subcommittee. I hope it will receive that kind of guidance from you.

Number eleven, I hope, Mr. Chairman, at the beginning of the next Congress, through the cooperation of government, business, labor and professionals, we can look at the record of these hearings and be able to say, "Of the issues raised, x are no longer problems, and y may continue to be problems but such and such is being done to remedy them."

The OSHA Act has been on the books for more than six years. It is here to stay. I am committed to it and its responsible implementation. Please know of my sincere interest in working with your Subcommittee to that end.

Thank you very much.

AMENDMENT TO OSHA

The SPEAKER pro tempore (Mr. MAZZOLI). Under a previous order of the House, the gentleman from Wisconsin (Mr. STEIGER) is recognized for 30 minutes.

Mr. STEIGER of Wisconsin. Mr. Speaker, I would like to bring to the attention of my colleagues a bill I introduced February 27, H.R. 13118, to amend the Occupational Safety and Health Act of 1970—OSHA.

The purpose of OSHA is to assure safe and healthful working conditions for American workers—with equity for employers and employees alike.

Presently under the act, employees of the States and their political subdivisions are expressly excluded from its coverage, except under approved State plans.

The purpose of H.R. 13118 is to amend the Occupational Safety and Health Act of 1970 by providing for Federal authority to help assure safe and healthful working conditions of State and local employees where a pattern or practice of unsafe or unhealthful working conditions or imminent danger exists.

State and local governmental employees are not now covered because the term "employer," which is controlling for coverage purposes, expressly excludes States and their political subdivisions.

According to section 3(5) of the act:

(5) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.

The term "State" is defined as follows in section 3(7) of the act:

(7) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

Since States, as defined in section 3(7) of the act, and political subdivisions of States are not regarded as employers under section 3(5) of the act, they are not covered as employers under the act, except to the extent that section 18(c) (6), and the pertinent regulations of that section, requires as a condition of approval that a State plan:

(6) Contain(s) satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan.

The Department of Labor has established that any entity which has been:

First, created directly by the State, so as to constitute a department or administrative arm of the Government, or, second, administered by individuals who are controlled by public officials and responsible to such officials or to the general electorate, shall be deemed to be a "State or political subdivision thereof" under section 33(5) of the act and, therefore, not within the definition of employer, and, consequently, not subject to the act as an employer.

The Department of Labor has further established in section 1975.5 of the Federal Register—January 21, 1972—various factors which will be taken into consideration in determining whether an entity meets the above two tests. Each case is viewed on its merits.

Examples of entities which would normally be regarded as not being employers under section 3(5) of the act are the State departments of labor and industry; the State highway and motor vehicle departments; State, county, and municipal law enforcement agencies as well as penal institutions; State, county, and municipal judicial bodies; State university board of trustees; State, county, and municipal public school boards and commissions; and public libraries.

Depending on the facts in the particular situation, the following types of entities would also probably be excluded as employers under section 3(5) of the act: harbor districts, irrigation districts, port authorities, bi-State authorities over bridges, highways, rivers, harbors, et cetera; municipal transit entities; and State, county, and local hospitals, and related institutions.

The following examples are of entities which would normally not be regarded as a "State or political subdivision of a State," but unusual factors to the contrary in a particular case may indicate otherwise: Public utility companies, merely regulated by State or local bodies; businesses, such as alcoholic beverage distributors, licensed under State or local law; other business entities which under agreement perform certain functions for the State, such as gasoline stations conducting automobile inspections for State and county governments.

Some protection of the employees of State and local governments is provided for elsewhere in the act. Section 18(c) (6) says that a State plan may be approved only if it contains satisfactory assurances that a State will, to its legal ability, establish and maintain an effective and comprehensive occupational safety and health program for public employees.

The Department of Labor has issued guidelines for the States as to the requirements for State and local public employees. These are set forth in the decision approving the North Carolina plan—38 CFR 3041, February 1, 1973. That decision rules that the remedial system of a State public employee program "does not have to be the same as the remedial system available to private employers." Instead, the decision says that, for approval, the State plan must contain assurances that the safety and health programs for State public employees provide for the following: First, regular inspections of workplaces, including inspections in response to complaints; second, a means for employees to bring possible violations to the attention of inspectors; third, notification to employees when no violations are found in a complaint-response inspection; fourth, information for employees about their protection and responsibilities under the program; fifth, protection for employees against employer retaliation for exercising their rights under the program; sixth, information for employees about their exposure to toxic materials, especially when exposures are above levels specified by standards; seventh, procedures for prompt restraint or elimination of imminent danger situations; eighth, a means of notifying employers and employees when an alleged violation has been found; and ninth, a means of establishing timetables for correction of

violations, and for notifying employees and employers about them.

All of the approved and proposed State plans provide coverage for State and local public employees. However, the application of the State safety and health program to public employees may be developmental. The Secretary has said that, for approval, a State plan need not meet all of the requirements of section 18 at the time of submission, but may be approved if it meets these requirements within a 3-year developmental period. The period for the development of State and local coverage and the particular provisions in State safety plans vary widely.

All approved State plans provide for some manner of enforcing a compliance of State and local governmental agencies. In a number of States the same type of enforcement is used for public employers as for private employers—that is, Alaska, Iowa, Minnesota, Oregon, and Washington. In other States coverage of State and local employees is similar to that provided for in section 19 of the act for Federal employees, with assurances that the program will meet the specific requirements outlined above—that is, Montana and North Carolina.

In 1972 the Bureau of Labor Statistics published "Injury Rates by Industry, 1970". The following work-injury rates were published based on work injuries and disabling work injuries per million employee-hours of exposure:

Industry	SIC code	Average days charged per injury				Percent of disabling injuries resulting in—				
		Injury-frequency rates		Injury-severity rate	Temporarily total	All disabling injuries	Death	Permanent impairment	Temporarily disability	
		1970	1969							
MANUFACTURING										
Manufacturing, total.....		15.2	14.8	759	427	18	50	0.2	4.4	95.4
NONMANUFACTURING										
Contract Construction		28.0	28.0	2,100	613	17	75	.7	2.6	96.7
Contract construction, total.....										
Wholesale and Retail Trade		11.3	11.6	452	545	14	40	.2	2.1	97.7
Wholesale and retail trade, total.....										
Educational services	82	6.7	7.3	385	748	15	57	.4	2.2	97.4
Elementary and secondary schools.....	821	7.1	7.5							
Colleges and universities.....	822	7.1	7.4	287	639	17	40	.3	1.2	98.5
Government										
State government:										
Hospitals.....	9282P	21.4	16.0	636	843	17	30		1.5	98.5
Institutions of higher education.....	9282P	14.4	6.2	208	665	15	42	.3	1.8	98.2
Other State government.....	9290P	10.4		910	646	14	88	.8	2.0	97.2
Local government:										
Railroad systems.....	9341P	22.0		853	557	25	39	.2	.5	99.3
Gas systems.....	9345P	17.2	17.8	1,391	1,171	20	81	.7	1.3	98.0
Water supply systems.....	9349P	14.1	11.0							
Water supply systems.....	9349P	24.9	20.1	1,583	711	16	63		1.5	98.1
Refuse collection and disposal.....	9349P	63.9	48.3	2,598	793	14	41	.3	1.1	98.6
Other utilities (and combination utilities).....	9349P	23.0								
Hospitals.....	9360P	13.0	12.2	400	670	16	31	.1	1.7	98.8
Elementary and secondary schools.....	9360P	13.3	7.5	300	564	13	32	.2	1.4	98.8
Police.....	9390P	45.6	42.3	2,211	797	12	55	.5	3.1	96.6
Fire protection.....	9390P	41.7	43.8	1,275	1,275	22	104	.6	3.1	97.7
Highways and streets.....	5990P	35.6	40.4	2,369	338	14	67	.8	1.3	

There are few instances where the injury frequency rate for State and local employees is lower than those reported under Nonmanufacturing, Manufacturing and Wholesale and Retail Trade. These figures reflect the need for further efforts to assure safe and healthful working conditions for State and local employees.

The present procedures for assuring the safety and health of State and local public employees followed by the States and the Occupational Safety and Health Administration surely comply with the act as it is written. But these procedures lack consistency and they fail to cover public employees in States without approved State plans. The statistics indicate that occupations in State and local employment can be every bit as dangerous as those in the private sector. I therefore believe there is a need to amend the act to provide for an effective and constitutional mechanism to improve the State and local public employee protection on the part of OSHA.

For these reasons, I have introduced H.R. 13113 to amend OSHA of 1970. This bill grants Federal authority to help assure safe and healthful working conditions for State and local employees where a pattern or practice of unsafe or unhealthy working conditions or imminent danger exists. It provides full coverage to public employees and employers, with enforcement through the District Courts in order to be consistent with the Constitutional limitations of *Maryland v. Wirtz*, 392 U.S. 183 (1967).

Generally the bill would extend OSHA's coverage to States and their political subdivisions. Specifically, it would amend the definition of the term "person" in the act to include any State or political subdivision of a State. Further, it would amend the definition of "employer" by striking out the phrase which eliminates States and their political subdivisions. These changes in the definition would give to employees of the States and their political subdivisions, as defined by the Occupational Safety and Health Administration, coverage under the act, and provide the full protection of the imminent danger provisions of section 13 of the act.

The bill would also increase the membership of the National Advisory Committee on Occupational Safety and Health from 12 to 14. One of the new members would be a representative of State and local governments and the other would be a representative of employees of State and local governments.

Any employees or representatives of employees of a State or a political sub-

division of a State, who believe that a safety or health violation exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Secretary or his authorized representative, of such violation or danger. Any notice shall: First, be in writing, second, set forth with reasonable particularity the grounds for the notice and third, shall be signed by the employees or representative of employees. A copy shall be provided the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving notice, his name or the names of the individual employees referred to in the notice shall not appear in the copy or on any record published, released, or made available according to the act. If the Secretary, upon receipt of the notice, determines there are reasonable grounds to believe that a pattern or practice of such violations or danger exists, he shall make a special inspection as soon as practicable, to determine if such pattern or practice or danger exist.

If the Secretary determines there are no reasonable grounds to believe that a pattern or practice of such violations or dangers exists, he shall notify the employees or representatives of employees in writing of this determination. If the Secretary determines there are no reasonable grounds to believe that a pattern or practice of violations or dangers exists, but that violations or dangers exist which do not constitute a pattern or practice, or that dangers exist which do not constitute imminent dangers, he shall notify the employer and the employees or representative of the employees in writing of this determination.

Prior to or during any inspection of a workplace, any employees or representative of employees employed in the workplace may notify the Secretary or the representative of the Secretary responsible for conducting the inspections, in writing, of any violation of section 5(a) of the act which they have reason to believe exists in the workplace; that is, the general duty clause of the act will cover State and local employees.

The U.S. district courts shall have jurisdiction, upon petition of the Secretary, to restrain any pattern or practice of any violation of section 5(a) that exposes employees of any employer who is a State or a political subdivision of a State to unhealthy or unsafe working conditions. Any such petition to restrain any pattern or practice of any violation of section 5(a) by an employer shall be filed with the appropriate U.S. district court not later than 6 months after the

occurrence of any violation which is part of such pattern or practice, and any affected employees or representative of affected employees shall have an opportunity to participate as parties in any proceeding held with respect to such petition. Any order issued may require such steps to be taken as may be necessary to avoid, correct or remove such pattern or practice.

Upon the filing of any petition, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems appropriate. The proceeding shall be as provided by rule 65 of the Federal Rules, Civil Procedure.

In the case of a petition to restrain any pattern or practice of any violation of section 5(a) by an employer who is a State or a political subdivision of a State, the Secretary shall, before filing the petition, attempt to eliminate such pattern or practice through voluntary compliance by the employer achieved by informal conciliation or other mediation procedures. Any affected employees or representative of affected employees shall have an opportunity to participate in such procedures.

I am confident this bill will help to assure employees of States and their political subdivisions coverage under OSHA with equity for employers and employees alike. It provides legal and consistent coverage for all of the Nation's State and local employees which the act currently lacks. Procedures for prompt restraint or elimination of imminent danger situations are retained as well as assurances to employees and employees alike for fair and equal treatment under the law.

An amendment such as this is not easily written, and I want to acknowledge the invaluable technical assistance offered by the Labor Department, the Legislative Counsel, the Staff of the Education and Labor Committee, [redacted] and Kathy Farnsworth of my staff. I feel it is essential that we allay the concern expressed by those in the private sector who say, "I am required to do certain things. Why does not the Government have to do the same?"

The text of the bill follows:

H.R. 13118

A bill to amend the Occupational Safety and Health Act of 1970 by providing for Federal authority to assure safe and healthful working conditions of State and local employees where a pattern or practice of unsafe or unhealthful working conditions or imminent dangers exists

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 5(a) of the Occupational Safety and

Health Act of 1970 is amended by striking out "or" the second time it appears therein and by inserting immediately before the period at the end thereof the following: ", or any State or political subdivision of a State".

(b) Section 3(5) of such Act is amended by striking out "or any State or political subdivision of a State".

Sec. 2. Section 7(a)(1) of such Act is amended by striking out "twelve" and inserting in lieu thereof "14" and by inserting immediately after the first sentence thereof the following new sentence: "One such member shall be a representative of State and local governments and one such member shall be a representative of employees of State and local governments."

Sec. 3. (a) Section 8 of such Act is amended by adding at the end thereof the following new subsection:

"(h)(1) The provisions of subsection (f) shall not apply with respect to any employer who is a State or political subdivision of a State.

"(2) In the case of any employer who is a State or a political subdivision of a State, any employees or representative of employees who believe that a violation of section 5(a) exists, or that an imminent danger exists, may request an inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or representative of employees, and a copy shall be provided the employer or his agent no later than at the time of such inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to subsection (g) of this section. If upon receipt of such notification the Secretary determines there are reasonable grounds to believe that a pattern or practice of such violations or dangers exists, he shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such pattern or practice or dangers exist. If the Secretary determines there are no reasonable grounds to believe that a pattern or practice of such violations or dangers exists he shall notify the employees or representative of the employees in writing of such determination. If the Secretary determines there are no reasonable grounds to believe that a pattern or practice of violations or dangers exists, but that violations or dangers exist which do not constitute a pattern or practice or that dangers exist which do not constitute imminent dangers, he shall notify such employer and the employees or representative of the employees in writing of such determination.

"(3) Prior to or during any inspection of a workplace, any employees or representative of employees employed in such workplace may notify the Secretary responsible for conducting the inspection, in writing, of any violation of section 5(a) which they have reason to believe exists in such workplace."

Sec. 4. Section 9 of such Act is amended

by adding at the end thereof the following new subsection:

"(d) The provisions of this section shall not apply with respect to an employer who is a State or a political subdivision of a State."

Sec. 5. (a) Section 10 of such Act is amended by inserting after subsection (c) thereof the following new subsections:

"(d) The provisions of subsections (a), (b), and (c) shall not apply with respect to an employer who is a State or a political subdivision of a State."

"(e) The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any pattern or practice of any violation of section 5(a) that exposes employees of any employer who is a State or a political subdivision of a State to unhealthy or unsafe working conditions. In the case of petition to restrain any pattern or practice of any violation of section 5(a) by any such employer (1) such petition shall be filed with the appropriate United States district court not later than 6 months after the occurrence of any violation which is part of such pattern or practice, and (2) any affected employees or representative of affected employees shall have an opportunity to participate as parties in any proceeding held with respect to such petition. Any order issued may require such steps to be taken as may be necessary to avoid, correct, or remove such pattern or practice."

"Upon the filing of any petition, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems appropriate. The proceeding shall be as provided by Rule 65 of the Federal Rules, Civil Procedure."

"In the case of a petition to restrain any pattern or practice of any violation of sec-

tion 5(a) by an employer who is a State or a political subdivision of a State, the Secretary shall, before filing such petition, attempt to eliminate such pattern or practice through voluntary compliance by such employer achieved by informal conciliation or other mediation procedures. Any affected employees or representative of affected employees shall have an opportunity to participate in such procedures."

Sec. 6. Section 11 of such Act is amended by redesignating subsection (c) as subsection (d), and by inserting after subsection (b) thereof the following new subsection:

"(c) The provisions of subsection (a) and subsection (b) shall not apply with respect to an employer who is a State or political subdivision of a State."

Sec. 7. Section 17 of such Act is amended by adding at the end thereof the following new subsection:

"(m) The provisions of subsection (a) through subsection (e) and subsection (i) through subsection (l) of this section shall not apply with respect to an employer who is a State or a political subdivision of a State."

Sec. 8. (a) Section 18(a) of such Act is amended by inserting before the period at the end thereof ", or over any such issue with respect to employees of such State or political subdivision of such State".

(b) The second sentence of section 18(e) of such Act is amended by inserting after "(c)" the first time it appears therein the following: ", and, specifically, the requirement set forth in paragraph (6) of such subsection,".

Sec. 9. The amendments made by the foregoing provisions of this Act shall take effect 120 days after the date of the enactment of this Act.

In the Supreme Court of the United States

OCTOBER TERM, 1976

No.

RAY MARSHALL, SECRETARY OF LABOR, ET AL.,
APPELLANTS

v.

BARLOW'S, INC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the three-judge district court (App. A, *infra*) is not yet officially reported. It is unofficially reported at 4 BNA OSHC 1887 and 3 CCH ESHG Para. 21,418.

JURISDICTION

The judgment of the district court declaring Section 8(a) of the Occupational Safety and Health Act

of 1970, 84 Stat. 1598, 29 U.S.C. 657(a), unconstitutional and enjoining the Secretary from acting pursuant to that Section was entered on December 30, 1976 (App. B, *infra*). A notice of appeal to this Court (App. C, *infra*) was filed on January 4, 1977. The jurisdiction of this Court rests on 28 U.S.C. 1252 and 1253.¹

QUESTIONS PRESENTED

1. Whether the inspection provisions of the Occupational Safety and Health Act of 1970, 29 U.S.C. 657(a), and their implementing regulations, violate the Fourth Amendment insofar as they authorize representatives of the Secretary of Labor to inspect without a warrant at reasonable times commercial premises routinely occupied by an employer's work force.

2. Whether, in any event, the district court should have upheld the constitutionality of the statute by interpreting it to meet Fourth Amendment requirements, instead of holding the statute unconstitutional and enjoining its enforcement.

STATUTE INVOLVED

Section 8(a) of the Occupational Safety and Health Act of 1970, 84 Stat. 1598, 29 U.S.C. 657(a), provides:

¹ Because the action was commenced on January 6, 1976, the three-judge court had jurisdiction to consider appellee's constitutional claims (see Section 7 of Pub. L. 94-381, 90 Stat. 1119, 1120).

In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized—

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent, or employee.

STATEMENT

1. The Occupational Safety and Health Act of 1970 (OSHA), 84 Stat. 1590, 29 U.S.C. 651 *et seq.*, was enacted “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.” 29 U.S.C. 651.² As we explained in our

² The need for the Act is explained in S. Rep. No. 91-1282, 91st Cong., 2d Sess. 2-4 (1970); Committee Print, Legislative History of the Occupational Safety and Health Act of 1970, Senate Committee on Labor and Public Welfare, 1st Sess. (“Leg. Hist.”) 142-144 (1971):

The problem of assuring safe and healthful workplaces * * * ranks in importance with any that engages the national attention today. * * * 14,500 persons are killed annually as a result of industrial accidents; * * * during

brief in *Irey v. Occupational Safety and Health Review Commission*, No. 75-748, argued November 29, 1976, the Act creates a federal statutory duty to avoid maintaining unsafe or unhealthy working conditions applicable to any non-governmental employer whose business affects commerce. 29 U.S.C. 654(a)(1) and (2); 652 (5).

The Act is administered by the Department of Labor, whose inspectors are authorized to conduct safety and health inspections at places of employment. 29 U.S.C. 657(a). If upon inspection or other investigation the Secretary has cause to believe

the past four years more Americans have been killed where they work than in the Vietnam war. By the lowest count, 2.2 million persons are disabled on the job each year, resulting in the loss of 250 million man days of work—many times more than are lost through strikes * * * [and] the economic impact of industrial deaths and disability is staggering. Over \$1.5 billion is wasted in lost wages, and the annual loss to the Gross National Product is estimated to be over \$8 billion. Vast resources that could be available for productive use are siphoned off to pay workmen's compensation benefits and medical expenses. * * * In sum, the chemical and physical hazards which characterize modern industry are not the problem of * * * a single industry, nor a single state jurisdiction. The spread of industry and the mobility of the workforce combine to make the health and safety of the worker truly a national concern.

The House Report (H.R. Rep. No. 91-1291, 91st Cong. 2d Sess. 14 (1970), Leg. Hist. 844) defines occupational health and safety as "the most crucial [issue] in the whole environmental question", and notes that "[t]he on-the-job health and safety crisis is the worst problem confronting [over 80 million] American workers."

that the Act or its implementing regulations have been violated, he is empowered to issue a citation to the employer specifically describing the violation, fixing a reasonable time for its abatement, and (in his discretion) proposing a civil penalty. 29 U.S.C. 658, 659.³

The inspections must be made at reasonable times and in a reasonable manner, and must be limited to the scope necessary to identify occupational hazards (29 U.S.C. 657(a)). Upon presenting his credentials

³ The amount of the proposed penalty "if any" (29 U.S.C. 659(a)) depends on the severity of the hazard and the cited employer's past diligence in attempting to discover and correct it (*ibid.*, see 29 U.S.C. 666(i) and (j)). The prospect of such penalties is designed to promote voluntary compliance by employers before any inspector arrives. 29 U.S.C. 651(1); see Leg. Hist. 463-464, 470 (Sen. Javits), 471-472 (Sen. Dominick), 853; *Brennan v. Occupational Safety and Health Review Commission*, 487 F. 2d 438, 441, 443 (C.A. 8). Cf. *National Independent Coal Operators' Association v. Kleppe*, 423 U.S. 388, 401. Such proposed penalties may range up to \$1,000 for serious violations, and to a maximum of \$10,000 for willful or repeated violations. 29 U.S.C. 658(a), 659(a), 666(a)-(c) and (j). The Secretary may also propose a civil penalty of not more than \$1,000 per day of nonabatement where subsequent inspection reveals noncompliance with a final agency order, 29 U.S.C. 659(b), 666(d), and may seek temporary injunctions in federal district court to correct imminent dangers before administrative enforcement would result in their abatement. 29 U.S.C. 662. Finally, in cases of willful violations that cause employee death, the Secretary is authorized to refer the matter to the Department of Justice for criminal prosecution, which may result in a maximum sentence of six months' imprisonment and a \$10,000 fine. 29 U.S.C. 666(e). However, of approximately 400,000 inspections conducted since the Act's April 1971 effective date, only 5 have resulted in criminal prosecution.

to the employer or agent in charge,⁴ the inspector is entitled to immediate entry to any premises where work is performed by employees of the employer (29 U.S.C. 657(a)); advance notice of the inspection is prohibited (29 U.S.C. 666(f); 651(10)). The employer is entitled to accompany the inspector during his tour of the relevant premises, and may raise privacy or other objections to the conduct of the inspection. 29 U.S.C. 657(e); see 29 C.F.R. 1903.4, 1903.7(e), 1903.8.⁵

The statute provides no sanctions for refusals to permit inspections. In implementing the statute, the Secretary has promulgated a regulation requiring the inspector to seek a court order authorizing entry if the employer refuses to consent to the inspection (29 C.F.R. 1903.4).

2. Appellee Barlow operates an electrical, plumbing, and heating-air conditioning installation business in Pocatello, Idaho. At 11 a.m. on September 11, 1975, an OSHA inspector arrived at Barlow's to

⁴ These credentials paraphrase and cite the statutory authority to inspect. See *Usery v. Godfrey Brake and Supply Service*, C.A. 8, No. 76-1247, slip op. 2, 5 (November 19, 1966). Inspectors may offer toll-free verifying calls to their area offices if these credentials do not convince employers of the propriety of the inspection. *Ibid.* Agency regulations also require that the inspector explain the nature, purpose and scope of the proposed inspection. 29 C.F.R. 1903.7(a).

⁵ Trade secrets and other compelling privacy interests of the employer are explicitly protected. 29 U.S.C. 664-665; 29 C.F.R. 1903.9.

make a routine inspection of its work areas,⁶ presented his credentials, explained his mission to the company's president, and was denied entry because he did not have a search warrant. After notice and hearing on December 30, 1975, the Secretary obtained a district court order authorizing the entry for inspection purposes (App. A, *infra*, pp. 1a-2a).

On January 5, 1976, the inspector returned to Barlow's and requested permission to inspect based on this order. Permission was again denied, and the next day the appellee filed a complaint alleging that 29 U.S.C. 657(a) is inconsistent with the Fourth Amendment, and seeking temporary and permanent injunctions against OSHA inspections. On January 15, 1976, a single judge denied Barlow's requests for preliminary relief (App. A, *infra*, p. 3a).

A three-judge court was convened, and on December 30, 1976, it concluded that 29 U.S.C. 657(a) is "unconstitutional and void", relying on *Camara v. Municipal Court*, 387 U.S. 523, and *See v. City of Seattle*, 387 U.S. 541. The court permanently enjoined the Secretary from conducting safety inspections pursuant to 29 U.S.C. 657(a) to enforce OSHA, and specifically from inspecting appellee's premises.⁷

⁶ The inspection was a "general schedule" investigation—it was not based on any employee complaint, history of employer noncompliance, or other reason to believe a violation was occurring at that particular place of business (App. A, *infra*, p. 2a).

⁷ On February 3, 1977, Mr. Justice Rehnquist stayed the district court's order "except at it applies to appellee Barlow's, Inc.," until final disposition of this case.

THE QUESTIONS ARE SUBSTANTIAL

1. The decision below, if permitted to stand, would seriously impair effective implementation of federal legislation designed to protect the health and safety of the Nation's workforce. The decision is not required by this Court's decisions applying the Fourth Amendment to administrative inspections; indeed, it is inconsistent with the rationale of *Colonnade Catering Corp. v. United States*, 397 U.S. 72, and *United States v. Biswell*, 406 U.S. 311, which dealt with closely similar Fourth Amendment issues.

Without the ability to make the unannounced visits the Act contemplates,⁸ the Secretary cannot effectively implement OSHA by identifying and requiring the correction of hazards threatening employees.⁹ In

⁸ Congress intended the Secretary to enter and inspect work places without a warrant. See S. Rep. No. 91-1282, *supra*, at 11 (Leg. Hist. 151):

In order to carry out an effective national occupational safety and health program, it is necessary for government personnel to have the right of entry in order to ascertain the safety and health conditions and status of compliance of any covered employment establishment. Section 8(a) therefore authorizes the Secretary or his representative, upon presenting appropriate credentials, to enter at reasonable times the premises of any place of employment * * * to inspect and investigate within reasonable limits all pertinent conditions * * *.

H.R. Rep. No. 91-1291, 91st Cong., 2d Sess. 22 (1970) (Leg. Hist. 852), is to the same effect.

⁹ In addition to routine random inspections, inspections are undertaken to confirm worker complaints of imminent dangers or other hazards, 29 U.S.C. 657(f), 662; investigate job-

addition, the constant possibility of such inspections and the knowledge that violations discovered by the inspectors may lead to monetary sanctions are essential to secure the broad voluntary compliance on which the program depends.¹⁰ Congress recognized that workplace hazards are so pervasive and in the main so transient or easily concealed that unannounced spot checks were needed, since "advance notice to an employer has been a prime cause of the breakdown in * * * enforcement" under other safety statutes (H. R. Rep. No. 91-1291, 91st Cong., 2d Sess. 26127 (1970); Leg. Hist. 856-857). It accordingly specified that the inspection is to be without advance notice (29 U.S.C. 651(10)) and the inspector is authorized to enter the premises to be inspected "without delay" (29 U.S.C. 657(a)).¹¹

related fatalities or catastrophes, cf. 29 C.F.R. 1904.8; reinspect workplaces to determine compliance with abatement orders, 29 U.S.C. 659(b), 660(b); and investigate claims that employers have retaliated against workers for exercising their rights under the statute. 29 U.S.C. 660(c).

¹⁰ See, e.g., 29 U.S.C. 659(a) and (b); *Usery v. Godfrey Brake and Supply Service*, C.A. 8, No. 76-1247, slip op. 6-7 (decided November 19, 1976); *Dunlop v. Rockwell International*, 540 F. 2d 1283, 1292 (C.A. 6); *Brennan v. Occupational Safety and Health Review Commission*, 487 F. 2d 438, 441, 443 (C.A. 8). Cf. *National Independent Coal Operators' Association v. Kleppe*, 423 U.S. 388, 401; *Godwin v. Occupational Safety and Health Review Commission*, 540 F. 2d 1013, 1016 (C.A. 9).

¹¹ Congress was also sensitive to the interests of the employers; it provided significant safeguards to assure that the interference with their operations is no greater than the interests protected by the Act require. Thus, the scope of the

A warrant requirement would significantly impede the effectuation of the statute's purpose, whether the warrant need be sought only after access is refused or prior to any attempt to inspect. As this Court noted in *See, supra*, 387 U.S. at 545, n. 6, "surprise may often be a crucial aspect of routine inspections of business establishments." Here, in view of the ease with which hazardous working conditions may frequently be temporarily concealed or ameliorated,¹² the effectiveness of the inspection system

inspection permitted is limited to that necessary to identify occupational hazards, it is to be made during working hours or at other reasonable times (29 U.S.C. 657(a)), and the employer is entitled to notice of the inspector's authority (29 U.S.C. 657(a)) and to protection of his compelling privacy interests (29 U.S.C. 664-665).

¹² For example, employers who have permitted spray-booth ventilating fans designed to remove toxic and flammable substances to become clogged with residues may swiftly restore them to operating condition before allowing them to deteriorate again after inspection. Cf. 29 C.F.R. 1910.107. Employers who have allowed employees to work in unshored trenches, 29 C.F.R. 1926.652(a) and (b), or without protective hard hats, safety belts, respirators, ear plugs, or guard rails, 29 C.F.R. 1910.23, 1910.95(b)(1), 1910.132-.136; 29 C.F.R. 1926.28(a), 1926.104-105, 1926.500, may quickly require use of such equipment, then rescind or ignore such orders to reduce expenses or increase production. Cf., e.g., *I.T.O. Corp. of New England v. Occupational Safety and Health Review Commission*, 540 F. 2d 543 (C.A. 1); *C.N. Flagg & Co.*, OSHRC No. 1734, 11 OSHARC Reports 632, affirmed without opinion, C.A. 2, No. 74-2362 (January 12, 1976). Guards to prevent amputations from work with hazardous machines, e.g., 29 C.F.R. 1910.212, .217, may be turned off or by-passed by foremen or individual operators when they are sure an inspector will not be present—a common produc-

would be largely nullified if an employer could gain significant delay by refusing to permit an inspection without a warrant.¹³ This would be particularly true where—as is commonly the case in civil warrant practice—a show cause order issues before compulsory process may be obtained.

The alternative of routinely obtaining *ex parte* warrants before attempting an inspection would also create substantial difficulties. Most employers willingly consent to inspections without a warrant. The Act covers nearly six million workplaces, and the Secretary is currently conducting tens of thousands of inspections yearly with only 1,300 inspectors.¹⁴ In

tion practice noted in the legislative history itself. See, *e.g.*, Leg. Hist. 401-402 (Sen. Saxbe). And since proof of correctible violations *inter alia* requires a showing that workers had access to hazardous machines or areas, *e.g.*, *Brennan v. Gilles & Cotting, Inc.*, 504 F. 2d 1255, 1263-1266 (C.A. 4), on remand, 1975-1976 CCH OSHD Para. 20,448 (February 20, 1976) (not yet officially reported), successful enforcement proceedings may be blocked with relative ease by temporarily disconnecting machines or barricading such areas, if advance notice of an inspector's arrival is obtained.

¹³ Agency regulations currently require the Secretary to obtain a court order authorizing entry if the inspector is initially refused entry. See 29 C.F.R. 1903.4. A ruling by this Court that no warrant is required should greatly reduce an employer's incentive to refuse entry. Moreover, since the district courts are always open for compulsory process purposes, Fed. R. Civ. P. 77(a), and there would ordinarily be no cognizable contention in opposition, orders authorizing entry would issue swiftly and routinely in the event of refusals, further reducing the interim available to employers.

¹⁴ Congress repeatedly indicated awareness that qualified inspectors to enforce this Act would be in critically short

these circumstances, requiring inspectors to obtain a warrant before each inspection would place an unwarranted burden on limited judicial and enforcement resources, creating severe delays in implementing inspections, to the detriment of the Act's basic purpose of assuring the swiftest possible abatement of occupational hazards. See, *e.g.*, *Brennan v. Winters Battery Mfg. Co.*, 531 F. 2d 317, 322-323 (C.A. 6), certiorari denied, No. 75-1162 (May 24, 1976).

Moreover, pre-inspection warrants for routine "general schedule" inspections would provide only minimal additional safeguards for an employer's privacy interests. Since the essence of the general schedule inspection is that it is a random spot check, the factors identified in *Camara v. Municipal Court*, *supra*, 387 U.S. at 538-539, as supporting a finding of probable cause for inspection would be largely irrelevant. Here, as in *United States v. Biswell*, *supra*, 406 U.S. at 316: "if the necessary flexibility as to time, scope, and frequency is to be preserved, the protections afforded by a warrant would be negligible." Accord, *Brennan v. Buckeye Industries*, 374 F. Supp. 1350, 1354 (S.D. Ga.).¹⁵

supply for an indefinite time. *E.g.*, S. Rep. No. 91-1282, *supra*, at 12, 21-22, Leg. Hist. 152, 161-162; H.R. Rep. No. 91-1291, *supra*, at 22-31, Leg. Hist. 852-861; H.R. (Conf. Rep.) Rep. No. 91-1765, 91st Cong., 2d Sess. 37 (1970), Leg. Hist. 1190.

¹⁵ Probable cause for inspections based on fatality reports or employee complaints could be established by submitting to the magistrate the fatality report prepared by the employer (29 C.F.R. 1904.8) or the employee complaint, which must in any event be presented to the employer at the time of

Nothing in the decisions of this Court calls for invalidation of the congressional authorization of warrantless OSHA safety inspections. This Court has consistently recognized that the overriding Fourth Amendment test is one of "reasonableness" in the particular circumstances. *E.g.*, *Roaden v. Kentucky*, 413 U.S. 496, 501; *Camara v. Municipal Court*, *supra*, 387 U.S. at 538-539. It has noted that congressional determinations regarding the reasonableness of particular intrusions are entitled to weight in this constitutional area, *United States v. Watson*, 423 U.S. 411; and it has regularly applied that test's balancing of governmental interests against privacy expectations in deciding whether a warrant is required, as well as in identifying the nature of the probable cause needed to support a warrant authorizing an inspection. *E.g.*, *Camara, supra*, 387 U.S. at 533; cf. *Almeida-Sanchez v. United States*, 413 U.S. 266, 269-270 (plurality opinion); 277-285 (Powell, J., concurring), 288-290 (White, J., dissenting).

Virtually all the factors the Court has found significant in concluding that statutorily authorized inspections (in contrast to the types of searches and seizures that have been the traditional focus of Fourth Amendment concern) may be conducted without a

the inspection (29 U.S.C. 657(f)(1)). But the warrant procedure in these cases would provide the employer with no more information concerning the reasonableness of the inspection than he is already provided by statute and regulation. See *United States ex rel. Terraciano v. Montanye*, 493 F. 2d 682, 685 (C.A. 2), certiorari denied *sub nom. Terraciano v. Smith*, 419 U.S. 875.

warrant¹⁶—express congressional authorization, compelling governmental need in light of the particular purpose of the inspection involved, the difficulty of making any meaningful “cause” showing, and limited interference with legitimate privacy expectations¹⁷—

¹⁶ Similar or identical provisions are included in many federal statutes, *e.g.*, 21 U.S.C. 374(a) (Food, Drug, and Cosmetic Act); 30 U.S.C. 723, 724 (Metal and Nonmetallic Mine Safety Act); 30 U.S.C. 813 (Coal Mine Health and Safety Act); 45 U.S.C. 437(c) (Railroad Safety Act); 8 U.S.C. 1225(a) (Immigration and Nationality Act); 29 U.S.C. 211(a) (Fair Labor Standards Act); 7 U.S.C. (Supp. V) 136g (Environmental Pesticide Control Act); 41 U.S.C. 53 (Walsh-Healey Act); 45 U.S.C. 29 (Railroad Safety Appliance Act); 42 U.S.C. 1857f-6 (Air Pollution Control Act); 7 U.S.C. 2146(a) (Animal Welfare Act of 1970); 46 U.S.C. 239, 362, 404 (Bureau of Marine Inspection Act); 21 U.S.C. 1034(a), (b), (d) (Egg Products Inspection Act); 15 U.S.C. 1270(a), (b) (Federal Hazardous Substances Act); 42 U.S.C. 2035(c) (Atomic Energy Act); Section II, Pub. L. 94-469, 90 Stat. 2032, 15 U.S.C. 2610 (Toxic Substances Control Act); 33 U.S.C. (Supp. V) 467(a) (Water Pollution Control Act); 42 U.S.C. 1857c-9 (Clean Air Act); 26 U.S.C. 7606 (Internal Revenue Code of 1954); 26 U.S.C. 5146(b) (Internal Revenue Act of 1958).

¹⁷ The statute is aimed only at business premises, which have “[h]istorically * * * been subject to broad visitatorial power, both in England and in this country.” *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 204. Moreover, the inspection is designed only to disclose hazardous working conditions—it relates purely to the regulation of business activities. *G. M. Leasing Corp. v. United States*, No. 75-235, decided January 12, 1977, slip op. 14-15. And, since OSHA inspectors are only to examine areas where employees work, they “do not * * * intrude into any zone of privacy which the [employers] reasonably expect to remain inviolate.” *Youghio-gheny and Ohio Coal Co. v. Morton*, 364 F. Supp. 45, 51 (S.D. Ohio). Indeed, at least two courts of appeals have suggested that employers’ privacy expectations in these circumstances are

are present in this case. See *Colonnade Catering Corp. v. United States*, 397 U.S. 72; *United States v. Biswell*, 406 U.S. 311.¹⁸ For this reason those federal courts that have attempted to balance the competing interests have sustained limited warrantless inspections under Section 8(a)¹⁹ and analogous regulatory provisions.²⁰

so low as to amount to a lack of Fourth Amendment standing. *Bloomfield Mechanical Contracting, Inc. v. Occupational Safety and Health Review Commission*, 519 F. 2d 1257, 1263 (C.A. 3); *Lake Butler Apparel Co. v. Secretary*, 519 F. 2d 84, 88 (C.A. 5).

¹⁸ Moreover, this case does not involve the circumstances that this Court identified in *Camara* and *See* as indicating that warrantless inspections are unreasonable under the Fourth Amendment in particular situations—blanket authorizations to inspect, lack of notice regarding the inspection's lawful purpose or scope, and the absence of any indication that a warrant requirement would significantly hamper regulation.

¹⁹ *Brennan v. Buckeye Industries*, 374 F. Supp. 1350 (S.D. Ga.); *Dunlop v. Able Contractors*, Civ. No. 75-57-BLG (D. Mont., December 15, 1975), appeal pending, C.A. 9, No. 76-1615. Contra, *Brennan v. Gibson's Productions, Inc. of Plano*, 407 F. Supp. 154, 162-163 (E.D. Tex.) (three-judge court), appeal pending, C.A. 5, No. 76-1526; *Dunlop v. Hertzler Enterprises*, 418 F. Supp. 627 (D. N.Mex.) (three-judge court), appeal pending, C.A. 10, No. 76-2020; *Usery v. Rupp Forge Co.*, No. C-76-385 (N.D. Ohio, April 22, 1976, appeal pending, C.A. 6, No. 76-1960; *Usery v. Centrif-Air Machine Co.*, No. C-76-1551 (N.D. Ga., January 10, 1977).

²⁰ *United States v. Business Builders, Inc.*, 354 F. Supp. 141, 143 (N.D. Okla.) (Food, Drug and Cosmetic Act); *Youghiogheny and Ohio Coal Co. v. Morton*, 364 F. Supp. 45 (S.D. Ohio) (Coal Mine Health and Safety Act of 1969); *United States ex rel. Terraciano v. Montanye*, 493 F. 2d 682, 684-685 (C.A. 2), certiorari denied *sub nom. Terraciano v. Smith*, 419 U.S. 875 (state narcotics statute); *United States*

2. Even if, despite our contrary submission, this Court should conclude that the Fourth Amendment precludes warrantless safety inspections of working areas, the district court erred in declaring 29 U.S.C. 657(a) "unconstitutional and void" and enjoining the Secretary from "acting or attempting to act pursuant to or in furtherance of" that Section (App. B, *infra*, pp. 11a-12a). It should instead have followed this Court's rule that "under familiar principles of constitutional adjudication, our duty is to construe the statute, if possible, in a manner consistent with the Fourth Amendment," *Almeida-Sanchez v. United States*, *supra*, 413 U.S. at 272, and interpreted the statute to meet Fourth Amendment requirements.²¹ Although, as noted, we believe it is clear that Congress intended to authorize warrantless inspections, it is equally clear that interpreting the statute to meet Fourth Amendment requirements more closely approximates congressional intent than totally eliminating the authority to inspect. Cf. *Tilton v. Richardson*, 403 U.S. 672, 684.

3. The uncertainty concerning the Secretary's authority to conduct OSHA inspections is seriously hampering the enforcement of that Act. Accordingly, the Secretary urges that this case be considered on an

v. Del Campo Baking Mfg. Co., 345 F. Supp. 1371, 1374-1377 and nn. 12-15 (D. Del.) (Food, Drug and Cosmetic Act); *United States v. Western & A. R. R.*, 297 Fed. 482, 484-485 (N.D. Ga.) (Railroad Safety Appliance Act).

²¹ This is the course followed by the other district courts that have found warrantless OSHA inspections unconstitutional. See note 19, *supra*.

expedited schedule that will permit a final decision this Term. To that end, the government will file its brief on the merits by March 15, 1977, and we suggest that if the Court notes probable jurisdiction, the appellees be ordered to file their brief in response no later than April 14, 1977. The case would then be ready for argument during the April Session of the Court.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted.

DANIEL M. FRIEDMAN,
Acting Solicitor General.

ALFRED G. ALBERT,
Acting Solicitor of Labor,

BENJAMIN W. MINTZ,
Associate Solicitor,

MICHAEL H. LEVIN,
Counsel for Appellate Litigation,
Department of Labor.

FEBRUARY 1977.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Civil No. 1-76-3

(Three-Judge Court)

BARLOW'S, INC., an Idaho corporation, PLAINTIFF

v.

W. J. USERY, Secretary of Labor of the
United States of America, in his official
capacity, ET AL., DEFENDANTS

MEMORANDUM DECISION AND ORDER

Before: KOELSCH and ANDERSON, Circuit Judges,
and McNICHOLS, Chief District Judge.

ANDERSON, Circuit Judge:

Plaintiff is an Idaho corporation in good standing situated in Pocatello, Idaho. Its business is the installation of electrical and plumbing fixtures, heating and air conditioning units. The corporation is engaged in interstate commerce in that it purchases and uses materials such as sheet metal which are made without the State of Idaho.

On September 11, 1975, Occupational Safety and Health Compliance Officer Daniel T. Sanger arrived at plaintiff's business premises for the purpose of conducting a safety and health inspection pursuant to Section 8(a) of the Occupational Safety and

Health Act. 29 U.S.C. § 657(a).¹ Mr. Sanger properly identified himself and requested permission to inspect the nonpublic area of the premises. Mr. Ferrol G. "Bill" Barlow, President and Manager of Barlow's, Inc., refused to allow the inspection, basing his refusal on the absence of a search warrant. It is undisputed that Mr. Sanger did not have any cause, probable or otherwise, to believe a violation existed nor was he in possession of any complaints by any employee of Barlow's, Inc.

As a result of Mr. Barlow's refusal, the Secretary petitioned this court on December 13, 1975, for an order compelling entry, inspection and investigation. A show cause order was thereafter issued and subsequent to the show cause hearing the Secretary's petition was granted on December 30, 1975.

¹ 29 U.S.C. § 657(a) states:

"(a) In order to carry out the purposes of this chapter, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized—

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee."

On January 5, 1976, the court's order was presented to Mr. Barlow. Mr. Barlow again declined to permit the inspection. The next day the plaintiff filed the instant action requesting that a three-judge court be convened to enjoin the enforcement of the Act on the ground of repugnance to the Fourth Amendment and, further, requesting a temporary restraining order. The present three-judge court² was empaneled and the temporary restraining order was denied on the ground of an inadequate showing of immediate and irreparable injury.

This case squarely presents the issue of whether the entry and inspection provisions of the Occupational Safety and Health Act (OSHA), 29 U.S.C. § 651, et seq., are consistent and compatible with the dictates of the Fourth Amendment.³

I.

Preliminarily, the Secretary advances two grounds to preclude this panel from reaching a decision on

² During the pendency of these proceedings Judge Koelsch took senior status and Judge Anderson was elevated from district judge to circuit judge and continues to participate in this matter by designation of the Chief Judge of the Ninth Circuit.

³ AMENDMENT IV—SEARCHES AND SEIZURES

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

the merits. First, it is contended that this court lacks subject matter jurisdiction. This argument is premised on two principles: First, that judicial review is improper because Congress has designated an exclusive forum—the Occupational Safety and Health Administration, and, second, that plaintiff is not entitled to challenge agency action for a supposed or threatened injury until prescribed administrative proceedings have been exhausted. In short, the Secretary contends that plaintiff should simply have permitted a full inspection under protest, thereby preserving its objections for the Commission and appellate courts, if and when a citation resulting from the inspection is actually issued against it.

The purposes served by the exhaustion doctrine, as set forth in *McKart v. United States*, 395 U.S. 185 (1969), are absent from this case and we therefore will not apply the rule to this case. It is beyond question that the administrative channels of OSHA lack the expertise to consider and determine the constitutional question presented by this case. We also find, after a consideration of the factors set forth in *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967), that the issue presented by this case is ripe for judicial determination. The issue presented is one of constitutional law only and, further, the plaintiff is placed in a dilemma of being forced to give up his asserted right of privacy or potentially finding himself in contempt of court. We therefore reject the secretary's contention that this court lacks subject matter jurisdiction.

The Secretary's second ground urged in support of dismissal is that plaintiff's failure to appeal the order of December 30, 1976, requiring the inspection bars the present action on res judicata grounds. Our review of the transcript of that hearing convinces us that the presiding judge reserved the constitutional issue on the basis that it was premature. The ruling in that case, Civil 4-75-58, clearly left open the door for subsequent litigation of the Fourth Amendment claim. We thus proceed to the merits.

II.

In *Frank v. Maryland*, 359 U.S. 360 (1959), the Supreme Court upheld the conviction of Aaron D. Frank who refused to permit a Baltimore City health inspector to enter and inspect his premises without a search warrant. This holding was expressly overruled by the Supreme Court in *Camara v. Municipal Court of San Francisco*, 387 U.S. 523 (1967) and its companion case, *See v. City of Seattle*, 387 U.S. 541 (1967). In *Camara* appellant was awaiting trial on criminal charge of violating the San Francisco Housing Code by refusing to give permission to a city housing inspector who sought to inspect appellant's residence without a warrant. The court, in tracing the history and scope of the Fourth Amendment, stated:

"Nevertheless, one governing principle, justified by history and by current experience, has consistently been followed: except in certain carefully defined classes of cases, a search of private property without proper consent is 'unreason-

able' unless it has been authorized by a valid search warrant." 387 U.S. at 528-29 [citations omitted].

The court went on to hold that under the Fourth Amendment a person has the constitutional right to insist that a search warrant be obtained before an administrative inspection of a private residence is allowed.

In *See, supra*, the court was faced with a warrantless inspection of a commercial warehouse in the course of a municipal fire, health and housing program. In expanding its *Camara* holding to include commercial structures as well as private residences, the court stated:

"We therefore conclude that administrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure." 387 U.S. at 545.

In *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970), the court narrowed the scope of its *Camara* holding in upholding the warrantless inspection of the premises of a retail dealer of liquor. In *United States v. Biswell*, 406 U.S. 311 (1972), the *Colonnade* reasoning was expanded to permit warrantless inspections of firearms dealers.

III.

It is upon the framework of the above-mentioned cases that we must base our decision. We reject the notion as espoused in *Brennan v. Buckeye Indus-*

tries, Inc., 374 F. Supp. 1350 (S.D. Ga. 1974), that the *Colonnade* and *Biswell* decisions envision a trend of the Supreme Court to generally narrow the holdings of *Camara* and *See*. Instead, we find that the warrantless inspection scheme pursuant to OSHA is more properly aligned with and must be controlled by the holdings in *Camara* and *See*, *supra*. See *Brennan v. Gibson's Products, Inc. of Plano*, 407 F. Supp. 154 (Three-judge court, E. D. Texas, 1976).

We simply cannot overlook the fact that in *Colonnade* and *Biswell* the court dealt with an "industry long subject to close supervision and inspection" (*Colonnade*, 397 U.S. at 77), and a "pervasively regulated business" (*Biswell*, 406 U.S. at 316). We believe that both of those cases fit into the *Camara* categorization of "certain carefully defined classes of cases." We have no such industry in this case. OSHA applies to all businesses that affect interstate commerce. 29 U.S.C. § 651(a)(3). As such, it applies to a wide variety of over 6,000,000 work places and does not focus on one particular type of business or industry. It cannot be questioned that this broad spectrum of businesses can be distinguished from the heavily-regulated liquor and firearm industries encountered in *Colonnade* and *Biswell*, *supra*.⁴

⁴ The Congressional investigations revealed in the legislative history of the Act (3 U.S. Code Congressional and Administrative News, 91st Congress, Second Session, 1970, p. 5177, et seq.) make a persuasive case for "need" in the health and safety fields. We, of course, do not sit in judgment of the wisdom of Congress. Our only concern is the alleged affront to the Fourth Amendment. The rationale of an anonymous

We have also had the benefit, not enjoyed by the court in *Brennan v. Buckeye Industries, Inc.*, *supra*, of recent Supreme Court pronouncements which show a continued allegiance to the *Camara* and *See* holdings as expressing the court's views on the scope of the Fourth Amendment. In *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973), the court was faced with a statute and regulations which permitted warrantless searches for aliens, without probable cause, within a one hundred mile zone along the international border. The court invalidated these roving searches by the Immigration and Naturalization Service, finding that such searches:

“embodied precisely the evil the court saw in *Camara* when it insisted that the ‘discretion of the official in the field’ be circumscribed by ob-

saying “Expediency is the argument of tyrants, it precedes the loss of every human liberty” seems of forceful application here. That the end result may be laudable and desirable does not justify the means used to accomplish it when constitutional prohibitions are confronted. To paraphrase Burke, *Impeachment of Warren Hastings*, February 16, 1788; “The Constitution (law) and arbitrary power are in eternal omnia.” We suggest that there are other less intrusive and oppressive methods of accomplishing the intended result, e.g., employer reporting requirements with provisions for employee contribution and participation; employer-employee safety committees; encouragement of employee complaints; in the organized management-labor relations field a greater and more forceful input by labor unions as the safety representative of their members; efforts toward better enforcement by the states of their health and safety laws, etc. We subscribe to the *Camara* court holding that warrantless inspections must be confined to “certain carefully defined classes of cases.” *Camara, supra*, p. 528-9.

aining a warrant prior to the inspection." 413 U.S. at 270.

The court went on to distinguish *Colonnade* and *Biswell* by noting that "businessmen engaged in such federally licensed and regulated enterprises accept the burdens as well as the benefits of their trade, . . ." 413 U.S. at 271.

More recently, in *Air Pollution Variance Board v. Western Alfalfa Corp.*, 416 U.S. 861 (1974), an inspector of the Colorado Department of Health conducted daylight visual pollution tests of smoke being emitted from the company's chimney. The inspector had entered the outdoor premises of the business without the owner's consent or having obtained a search warrant. The court expressly reaffirmed the holdings of *Camara* and *See*, but held them inapplicable to the case because of the "open fields" doctrine. See *Hester v. United States*, 265 U.S. 57 (1924).

There is one common thread among these cases that requires the result we reach here. In *Camara*, *See* and *Western Alfalfa*, *supra*, each was involved with statutory and regulatory schemes aimed at promoting and protecting public health and safety. The warrantless inspections authorized under OSHA likewise seek to promote public health and safety and therefore must be controlled by *Camara* and *See*.

The analysis which we have outlined above is consistent with that taken by another three-judge panel in *Brennan v. Gibson's Products, Inc. of Plano*, *supra*. While we adopt, in general, the similar reasoning

employed there, we decline the invitation to judicially redraft an enactment of Congress. Unlike the *Gibson's Products* court, we cannot accept the proposition that the language of the OSHA inspection provisions envision the requirement that a warrant be obtained before any inspection is undertaken. Certainly, Congress was able, had it wished to do so, to employ language declaring that a warrant must first be obtained, the procedures under which it is to be obtained, and other necessary regulations. Congress did not do so and we refuse to accept that duty.

IV.

We therefore hold that the inspection provisions of OSHA which have attempted to authorize warrantless inspections of those business establishments covered by the Act, are unconstitutional as being violative of the Fourth Amendment.

IT IS SO ORDERED and judgment shall be entered accordingly.

DATED this 30th day of December, 1976.

/s/ M. Oliver Koelsch per JBA
M. OLIVER KOELSCH
Senior Circuit Judge

/s/ J. Blaine Anderson
J. BLAINE ANDERSON
United States Circuit Judge

/s/ Ray McNichols per JBA
RAY MCNICHOLS, Chief
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Civil No. 1-76-3

(Three-Judge Court)

BARLOW'S, INC., an Idaho corporation, PLAINTIFF

vs.

W. J. USERY, Secretary of Labor of the
United States of America, in his official
capacity, ET AL., DEFENDANTS

SUMMARY JUDGMENT

The cross motions of the parties for summary judgment having been heard and submitted and the court having heretofore entered its memorandum decision and order, and it appearing that there are no genuine material issues of fact and that the record in this cause presents only questions of law, and the court having concluded that plaintiff is entitled to the relief prayed for in its complaint on file herein,

IT IS HEREBY ORDERED, ADJUDGED and
DECLARED as follows:

I.

That Section 8(a) of Public Law 91-596, December 29, 1970, 84 Stat. 1598 (29 U.S.C. 657(a)), is unconstitutional and void in that it directly offends

against the prohibitions of the Fourth Amendment of the Constitution of the United States of America.

II.

That defendant, the Secretary of Labor of the United States of America, and all other defendants, and their successors in office, and all other persons acting by, through or under them, are hereby forever and permanently RESTRAINED and ENJOINED from acting or attempting to act pursuant to or in furtherance of Section 8(a) of OSHA (29 U.S.C. 657(a)) and from conducting or attempting to conduct any general searches or inspections of the non-public portions of the premises of the plaintiff herein pursuant to Section 8(a) of the Occupational Safety and Health Act of 1970.

III.

No costs or attorneys' fees are allowed.

DATED this 30th day of December, 1976.

/s/ M. Oliver Koelsch per JBA
M. OLIVER KOELSCH
Senior Circuit Judge

/s/ J. Blaine Anderson
J. BLAINE ANDERSON
Circuit Judge

/s/ Ray McNichols per JBA
Chief District Judge

APPENDIX C

WILBUR T. NELSON
United States Attorney
District of Idaho
Federal Building, Room 693
550 West Fort Street
Boise, Idaho 83724
Telephone: 384-1211

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Civil No. 1-76-3

(Three-Judge Court)

BARLOW'S, INC., an Idaho corporation, PLAINTIFF

vs.

W. J. USERY, Secretary of Labor of the
United States of America, in his official
capacity, ET AL., DEFENDANTS

NOTICE OF APPEAL

COME NOW the Defendants by and through the
United States Attorney for the District of Idaho and
pursuant to 28 U.S.C. 1252 and 1253 appeal to the

United States Supreme Court from the Memorandum Decision and Order and Summary Judgment entered on December 30, 1976, in the above-captioned matter.

WILBUR T. NELSON
United States Attorney

By /s/ Paul L. Westberg
PAUL L. WESTBERG
Assistant United States
Attorney

[Filed January 4, 1977]

WILBUR T. NELSON
United States Attorney
District of Idaho
Federal Building, Room 693
550 West Fort Street
Boise, Idaho 83724
Telephone: 384-1211

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Civil No. 1-76-3

BARLOW'S, INC., an Idaho corporation, PLAINTIFF

vs.

W. J. USERY, Secretary of Labor of the
United States of America, in his official
capacity, ET AL., DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee in the Office of the United States Attorney for the District of Idaho and is a person of such age and discretion as to be competent to serve papers.

That on January 4, 1977, I Paul L. Westberg, served a copy of the Notice of Appeal on Runft and Longeteig, Attorneys at Law, 420 West Bannock Street, Boise, Idaho 83701 by depositing same in the United States mail at Boise, Idaho.

/s/ Paul L. Westberg
Assistant United States
Attorney

Subscribed and sworn to before me this 4th day
of January, 1977.

/s/ Mikel H. Williams
Notary Public
Residing at Boise, Idaho
My Commission expires:



RUBBER MANUFACTURERS ASSOCIATION

1901 PENNSYLVANIA AVE., N. W. • WASHINGTON, D. C. 20006 • (202) 785 2602

April 21, 1976

The Honorable Morton Corn, Ph.D.
 Assistant Secretary of Labor for
 Occupational Safety and Health
 United States Department of Labor
 Occupational Safety and Health Administration
 Washington, D. C. 20210

Subject: Petition for Promulgation of a
 Standard Relating to Multi-
Piece Wheels and Rims

Dear Dr. Corn:

The following is submitted by the Rubber Manufacturers Association pursuant to the Williams-Steiger Occupational Safety and Health Act of 1970 (hereinafter the "Act"), Section 6(b)(1) of said Act, and 29 C. F. R. § 1913.3, governing petitions for promulgation of a Standard.

Relief Requested

Your petitioner respectfully requests and petitions the Secretary of Labor to promulgate the Standard which is attached hereto as Exhibit "A" or, in lieu thereof, a similar Standard which in the judgment of the Secretary shall have the maximum effect of reducing serious injuries and deaths due to the misuse of multi-piece wheels and rims.

Summary of Problem Sought to be Corrected

Studies conducted by the National Highway Traffic Safety Administration ("NHTSA"), and by several State safety agencies, indicate that serious bodily injuries and deaths have occurred, and will continue to occur, to persons servicing, or who are in the vicinity of persons servicing, multi-piece truck wheels and rims, despite every conceivable effort on the part of the manufacturers of such products to prevent such injuries and deaths.*

* As used herein, the word "truck" shall mean and include trucks, buses, trailers, tractors, off-the-highway, and other non-passenger car vehicles.

The NHTSA and all States which have considered this subject, have further concluded that the most effective way to prevent such injuries and deaths is to impose on the shop owner or employer the responsibility to see that his or its employees are instructed in correct assembly, disassembly, maintenance, and safety precautions when servicing multi-piece rims; to have NHTSA's Wall Charts or equivalent industry literature (which is free from either source) prominently displayed in the service area of the shop's premises; to have an inflation safety cage or comparable restraining device on the premises and available for employee use; and to make certain that employees servicing such rims and wheels follow correct servicing instructions and make use of the safety cage or portable restraining device when inflating tires on such rims.

The States of California, Massachusetts, and Utah, and the Canadian Province of Ontario, have adopted laws and/or regulations placing the above described responsibilities on the employer. The NHTSA and several industries recognize the urgent need for adoption of a similar law on a national basis and have urged OSHA to adopt a Standard governing the assembly, disassembly, maintenance, and safety precautions necessary in servicing multi-piece truck rims.

Terminology

A multi-piece rim is composed of a "rim base" which is the largest part of the metal structure supporting the tire. The rim base is either welded or riveted to a "disc" which bolts onto the axle hub. A rim base and a disc are collectively referred to as a "wheel". The smaller or outer part of the assembly which forms the other support for the tire's bead is referred to as a split "side ring" in two piece assemblies and a solid "side ring" and split "lock ring" in three piece assemblies. In the case of two piece circumferentially continuous components, the outer small component is termed a "side ring". See Society of Automotive Engineers' No. "A-J 393" defining rim terminology attached hereto as Exhibit "B".

While something of an over-simplification, there are four (4) basic multi-piece rim designs. In the first design (exemplified by Goodyear's "KW" type rim) the rim base is split radially and the side ring is circumferentially continuous. In the second basic design (exemplified by Firestone's Kelsey's and Budd's "RH50" and "XL" rims) both the wheel and the side ring are circumferentially continuous. The third type rim, (exemplified by Goodyear's "LW" type rim) is a two piece assembly composed of a demountable rim base and a split side ring or a wheel and a split side ring. The fourth design in the larger sizes (exemplified by Firestone's "Commander 50" rim) is a 3 piece assembly composed of a wheel and a side and lock ring. See NHTSA's Safety Precautions for Mounting and Dismounting Tube Type Truck/Bus Tires and its companion Multi-Piece Rim/Wheel Matching Chart appended hereto as Exhibit "C".

The Necessity For Multi-Piece Rims

Unlike passenger cars which employ single piece rims, over 85% of all trucks, trailers, buses, and off-the-highway vehicles in use in the United States are driven on multi-piece rims and wheels. These range from 2 or 3 piece assemblies used by trucks, buses, and trailers, to 5 and 6 piece assemblies used by large off-the-highway vehicles.

Explanation for the foregoing is simple but not generally understood by persons outside of the industry. Passenger tires are relatively small and for the most part tubeless. Further, the rims on which passenger tires are mounted have a contour with a deep well which permits assembly on a single piece rim with comparative ease (although virtually all shops which regularly sell and mount tires employ a tire mounting machine*).

The foregoing is not the case with truck tires. While many proprietary fleets have converted to tubeless tires and use single piece deep well rims, there has been generally poor public acceptance of tubeless truck tires, despite the fact that all major tire companies have championed their use, and the further fact that tubeless truck tires have certain safety advantages over tube-type truck tires. For example, many road hazards which would fail a tube-type tire will not fail a tubeless tire, and if a tubeless tire does fail, it will not "blowout", but will "slowout" or lose air over a period of several seconds which is enough time to allow a driver to retain control of his rig. Moreover, the price of a tire and tube approximates that of a tubeless tire, and tire mileage is approximately the same in both type tires.

While partial explanation for public resistance to tubeless truck tires may be offered in terms of general unavailability of tubeless truck tire mounting machines (which are relatively large and expensive) other than at major proprietary trucking fleets and truck tire centers, those who have considered this subject closely have concluded that the answer to this enigma is simply public ignorance and suspicion of tubeless tires. Indeed, some truckers who are convinced of the merits of tubeless tires for mileage performance and order them as original equipment on their vehicles, insist upon the very questionable practice of installing tubes in such tires.

* It should be noted that even in the case of mounting passenger tires using a tire mounting machine, an untrained, careless, or lazy tire mechanic occasionally attempts to "seat" a tire whose bead is hung-up by using excessive air pressure (as opposed to breaking down the assembly, relubricating it, and beginning again), with the result of breaking the tire's bead causing an explosive release of air pressure. We have known of instances where no reduction regulator was used and the amount of primary air dumped into a hung-up tire has resulted in such explosive force that it has torn a well-anchored tire mounting machine out of a concrete floor and blew it and the tire mechanic through a metal roof.

In any event, if a trucker desires to use a tube-type tire, he must use a multi-piece truck rim or wheel. Moreover, above a certain size, multi-piece truck rims must be used as it would be physically impossible to mount a tire on a single piece rim.

Correct Assembly, Disassembly
Maintenance & Safety Precaution

Unfortunately the occupation of tire mechanic (or as it is sometimes popularly termed "tire buster") is not generally regarded as a highly skilled calling. This attitude possibly results from the fact that tire busting is hard physical labor and there are not an enormous number of cardinal guides or rules of assembly, disassembly, maintenance, and safety precautions which must be learned to service multi-piece truck rims. Moreover, such rules have been identical, or nearly identical, for at least the past 40 years. (All manufacturers' recommended assembly, disassembly, maintenance, and safety precautions are contained in NHTSA's Wall Charts and comparable industry literature; See Composite Exhibit "C" hereto).

While thus partially justified, this attitude is definitely not justified when it is appreciated that an inflated truck tire is a high pressure vessel. In fact, a popular size 10.00 x 20 truck tire correctly inflated contains enough potential energy to blow a 38 pound weight over the Empire State Building. For this reason, persons should never attempt to service truck tires unless they are completely familiar with and observe the rules referred to above.

The Warning Problem

At this point, persons unfamiliar with the state of the art may logically ask why these assembly, disassembly, maintenance, and safety precautions are not stamped on the product or its container or packaging. The answer to this question is necessary to a true understanding of the situation.

To begin, approximately 98% or more of all multi-piece truck rims and wheels are sold as original equipment to vehicle manufacturers. Of the remainder of the wheels and rims sold to wheel and rim distributors, approximately 80% of the 2% are sold by such distributors to smaller (generally specialized) vehicle manufacturers who do not buy in sufficient volume to justify selling such customers direct. Rims and wheels are not, therefore, packaged, but rather are shipped off-the-end of the production line in bulk railroad car or truck load shipments as original equipment directly to vehicle manufacturing customers and distributors. Of course, all such customers are completely familiar with all recommended assembly, disassembly, maintenance, and safety precautions, and in some cases, the wheel and rim manufacturer merely fabricates a product to the vehicle manufacturer's specifications. Moreover, they are generally

shipped in an unpainted condition. These facts eliminate any possibility or need for packaging.*

It is physically impossible to place such information on the rim itself for several reasons. First, due to the manufacturing process of cold rolling such components, and their operational use, the only possible and permanent method of marking rims is to mechanically stamp the information into the metal. This is done for the essential matter of rim identification by manufacturer's name, size, type of rim and manufacturing date. However, elementary engineering principles dictate that imprinting on a flexible metal component should be held to an absolute minimum for reason that it creates stress raisers which could propagate to fatigue failure in high cycle and high stress usage. And, as you can appreciate, rims are driven millions of cycles in fully loaded and/or overloaded condition.

In addition to the foregoing, there is not enough physical room on either component to imprint all necessary assembly, disassembly, maintenance, and safety precautions, and it would be misleading and dangerous to imprint some and not all such instructions. To do so could induce misrelance only on the imprinted instructions, to the ignorance of competing and what may in a given case be a more important instruction or warning.

Moreover, if the reader will examine Composite Exhibit "C" and the manufacturers Rim & Wheel Catalogues (appended hereto as Composite Exhibit "D") he will note that they all contain pictorial demonstration of assembly, disassembly, maintenance, and safety precautions. This is done in recognition of the widespread functional illiteracy prevalent throughout our Country (particularly in the socio-economic group changing tires), and it is obviously impossible to imprint these photographs on the products themselves.

Further, truck wheels and rims are the part of the product which comes most in contact with water, dirt and mud, and any instructional or warning imprinted on the products would almost immediately be covered by corrosion or dirt and would not be readable unless and until the rust and dirt were removed from the components.

Finally, to attempt to imprint a tire mechanic's job on truck wheel components is comparable to attempting to print flying lessons on the side of an aircraft

* The reason for the foregoing is that, if properly maintained, truck rims will exceed the life of the vehicle on which they are original equipment, and there is very little true after-market business. Moreover, while we do not endorse this practice, replacements of rims and wheels damaged in operation not infrequently come from used parts lots or as they are sometimes called "junk yards". In any event for these reasons, a comparatively de minimis number of new rims are actually sold into the replacement market.

and then asking some non-pilot to attempt to fly the aircraft. This is manifestly absurd.

Literature and vocational or on the job training are the only methods of teaching correct and safe tire mechanics. Wheel and rim manufacturers attempt to provide parties servicing their products with manufacturers' recommended assembly, disassembly, maintenance, and safety precautions by a variety of means. They publish annual Wheel and Rim Catalogues which they routinely distribute to all of their original equipment customers and to their distributors in bulk quantities for free distribution at point of sale. They also publish Wall Charts, Safety Bulletins, audio-visual training aids, and even hold public demonstrations on correct assembly, disassembly, maintenance, and safety precautions on servicing multi-piece truck rims.

Several other industries do much the same thing. Tire manufacturers hold training courses for their employees and dealers on this subject. They also include such information in their Tire Data Books and other literature sent to their dealers.

Petroleum companies hold similar courses and distribute similar literature to their employees and franchised dealers.

Manufacturers of safety cages and other restraining devices do the same thing as part of their promotional literature.

Vehicle manufacturers include instructions in their vehicle Service Manuals and warnings in their Operator's Manuals.

The National Highway Traffic Safety Administration, in cooperation with the wheel and rim industry, has published and distributed warning literature in hundreds of thousands of copies.

Trade associations such as the Rubber Manufacturers Association, the National Wheel and Rim Distributors Association, etc., also publish and distribute booklets and Wall Charts containing the identical information:

The military, public vocational educational programs, and private schools for training truck drivers and auto mechanics, teach these same instructions.

Private safety organizations, such as the National Safety Council (or "Green Cross") publish and distribute similar materials.

Representative samples of these materials are appended hereto as Composite Exhibit "D". One would be compelled to believe that such literature, which has been distributed in one form or another in millions of copies, has reached everyone servicing multi-piece truck rims. Whether or not this literature is not reaching tire mechanics, or if it does it is being ignored by employers and employees, is unknown. What is known is that, despite every possible

effort on the part of manufacturers and Federal and State agencies which have attempted to solve this problem, deaths and serious injuries have occurred, and will continue to occur, unless the law places the responsibility for preventing such accidents on the only person in physical position to discharge such responsibility, to wit: the employer.

One need only review NHTSA's ODI 150 and 215 to appreciate the seriousness of this problem. Obviously, the only person who knows what work is being performed, by whom, the degree of competency and training of the employee performing such work, and who must provide the employee with proper training and tools to perform his work, is the employer. NHTSA, the States of California, Utah, and Massachusetts, and the Canadian Province of Ontario, have conducted investigations into this problem, and have concluded that there was an urgent need for adoption of a shop regulation placing on the employer the responsibility to insure that his employees servicing multi-piece rims are instructed in their correct assembly, disassembly, maintenance, and safety precautions and require the use of safety cages or comparable restraining devices. Not only have they reached this conclusion, but they have adopted laws and/or regulations so requiring (See Composite Exhibit "E" hereto which are copies of such laws). I understand that former Administrator of NHTSA, Douglas Toms, has recommended to the Department of Labor adoption of an OSHA Standard similar to such laws.

Nor should the employer have any objection to assumption of this responsibility for three reasons. First, it is desirable to have competent, well trained, and safety conscious employees, and it requires a minimal investment in time and money to achieve this, i.e., to write for a free publication, have the employee read it and demonstrate his competence to his employer, and purchase a safety cage or portable restraining device (the latter of which costs in the range of \$5 to \$10).

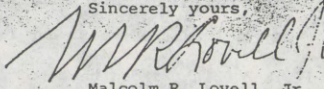
Secondly, once one has such an employee, it is desirable and in the employer's best interests to prevent his injuring himself. While desirable from a purely humanitarian motive, it also costs time and money to pay for an injured non-productive employee.

Thirdly, there have been numerous instances in which workman's compensation carriers and products liability carriers have investigated such accidents, and, where sloppy practices were uncovered and proper tools not provided, raise the shop owner's insurance premiums beyond the shop owner's ability to afford such insurance, or cancel their coverage completely. And today, only the very largest companies can qualify for or afford to be self-insured. Indeed, in today's serious products liability exposure, it would be foolhardy to continue in business absent such insurance.

To conclude this petition, we cannot overstate the seriousness and urgency of this problem. Nor can we over-emphasize the fact that the only method of solving it is to effectively outlaw occurrence of these needless accidents by

adoption of Exhibit "A" as an OSHA Standard. Wherefore, your petitioner respectfully requests and petitions that this be done, and stands ready to furnish such additional information and assistance as you may require in expediting adoption of this Standard.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "MR Lovell Jr.", written in a cursive style.

Malcolm R. Lovell, Jr.
President

MRL/evm
Enclosures

Exhibit "A"

1910. Multi-Piece Automotive Rims and Wheels.

(a) Definitions Applicable to this Section.

(1) "Multi-piece rim" means any rim or wheel which consists of two or more parts and which is designed to disassemble and reassemble during the mounting and dismounting of a tire.

(2) "Service" means and includes the assembly, disassembly, and maintenance of a multi-piece rim, and the reinflation of tires mounted on such rims which have been run flat or seriously underinflated.

(3) "Service area" shall mean that part of an employer's premises customarily or routinely used for the servicing of multi-piece rims.

(4) "Wall Chart" shall mean the United States Department of Transportation's National Highway Traffic Safety Administration's ("NHTSA") publication entitled Safety, Precautions for Mounting and Dismounting Tube-Type Truck/Bus Tires and its Companion Chart entitled Multi-Piece Rim/Wheel Matching Chart, or equivalent industry or trade association literature containing at least the same instructions and safety precautions. (NHTSA's Wall Charts may be ordered free from its General Services Division, 400 Seventh Street, S. W., Washington, D. C. 20590, and industry literature is free upon request from the manufacturer).

(5) "Safety cage" shall mean a steel cage used for the inflation of tires. When multi-piece rims are being serviced in the field, it shall mean a portable restraining device designed to substitute for a safety cage when such cage cannot easily be used.

(6) "Rim Manual" shall mean a publication containing correct assembly, disassembly, maintenance, and safety precautions particular to the multi-piece rim being serviced.

(b) Application

The purpose of this Section is to prevent the occurrence of accidents and personal injuries involving multi-piece truck rims. This Section accordingly applies to employers requiring employees to service multi-piece truck rims as part of their duties regardless of frequency.

(c) Training and Warnings

(1) There shall be posted at a prominent place in the employer's service area a current Wall Chart.

(2) Employer shall have available on the premises a current Rim Manual containing mounting instructions for the type rims being serviced by such shop.

(3) No employee shall be permitted to service any multi-piece rim without being instructed in correct assembly, disassembly, maintenance, and safety precautions for the rim being serviced.

Where an employer knows, or has reason to believe, that any employee is unable to read or appreciate the contents of the Rim Manual and Wall Chart, he shall be instructed orally in their entire contents and shall have all of his duties and safety procedures demonstrated to him.

(d) Safety Precautions

(1) Employer shall be responsible for having a safety cage in his service area and a comparable portable restraining device in vehicles used to service multi-piece rims in the field.

(2) Employer shall instruct employees servicing multi-piece rims to follow all of the safety precautions contained in the Wall Chart.

OSHA: PETITIONS FOR MODIFICATION OF
STANDARDS: POWER TOOL INST.

August 24, 1976

The Honorable Morton Corn
Assistant Secretary of Labor
Occupational Safety and Health
Administration
Washington, D.C. 20210

Dear Mort:

Representatives of the Power Tool Institute, a national trade association whose members manufacture approximately 95% of the electric power tools sold in the United States, brought to my attention their four petitions for modification of standards pending in OSHA. They are:

- 1) Guarding on Portable Belt Sanding Machines - filed September 13, 1971;
- 2) Radial Arm Saw Label - filed August 7, 1973;
- 3) Woodworking Machinery Requirements - filed August 11, 1975; and,
- 4) Machine Guarding for Abrasive Wheel Machinery - filed October 24, 1975.

I understand from the Office of Standards that the Radial Arm Saw Label and the Guarding on Portable Belt Sanding Machines petitions have been technically reviewed. Is it possible for you to provide me with information on when formal action may be taken on these petitions.

I understand that the remaining two petitions will be considered as part of the White House Task Force review of Subparts O and P. Has any time frame been established as yet for this review so that the Power Tool Institute might expect a response to their petitions?

Many thanks for your continued assistance.

Sincerely yours,

William A. Steiger
Member of Congress

WAS:kf

D&A: Labor: OSHA/ Standards

September 2, 1976

Dr. Morton Corn
Assistant Secretary for OSHA
Department of Labor Building
200 Constitution Avenue
Washington, D.C. 20210

Dear Mort:

I had a delegation from the Rubber Manufacturers Association call on me and it seems to me they have a legitimate point and a real problem.

They wrote to you on April, 21, 1976 petitioning for the promulgation of a standard relating to multi-piece wheels and rims. They attached to that letter a proposed standard and I am enclosing a copy of that standard with this letter.

Here's a case where you have a group asking for a standard, which is in and of itself somewhat unusual. Frankly, they are concerned that little is being done to respond to their request. Thus, I write to most respectfully urge that the Department take a very close look at this proposal and do all they can to promptly put the machinery in place for the issuance of a standard. In this particular case all of the rim manufacturers and all of the tire manufacturers, except one which does not belong to the Rubber Manufacturers Association, support the promulgation of the standard.

You have, according to the latest figures that are available from the Department of Transportation in excess of one hundred serious or fatal injuries per year as a result of careless servicing or repair work on multi-piece truck wheels. The Problem facing the manufacturers is a real one. As much as they try to get out their posters

and do all of the work that is necessary, it is pretty clear that the problem isn't going to go away in the small independent truck operators shops across the country where most of these accidents take place. The key not only is the posting of the posters but the educational process that would be mandated by the standard to try and solve what to me is a real problem.

I would very much appreciate you carefully considering this request. Please get back to me and give me a full report at your earliest possible convenience of what action is being taken and when something could be expected in terms of the issuance of the standard.

Thanks very much.

Best personal regards,

Sincerely yours,

William A. Steiger
Member of Congress

WAS:mmn

Enclosure

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration
WASHINGTON, D.C. 20210



Office of the Assistant Secretary

OCT 19 1976

Honorable William A. Steiger
House of Representatives
Washington, D.C. 20515

Dear Congressman Steiger:

This is in response to your letter of August 24, 1976, inquiring as to the status of several petitions filed on behalf of the Power Tool Institute (PTI).

The first two petitions, addressing the guarding of portable belt sanders, Section 1910.243(a)(3), and the warning label on radial saws, Section 1910.213(h)(5) deal with specific individual provisions of our safety and health standards which PTI felt require modification. The conclusion of the review by our Office of Standards Development was that the suggested modifications appeared to merit the development of a proposal to be published in the Federal Register and thereby exposed to general public review and comment. The guarding of portable belt sanders was incorporated into a standards development project but has not reached the proposal stage. The modification dealing with the labeling of radial saws was published as a proposal in the Federal Register of May 11, 1973, but has not yet been finalized. The emphasis given any standards development project is dependent on the priority associated with its importance in the safety and health field.

The two remaining petitions which deal with woodworking machinery, Section 1910.213, and abrasive wheel machinery, Section 1910.215, address entire sections of our standards. Here PTI is basically recommending changes that have been made in the American National Standards Institute's consensus standards upon which the OSHA regulations were based. These petitions are now under review.

The recent establishment of a White House Task Force to assist OSHA in the revision of the standards in 29 CFR Parts 1910 Subparts O and P, will impact on the outcome of these petitions. The four petitions along with all others relating to either Subpart O or P are being reviewed by the

task force and will be considered in the development of any proposal or Federal Register notice. At this time it appears as though the task force will prepare a Federal Register package similar to that recently published displaying the current standard and suggested changes in Subparts D and L and Anhydrous Ammonia. Such a publication would provide for a comment period and a series of informal meetings to be held around the country to facilitate the input by knowledgeable persons on the significant issues. The fate of the rulemaking on Section 1910.213(h), (5), radial saw label, has not yet been decided; that proposal might be withdrawn, as was an earlier Subpart D proposal with the publication of this notice in the Federal Register.

Sincerely,

Morton Corn

Morton Corn
Assistant Secretary of Labor

DEA: DOL: OSHA: STANDARDS
 " " " PETITIONS FOR
 MODIFICATION OF STANDARDS:
 POWER TOOL INSTITUTE

October 22, 1976

Dr. Morton Corn
 Assistant Secretary for OSHA
 Department of Labor
 200 Constitution Avenue, N.W.
 Washington, D.C. 20210

Dear Mort:

Your letter of 21 October arrived today and I must say, Mort, I am displeased with the contents.

It has taken two months and at least three phone calls to get this response and now that I have it, I find it only reiterates what I stated I already know.

I do not mind sacrificing some time in the interest of getting a well-reasoned response, but I find this is not the case. I'm enclosing a copy of my August 24th letter and I look forward to a prompt, substantive answer to my questions.

My office has recently called the Office of Legislative Affairs to inquire into the status of my 2 September letter to you regarding the Rubber Manufacturers Association petition for the promulgation of a standard relating to multi-piece wheels and rims. May I expect to hear from you soon on this as well?

Sincerely yours,

William A. Steiger
 Member of Congress

WAS:kf

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration
WASHINGTON, D.C. 20210

Office of the Assistant Secretary

NOV 11 1976

Honorable William A. Steiger
House of Representatives
Washington, D.C. 20515

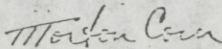
Dear Bill:

I am in receipt of your letter of October 22nd. I will shortly provide you with some additional information, which is a result of recent developments in OSHA's safety standard. I apologize for the delay in responding to your August 24th letter and have taken steps to avoid such delays in the future.

With respect to your inquiry about a standard related to multi-piece wheel rims, I also expect to have a reply to you shortly. It appears that, in substance, the issues involved have largely been resolved. However, as you know, most of our resources in the safety standards area have been devoted to revision of the consensus safety standards. I am trying to ascertain when the agency will be able to address itself to the wheel rim issue. I should have the results of this examination shortly and will be able to get back to you further on both matters.

Once again my apologies for the delay.

Sincerely,



Morton Corn
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration
WASHINGTON, D.C. 20210

Office of the Assistant Secretary

DEC 23 1976

Honorable William A. Steiger
House of Representatives
Washington, D.C. 20515

Dear Bill,

This letter is in reply to your letter dated October 22, 1976, and to our subsequent conversation requesting additional information as to when modification will be made in OSHA Standard CFR 1910.

As reflected in our safety standard revision efforts to date, OSHA believes that the best approach to changing the standard is to address each subpart individually. In this way, a number of individual petitions can be addressed in each subpart.

Presently, the OSHA staff is working on subparts D, L and anhydrous ammonia. The White House "Task Force" is addressing subparts O and P, which account for those portions of the standards that are most often encountered.

In this endeavor, the agency's safety standards resources are almost totally committed to parts D, L and anhydrous ammonia, and sections O and P. It is hoped that we will have the majority of work necessary for revision performed during the calendar year of 1977. Then, we can begin to address CFR 1910 and then other parts of the OSHA standards.

In order to carry out these revisions, certain rulemaking procedures must be carried out. You are probably familiar with the process. However, I would like to list the steps which OSHA must carry out in revising the standards. Completion of these steps would take approximately 12 months.

Action

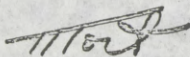
Literature Search and Documentation
External Reviews
Solicitor/Project Officer Rewrite
Management Review
Proposal Comment Period
Public Hearing
Close of Record and Final Publication

During this same time period, two other documents are also prepared; the Environmental Impact Statement and the Inflationary Impact Statement.

I would very much like to be able to address the multi-piece wheel rim hazard and others immediately, but our resources simply do not permit it as I trust this letter made clear.

I hope to be able to get together with you early in the New Year and extend to you my best wishes for the holiday season.

Sincerely,



Morton Corn

**STATEMENT OF HON. WILLIAM STEIGER, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF WISCONSIN**

Mr. STEIGER. Mr. Chairman, thank you very much. Thank you for your comments, and thank you for holding this hearing.

I think I thank you for making it Monday morning—I am not sure about that, without any reference to a Higher Being.

The statement is long and I will not attempt to unload all of it on you this morning. What I will do, Mr. Chairman, with your permission, is to ask unanimous consent that the full statement and all of the attachments be made a part of the record and let me just go through some of what I would like to talk about this morning.

Mr. GAYDOS. Without objection, so ordered.

Mr. STEIGER. As you know, from those who already testified before you, there is some controversy about the Occupational Safety and Health Act. The whole campaign on Government regulation has become very much a part, not only of the rhetoric of this profession of politics, but also others.

What needs to be done, and what can be done as it relates to OSHA, can of course be done administratively. I mentioned there are two modifications that I think the act requires. I will talk a little bit about both of those in just a minute.

What I must say, Mr. Chairman, at the outset is that the record of the Education and Labor Committee is not as good as I think it should be, or that you are capable of doing in examining the implementation of the act. You have not followed through on what you have learned and the Small Business Committee has been far more effective in its handling of the act in making specific recommendations to the Department of Labor of what can, and should, be done.

You only need to pick up trade publications, labor publications, or daily newspapers to see and understand the controversy that continues to surround the Occupational Safety and Health Act.

The controversy, Mr. Chairman, should not surprise anybody. It is a continuation of the conflicts that were apparent to all of us since President Johnson proposed the first Occupational Safety and Health Act, on which we worked in 1968.

There is, however, far too much Washington orientation on the part of the reports that I have seen. Few reporters get in the field; therefore, they cannot assess the full impact the act has had.

I am convinced that the passage of the Occupational Safety and Health Act, despite the frustrations and in spite of some problems, has produced, for the first time in our history, a profound awareness of safety and health problems in the workplace environment. There is, moreover, a growing recognition of this progress in the business community.

More and more business people with whom I visit, in Wisconsin's Sixth District and across the country, now make a point of describing to me the help that the act has been to them. These effects are not reflected in much of what we see, in part because a kind of myopic vision is often exhibited by spokesmen for both labor and business.

It is human nature to write to a Member with a complaint but not when something goes well.

I think that one of the problems that we have with that is it becomes very onesided. So the evidence, I think, is clear that the act has worked, is working, and will continue to work if we can obtain far greater understanding of exactly what is involved.

From the very beginning, the difficulty that we have had with the act has been a fear of the unknown. That fear still exists on the part of those who do not know very much about it except what they read and what they hear. And then you have some, like our colleague in the House from a State in the West who hopes to create further confusion and misunderstanding by urging everyone to block the door when the Occupational Safety and Health inspector appears. That kind of campaign, regrettably, receives far more attention than it deserves and it receives one hell of a lot more money than the rest of us could ever raise in attempting to deal fairly with the administration of the Occupational Safety and Health Act.

Let me, if I can, Mr. Chairman, on page 2, talk a little—after having criticized to some extent this committee, having criticized to some extent my colleagues, then I think it is only fair to suggest that there is more than enough criticism to go around.

You can criticize legitimately business and labor because they have done more to frustrate the program than all of us who wish to repeal the act altogether. Plus, I think, Mr. Chairman, you must also consider the necessary work of overcoming the misinformation, the distress, and adversary relationship that exists between labor and management, between Government and industry, and Government and labor, the strained relationships which are a source of much of the confusion in the implementation of the act.

Yes, by its very nature, the act creates a kind of adversary atmosphere. The natural result of such a situation is criticism and controversy. From the very beginning it has been clear that if OSHA is going to be successful, it requires the cooperation of Government, business, and labor. All other considerations aside, the act by itself—the standards by themselves—cannot stop the injuries, illnesses, and deaths that are a part of the workplace.

If business and labor do indeed support the intent of the act as they always say they do, then they frankly accordingly have to change their own attitude and their own approach on the issues, to be more rational and cooperative. This is an area in which labor and management have a shared responsibility and a shared goal; namely, a reduction in the deaths and illnesses and accidents that take place; yet this shared responsibility has also come to involve a degree of dispute between labor and management.

Far too often, labor has sought to avoid its own obligations by attempting to shift this burden to the Government, of attempting to develop an awareness and education in workshops of the health and safety matters. I hear from those who run the shop, what are you doing to me? Why do I have to wear a hardhat? What is this about shoes? Why am I slowing down my production because of guards on machines?

That indicates very clearly that there is a lack of effort on the part of organized labor, with the exception, perhaps, of the oil and chemical workers, who have done, by and large, a better job of attempting to educate their own members.

As to the problems with which you are dealing, when you are talking about what the responsibilities are for labor, business, on the other hand, too often has abdicated its responsibility of management to regulate the safety and health conditions by attacking, rather than assisting, the developments of the standards that Government, under the law, must promulgate. The ladder standard, which has become—perhaps it has replaced the split toilet seat and hanger in the coatroom as a nuisance standard, because it even achieves Tony Louis' columns or Tom Wickers' columns in the New York Times. There is a very clear lack of understanding by the New York Times, or those who write that column, that that was a voluntary standard.

If the criticism is going to come, frankly it should have started one hell of a long time ago.

Now the Department of Labor, for promulgating the standards, is attacked by the very people who developed the standard. It makes no sense. It indicates clearly a lack of their willingness to deal responsibly with the act and yes, I think it is also fair to say that the Congress has been less than supportive and less than understanding of what happens under the act and what the responsibilities are of the Department and all of the parties involved.

Thus, Mr. Chairman, my plea to you is, first, to do a better job in your oversight; second, to follow through on what you hear and what you learn. Third, yes, because I am committed to it, H.R. 1327, by Ron Sarasin, ought to be passed as one way to try to alleviate much of the fear and misinformation that has so surrounded the development of OSHA.

As you know, there are a number of States that do carry on consultation. Everything I have been able to learn and see indicates that it is working. That demand, while not overwhelming, is there and there are people who would like to be able to comply with the standards but for a very good reason are afraid; they do not want to bring anyone in to do it. That is why consultation, in my view, is important.

The Department is doing it by contract. As you know, six universities, if my memory is correct, do try to assist the Department in the implementation of a consultation program, but I think both from the standpoint of equity under the act and frankly because of the psychology of legislators, it is important that we bring out and pass onsite consultation.

The other bill is the coverage of State and local employees, H.R. 1335; that deserves the careful consideration of the subcommittee.

Then, Mr. Chairman, I raise for you 11 issues, 11 areas, that I think that you have to look at. Let me briefly mention them, then I will be happy to go into whatever questions you want to ask of me.

The first is the relationship between NIOSH and OSHA. The transition document, you know, raises—I quote from it—"It is useful from the Department of Labor's standpoint to start thinking of such a transfer." I am as yet unpersuaded that transfer is the answer and would solve the problems that do exist between the agencies.

The second, you have a continuing and I think very serious problem with the relationship between the Occupational Safety and Health Administration and the other Federal agencies. You have a file with which, Mr. Chairman and members of the committee, I am sure you are familiar, the memorandums of understanding between the Depart-

ment of Labor and the Department of Agriculture, the Department of Transportation.

All that that bureaucratic infighting has meant is that workers are not being given as effective safety and health protection as I think they deserve.

No. 3, Mr. Chairman, I have attached for the information of the subcommittee the jurisdictional statement submitted by the Department of Labor to the U.S. Supreme Court on the constitutional challenge. As you know, the seventh amendment challenge has been heard and the Court will, at some point in the not too distant future, I am sure, hand down its decision. I have no doubt at all that the act is constitutional in terms of that amendment.

The fourth amendment argument, the Labor Department is, I understand, going to file a brief by March 15. Those on the other side will have 30 days, until April 15, which will mean that the Court could hear it this term.

It is absolutely essential that the Court hear it. If they do not hear it, you will have George Hansen and people like that out there screaming and hollering and making it more difficult for everybody to know what they are supposed to do, and for the act to do its work. It is important that it be done.

Obviously I believe very strongly that the act is constitutional, I do not think that that challenge will be sustained.

No. 4, the generic standard idea that Dr. Corn has proposed, an effort to try to speed up the health standards, health criteria document approach—you have a problem that is going to come at you that you have already started with.

Business Week, March 14, the latest issue of Business Week, talks about the cost criteria of regulators and the plan being developed by the administration is to require executive branch departments and agencies to conduct detailed economic analyses of proposed, new regulations which would apply, so Mr. Schultze indicates, only to certain agencies, such as the Labor Department's Occupational Safety and Health Administration.

I happen to believe that there is some very good reason why economic impact statements are inappropriate. Let us understand the implications.

First, you are going to slow down the promulgation of regulations and standards when you go into this.

Second, you have a real problem, I think, in the development of a generic standard for carcinogens or toxic substances, trying to figure out the economic impact. I do not know what the effect would be if you applied it to the generic standard. I am afraid you would do in the generic standards because you could not, with any real precision, know what the full economic impact would be.

No. 5, you have the whole issue of the closer relationship between OSHA and the legal staff of the Department of Labor. I must say on balance, Mr. Chairman, with few exceptions I think that we have been blessed in the Department of Labor with extraordinarily committed, very competent individuals, but you have a real problem when you get in as deeply as this law does and this development of standards does in the law field, where you have slowed down the promulgation of standards because they have not brought themselves together.

That has been changed by Dr. Corn. I hope that the new Assistant Secretary will continue that relationship.

No. 7, while I consider it to be the No. 1 problem for the Department, which is a modification of those standards originally issued under the act, until such time as the Department does that work, and does it well, much of the criticism of the act and much of the detraction from the act's effectiveness will continue because of the confusion over standards, particularly with consensus standards.

No. 8 is the national emphasis program which Mr. Chairman, you know is in some trouble, some confusion, and I think it is worth your looking at, both to determine whether the concept of the NEP makes sense; if it does, what do you do to make sure it is done on a better basis than this one has been done on?

No. 9, the Review Commission decisions, in fact, the whole issue of the Review Commission. I still think the Review Commission is the right idea. I think the separation of powers is absolutely essential, but there continues to be a problem in my judgment as I watch the Labor Department and the Commission, particularly as it relates to what the Labor Department does with Review Commission decisions.

No. 10, the Government Operations Committee reports and No. 11, the noise standard. I say in here, and I mean it, that the noise standard is either going to make or break the act. It is the most complex, the most sophisticated, the most far-reaching of any of the standards as yet proposed because it hits universally throughout American industry and business. Unless it is done with very great care and prudence by the Department, I am afraid it will assure the destruction of the agency.

I hope this subcommittee will work closely with the Department of Labor in its effort to promulgate an effective and yet a fair, prudent standard for noise.

Thank you, Mr. Chairman. I will be happy to answer any questions.

Mr. GAYDOS. I want to thank Congressman Steiger for his usual pointed and valuable observations. He has always been that way, and he has not changed.

I was just about going to withdraw my remarks of introduction when you started talking about the committee and what it has not done, but you were not too bad, so I decided to the contrary.

LTTG is a new word around here—Less Than Good, but much better than the "so-so" word.

Congressman, on the 11 suggestions you make, you checked our record, or we checked yours, because of the 11, approximately 9 have been considered by the subcommittee and will be discussed with the representatives of OSHA when they appear before the subcommittee. Under your critical analysis, you picked the same points and added a few of your own, so I am very happy that the subcommittee had gone into an analysis of the problem, and you are in agreement substantially as to what the subcommittee thinks are the same factors that we are going to have the consider and hopefully dispose of in the next several years.

I want to make several references concerning those points for your edification. No. 1, when we talk about the relationship of NIOSH with OSHA, their operations, how it is working and what we can

expect in the future, we did mention that in our opening hearing, and we will proceed in that specific area and delve into that aspect of it. What is NIOSH doing, how it is doing, how it is working.

I think that you will be also very happy to know that your second suggestion, the jurisdictional dispute between OSHA and other agencies, that that fact in itself was discussed personally as late as last Thursday with Dr. Bingham who, as you know, is taking Dr. Corn's position as Assistant Secretary, and she has—and I think you will find this satisfying—she has suggested that she will have a special look at this aspect of the problem and will report back to the committee in writing if we desire and orally when she does testify in the next month or so. I think you will be satisfied with that.

Mr. STEIGER. That is excellent.

Mr. GAYDOS. With respect to the *Barlow* case, I appreciate your comments. I agree with your comments. I think learned people who have gone into it agree that the case is frivolous and constitutionally we should be on sound ground. If the opinion that does come down is going to necessitate some changes, I believe the committee is going to respond to the changes, so the constitutionality question can be disposed of.

The generic standards. The committee is in the possession of a report and a letter from Assistant Secretary of Labor Corn, as you suggested, and you would be very happy to know that we are already reviewing Dr. Corn's letter and report. We have it under consideration. We have it here before us.

As to the working relationship between OSHA and the legal staff of the Labor Department, we have already stated for the record that we will look into the structure and operation of OSHA and, as you so wisely, I think, suggest, that is going to be a very salient feature.

We are going to make sure that we go into that in detail. The act is going to rise or fall, in my personal opinion in that area. We have already included that on our punch list, for lack of a better descriptive term.

The other items you mentioned, the revision of the current consensus standards, also in our opening remarks of the first public hearing, we did put that down on our list. It is a very important area that we cannot overlook.

We also mentioned and put in as a matter of record the prospects for the committee in the next year or 2 for oversight. We also took a look generally at the oversight hearings to date, resulting from the two reports that you referred to, one dealing with safety in the Federal workplace and the chemical dangers in the workplace.

In conclusion, I do agree with you that the noise standard seems to be so important that we are going to have to handle it adroitly, hopefully effectively, and we may be calling upon the assistance of Members of Congress such as yourself who have a good, solid background and knowledge of what the problem consists of.

Let me close by saying this. I again want to reiterate for the record that I feel personally satisfied that we are in so much agreement on so many points as to where this committee should be heading.

You have been an active member in the past, and I think that that is

significant. Let me conclude by saying that as far as the committee's past actions, I have to, on behalf of my former colleague and former chairman of this subcommittee, mention for the record that when Mr. Daniels, the gentleman from New Jersey, was handling the subcommittee that he had more legislation in the last 2 years than, I think, any subcommittee on the floor of the House and I would say that would be a possible explanation as to why some areas of oversight have not received full consideration of the committee such as you suggested, and I agree that we can do more oversight in certain areas.

Mr. Daniels brought so many bills to the floor of the House and discharged that responsibility, that as a result I think oversight did suffer in some respects. I know that you would join me in citing for the record that Congressman Daniels should be commended for the way he handled the committee and his hardworking attack on the problem.

Mr. STEIGER. He did an excellent job. If he were here, I would say exactly what I said this morning. It is not because he is not here.

I do not think that I can fairly express to you, without mentioning this problem, the very real concern that I have that this subcommittee has a most important responsibility for examining what happens with this particular piece of legislation, and I think that you owe it to yourselves as well as to the Department of Labor and the Department of Health, Education, and Welfare and to the people of this country to just make sure that you can, to the extent possible, do a better job now than you did in the past.

Mr. GAYDOS. I believe Mr. Daniels should be commended publicly and as a matter of record, again, for the bill that he did introduce, H.R. 8618, on site consultation, last year.

At the time I was in the hospital. I was asking counsel what happened. We are going to take a look at it.

I have talked enough already. Again, I wish to close with most personal and most sincere thanks to you for taking the time at 9 o'clock on a Monday morning to come before the committee and to give your most meaningful testimony and remarks. I know that we can count on your cooperation in the future.

Mr. STEIGER. You will have it Mr. Chairman, thank you.

Mr. GAYDOS. Mr. Sarasin?

Mr. SARASIN. Thank you, Mr. Chairman.

Mr. Chairman, before I ask Mr. Steiger any questions, I wonder if we could introduce Dr. Corn's statement of January 12, 1976, into the record?

Mr. GAYDOS. Without objection, so ordered:

[The material referred to follows:]

STATUS REPORT ON OSHA

submitted by

Morton Corr, PhD

to

Secretary of Labor W. J. Usery

January 12, 1976

STATUS REPORT
OF
THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

January 8, 1977

by

Morton Corn
Assistant Secretary of Labor
for Occupational Safety and Health

I. INTRODUCTION

The purpose of this report is to examine the current state of operations of the Occupational Safety and Health Administration. The report will focus on the conditions existing in the Agency as of December 2, 1975 when I assumed office, the philosophical approach and decisions made to alter many of the situations encountered at that time, progress made during the period since December 2, 1975, and finally, major issues and conditions facing the Agency today. Of necessity, this presentation will be brief. It is possible to construct an elaborate text which would provide extensive detail on the subject.

II. STATE OF THE AGENCY ON DECEMBER 2, 1975

Mr. John Stender, previous Assistant Secretary for Occupational Safety and Health, left the Office at the close of June, 1975. From July through November, 1975, Messrs. Miller and Concklin, Deputy Assistant Secretaries of OSHA administered the Agency. Both of these individuals were energetic management specialists without any prior experience in

occupational safety and health. During these months, they forged a superficial reorganization of the Agency and a complex network of task forces and temporary arrangements to address problems that had been festering for literally years. Subsequently, Mr. Miller left the Agency (departure was July 1, 1976, but effective relinquishment of responsibility occurred March 1, 1976). During the interim period of March through June 1976, Mr. Miller was preparing a special report related to chemical toxicity. That report was never submitted to the Agency.

The Agency was under extremely heavy criticism from the very public that it was created to protect. During my visits to congressional offices prior to confirmation hearings, I was informed of the large volume of OSHA-related mail on the Hill, virtually all of which was critical of the Agency's procedures. Morale in the Agency was at a very low level. In general, staff members expressed the view that regardless of what actions were taken by the Agency members, criticism was bound to ensue.

The professional health and safety communities, which one would think were allied with the Agency, were also in conflict with OSHA. Many of the procedures followed by OSHA in both its standard setting and compliance activities were antithetical to professional health and safety organizations.

Within the Department of Labor, OSHA was considered the "hot seat" Agency. The very nature of OSHA's responsibilities had established a pattern of acute, intensive emergency situations which required attention on the part of the Assistant

Secretary for OSHA and the Secretary of Labor. These emergencies appeared to occur with regular frequency. In addition, there had been past instances of political tampering with OSHA. The most famous of these incidents involved the first Assistant Secretary for OSHA, Mr. Guenther. A letter had been uncovered and made public which suggested that OSHA could be used to apply pressure to stimulate contributions to the 1972 political campaign. Thus, the Agency was recognized by all to be a difficult one to administer, and one searching for a pattern of behavior that would effectively accomplish the mandate of the Occupational Safety and Health Act of 1970.

III. APPROACH TO AGENCY REFORMATION

Certain basic principles guided actions taken during 1976. They will now be delineated.

A. Professional Code of Behavior for the Agency

The appointment of the first health professional as Assistant Secretary was a step taken by Secretary John T. Dunlop towards building the Agency's "health" capabilities. Upon review of existing conditions I determined that OSHA must be a professional health and safety Agency. I deemed it necessary to institute other steps that would convince the public served by OSHA that the Agency was, indeed, conducting itself according to a professional code of behavior. Therefore, the following steps were taken.

Major emphasis was placed on hiring professional health and safety compliance officers and training those currently employed by the Agency to bring them up to an acceptable level of performance.

Hiring guidelines were altered for more stringent requirements, a three-year career development program was instituted in September 1976 for health compliance officers who could not be hired through normal procedures because insufficient numbers of these professionals are available, and a two-week course in health training was developed and offered to all safety compliance officers. In addition, a three-day course devoted to dealing with the public was developed and is being offered on a rotating basis to all compliance staff. It should be noted that this latter effort is crucial to the receptivity of OSHA by the public (approximately six percent of OSHA citations are contested; the OSHA solicitor force exceeds 250 attorneys).

In order to implement these training initiatives, the size of the OSHA training staff was approximately doubled. The OSHA Training Institute in Chicago, Illinois, will move into a new facility, which approximately triples its space, in April 1977.

Because the training efforts of the Agency were held in low regard by its own employees, the very best OSHA experts are now utilized in training at the Institute; they are guest instructors.

Technical libraries, each costing several thousand dollars, were installed in every OSHA regional and area office and field stations. Thus, it is now possible for OSHA employees to have reference materials at hand. These libraries were non-existent prior to 1976.

Each OSHA professional health and safety employee is now offered the opportunity of attending one professional meeting for a maximum attendance time of one week every two years. Attendance at these meetings represents another aspect of professionalism, namely, exchanging knowledge and new developments with one's colleagues. This policy implicitly states that OSHA must be represented in the professional community.

During 1976 a policy was established by which approximately one percent of OSHA employees (currently Agency staffing is approximately 2,700) would attend graduate school full time for one year, while on salary. A committee was established to judge and select applicants for this program. The program is an investment in the future. It is an explicit statement of belief in current employees of the Agency who show promise for assuming leadership roles in the future. Applications for the first year of training, to commence September 1977, have been received and are being evaluated by the selection committee.

All professional safety and health personnel were instructed to discuss their judgments and their citations with employers and employees. Previously, discussions were not

held on site. This failure to discuss professional judgements with the clients OSHA serves led to misunderstanding of our procedures and our judgments.

All of the above initiatives are directed at building a professional body of health and safety personnel in the Agency. Many of them have long term "pay off times". Results are already beginning to show in the improved climate of acceptance of the Agency by the public. These initiatives and mechanisms must be sustained if incremental improvement in Agency performance is anticipated in the future.

B. Technical Support Capability of OSHA

This philosophical approach is closely related to that of the professional base of the Agency. It requires different actions for implementation and it is therefore highlighted here under a separate category.

Implementation of the OSH Act of 1970 was conceived in a strictly managerial sense. In other words, it was believed that efficient managers without health and safety expertise could pilot the Agency. There is almost an absolute absence of highly qualified technical personnel among the Washington staff and in the highest level field positions. In December, 1975 major offices of the Agency were headed by individuals without health and safety expertise. This omission of technical understanding of health and safety, perhaps the major

ingredient of an OSHA program has, in my opinion, led to alienation of the clients the Agency serves and the allied professional community. Steps taken to remedy this situation have involved numerous personnel actions to replace key individuals, as well as a reorganization of the entire Agency (effective November, 1976). One of the results of the reorganization was to create an entirely new technical support capability of the Agency. Large amounts of time have been spent in recruiting for senior positions under the new reorganization scheme. Certain key selections were made at the close of 1976; the Civil Service Commission is acting on these selections today. The Congress authorized additional staffing of the Agency in fiscal '76 and '77; approximately 500 new positions were made available to the Agency. It is crucial that new staffing and replacement staffing of the Agency focus on individuals with a high level of technical expertise. Increasingly, OSHA is being challenged on the integrity of its technical procedures and judgments. Presumably, the reason for this is that as the Agency continues to build in the health area, as contrasted to the safety area, the costs of compliance with standards will increase. In general, it is more expensive to implement a program directed at the containment of agents which can affect health than to implement a program directed at control of traumatic hazards which can cause injury, i.e., safety conditions.

The new reorganization scheme, which took effect November 1976 is appended to this paper (Appendix A). Complete descriptions of responsibilities for all offices shown in this schematic are available. In a different section of this report I will discuss the rationale for this reorganization and some further details of the components created.

The lack of technical expertise in the Washington office, in particular, led to creation of a rift between the field components of the Agency (approximately 75% of Agency staff) and those directing and coordinating Agency activity in the field. Those in the field have a far greater understanding of the technical ingredients of OSHA work than do those in Washington. The result of this rift, as well as a broader philosophy promoted during the period 1970-74, was that OSHA operations were decentralized in ten regions in the field. Each region "did its own thing". All efforts during 1976 were undertaken to coordinate regional performance so that the Agency was, indeed, appearing as a consistent regulatory Agency to all those clients it dealt with, regardless of their physical location in the continental United States, Alaska, Puerto Rico or Hawaii. Major progress has been made in this regard. It was made by bringing present safety expertise in the field into Washington to guide the field, and by increasing the technical competence of the Washington staff at the maximum rate feasible prior to the reorganization, and increasingly more rapidly since the

reorganization was implemented in November of 1976. It is absolutely essential that the technical administration of the Agency be further increased if the coordination of activities in the field is to continue. When the field cannot get valid responses from Washington or even worse, obtains contradictory responses and guidance from Washington, the field merely neglects to consult with Washington and proceeds as it deems necessary. This type of activity leads to contradictory regulatory action by the Agency.

The technical incompetence of the Agency is also reflected in its standards activities. The safety standards office of the Agency is particularly defunct of sufficient high level technically able individuals. The health standards area has more expertise than the safety area, but it is preciously small when one considers the demands being made upon the Agency in this area. Additional positions have been allocated to these areas under the reorganization scheme. In addition, there is provision for supervisory control which will permit better utilization of those individuals with the highly developed knowledge to work with well-meaning, but relatively inexperienced beginners recruited into the organization.

The technical capability of the Agency was also extremely weak in certain support function units. Specifically, the OSHA laboratory numbered 26 individuals in December of 1975. It has been built to a current strength of 72 individuals. This laboratory is responsible for analyzing samples which are the

basis for many citations in the health compliance area. In 1975 only seven percent of Agency inspections in the field were associated with health and the load on the laboratory was not great, as will be discussed later in this report. During 1976 the Agency has been eased into the health area with an attendant major increase of resources. This necessitated strengthening the laboratory facility. The facility was technically reviewed during 1976 by highly qualified professional peers. It was my intent to build this laboratory into a first-class facility.

The instrument calibration facility for OSHA was located in Cincinnati and was administered by the National Institute of Occupational Safety and Health. With the greater activity in health compliance, and additional instrumentation envisioned (approximately two million dollars of instrumentation was ordered in 1976; an additional four million dollars of industrial hygiene instrumentation is planned for 1977), it was necessary to integrate this facility into the OSHA organization and expand it. With the reorganization of 1976, at OSHA's request NIOSH transferred the calibration facility to OSHA. OSHA has obtained increased physical space for the calibration facility and has also increased the number of personnel.

These technical backup units, if you will, are crucial to the effectiveness of the Agency in sustaining its efforts in the health compliance area. There are already proceedings of contested OSHA citations that have hinged on the

accuracy and reliability of instrumentation and results of analysis of air samples obtained in the field.

C. The Increased Activity in Health Compliance

It was perceived in December of 1975 by virtually all those having any understanding of the Agency that efforts in health compliance had been minimal during the first five years of OSHA activity. It has never been clear to me why the preponderant effort was in safety during these five years. Nevertheless, 1976 activities were very heavily devoted to laying a firm foundation for a health compliance and standards setting effort. Some of the ingredients of this activity have already been mentioned; certain others will now be discussed.

In December, 1975 the Agency employed approximately 1,050 safety compliance officers. A decision was reached to sustain this number of safety compliance officers while using all new position allocations for compliance to hire health compliance officers, or industrial hygienists. Very few qualified industrial hygienists were available for hiring and an ambitious three-year career development program for industrial hygienists was initiated in September, 1976; approximately 200 individuals are enrolled at this time. It is planned to enroll approximately 100 beginner industrial hygienists in this program during 1977. (A brief article describing this program is appended to this report as Appendix B.) The main point to stress is

that the decision was made to build, in the short run, to a level of equal activity in the field in safety and health. This activity would be measured by the admittedly inadequate parameter of equal numbers of safety and health compliance officers. It is planned to achieve this short term goal by 1979. At that time, the Agency should have approximately 2,100 compliance officers in the field, with approximately half of these in each of the specialized areas of health and safety. This complement of compliance officers should permit OSHA to perform, with a high degree of professional competence, approximately 150 to 160,000 inspections a year. I will later discuss how plans and programming have been altered to target these inspections efficiently, because the Agency has responsibility for over five million establishments and must use its limited resources by going to the worst facilities first.

The above discussion is not meant to imply that exclusive reliance is being placed upon enforcement. Indeed, a philosophy evolved during 1976 explicitly stated that OSHA is interested in compliance, and that enforcement as reflected in inspections is only one of several tools for compliance activities. Educational efforts for employer and employee and on-site consultation are other tools that serve the purpose of ensuring compliance with standards adopted under provisions of the Act. Additional tools of compliance should also, ideally, be programmed to target those in greatest need of assistance.

Efforts to target educational and informational programs for employer/employee and on-site consultation are not as well developed as targeting efforts for enforcement activities.

It should be noted that a higher level of technical sophistication is required to effectively operate a program directed at agents affecting health in industry as contrasted to operating a safety program. In general, one can sense by sight or by touch the hazards which can result in traumatic injury to the individual, i.e., safety hazards. In almost all cases, extension of the human senses is required to detect health hazards. Instrumentation, collection of samples, chemical analysis of samples, elaborate engineering design to contain chemicals or physical agents, are all parts of the matrix of a health compliance program. Understanding the individual parts of the matrix requires program managers with fairly sophisticated scientific and technical backgrounds.

D. Relationships with Special Interest Sectors

A major part of my effort during this year was to establish dialogues with the professional health and safety community, the private sector as represented by both large and small business management groups, and organized labor. It was also necessary to initiate, or in a few cases, to continue dialogues with other agencies of government. It is appropriate to discuss these efforts in this report.

1. Professional Community

The National Advisory Committee on Occupational Safety and Health (NACOSH), a committee established by statute to represent labor, management and the public, was meeting as a full committee on the minimum number of occasions required under the Act, i.e., twice a year in 1975. I decided to upgrade the importance of this committee. Its potential importance was built into the Act, but in reality it was almost serving a vestigial function. The committee was reappointed in 1975. It was authorized to form into subgroups which would permit fewer than the 12 members comprising the full committee to meet for in-depth discussion of selected topics of their own choosing, or referred to them by the Assistant Secretary. Four sub-groups were formed (standards, compliance, policy and budget) in early 1976 which evolved into three sub-groups by the end of the year.

The full committee met six times during 1976. Sub-groups met an average of six to ten times each. The influence of NACOSH and its sub-groups during 1976 cannot be over-emphasized. Virtually all major compliance and standards decisions are now referred to this committee for their recommendations. Almost all recommendations to the Assistant Secretary during 1976 have been acted upon by the Assistant Secretary and translated into Agency policy. A few of these subjects are noted here for examples: definition of serious and other than serious hazards, revision of the penalty system, relationship of OSHA to the small business community, revision of consensus

safety standards, the 1977 budgetary needs of OSHA. Other equally important topics were deliberated and recommendations were made. The committee serves an invaluable function. It is absolutely essential that the resources and support given to this committee in 1976 be continued.

Although efforts started with the National Advisory Committee, the Assistant Secretary and key individuals in OSHA were drawn upon to establish relationships with the American Society of Safety Engineers, the American National Standards Institute (ANSI), the American Industrial Hygiene Association, among others. In all cases, the message was the same: we welcome your participation in our activities. We wish to draw upon you for review functions and for involvement in generation of standards. A formal agreement was signed with ANSI and others may be signed. In all cases the response to these initiatives has been salutary.

2. Organized Labor

The Office of the Assistant Secretary has three special assistants for liaison purposes. One of these is in the area of labor (the other two are industry and agricultural liaison, respectively). Tragically, the highly qualified labor liaison incumbent when I assumed office retired early in 1976 with a medical disability. The position was not filled until late 1976. I cannot over stress the difficulties this vacancy

created during 1976. These are crucial staff positions. The function of a labor liaison officer is to alert the Assistant Secretary to the concerns of organized labor and to inform organized labor of the concerns of the Assistant Secretary which, hopefully, reflect the concerns of the Agency.

Organized labor has assumed a watch-dog role for the Agency. Frequent meetings are necessary with labor representatives. Organized labor is not a homogeneous entity. Each of the unions have their own views on virtually all subjects of importance to the occupational safety and health program. It is therefore necessary to have open channels of communication with as many of the unions as possible and to keep them closely informed of Agency activities. Unfortunately, only a very few of the unions have a level of expertise necessary to the watch-dog role they desire. It has been my experience that many of the labor criticisms of Agency activity are superficial and upon closer scrutiny stem from bona fide but baseless fears, of incorrect Agency action. Only time will increase the level of competence of union personnel in these matters, so necessary to facilitate the essential relationship between organized labor and the Agency.

3. Management and Industrial Associations

There are simply too many industrial management associations for OSHA to deal with on an ongoing basis. They number in the hundreds or even thousands. Certain key groups

pay very close attention to OSHA; channels of communications with their representatives are on a continuing basis. A new policy I initiated is that whenever a new standard is started the Agency communicates with the relevant industrial group. We inform them of the project, solicit their assistance, and enlist their support for final review of the material that will go to proposal. This new policy has greatly improved the acceptance of the Agency in this sector. We have made it very clear that OSHA must make decisions on the basis of evidence before it and that these decisions will be the best technical-professional decisions that can be made. We are not soliciting their assistance to make our decisions; we are soliciting their assistance with gathering available data prior to decision making.

The procedures referred to above were instituted during development of the diving proposal and further implemented with the cotton dust proposal. These procedures have proven effective in sustaining dialogue but not for avoiding legal challenge to the Agency's standards.

In general, the concerns of the private sector are directly proportional to the costs of compliance with OSHA standards. The private sector is not convinced of the necessity for many OSHA requirements. The early OSHA adoption of consensus safety standards did not promote a feeling of confidence in OSHA among regulatees. Many of the early consensus

safety standards were, indeed, associated with nitpicking ingredients. The costs of compliance with health standards can be large. As an example, the coke oven standard will have an estimated 275 million dollars a year cost. Thus, efforts aimed at engendering understanding among those who must comply with the standards are well placed efforts. OSHA cannot require compliance with standards without laying the groundwork for understanding. In this same regard, I instituted a major policy of providing educational materials in advance of the effective date of a standard. In fact, I delayed the enforcement date of the standard for guarding of farm machinery because an unanticipated delay had occurred in the preparation of simplified brochures for the farm community. These brochures were directed at demonstrating in clear, simple terms the steps required to comply with the standard. It would be an error for OSHA to move rapidly in institution of new requirements without fully laying the groundwork for the understanding of these requirements by those in the private sector. More extensive use of information hearings during development of standards and multiple hearings at locations other than Washington were also started during 1976; they should not only be continued, but should be expanded.

At this point in time, a tenuous but real working relationship has been established with many components of the private sector. This working relationship has not prevented the filing of challenges to our standards, i.e., the American

Iron and Steel Institute challenge to the Coke Oven Standard. But it has placed the dialogue between OSHA and the private sector on a professional, substantive footing. The period of emotional accusations and phony issues is over; it should not be resurrected by rapid action on the part of overzealous administrators of the Agency. Actions by OSHA must be carefully considered and documented prior to announcement. They must then be implemented effectively.

4. Relationships With Other Federal Agencies

Many of OSHA's activities impact upon other Federal agencies. There is only one major agency, created in the OSHA Act, with which we must coordinate efforts. It is the National Institute of Occupational Safety and Health. In December of 1975 practically all communication between NIOSH and OSHA had ceased. NIOSH was transmitting to us in a very formal manner, criteria documents developed as recommendations for initiation of standards activity. Under the Act, NIOSH was established as the research wing of OSHA. It is a non-regulatory agency.

Almost immediately upon assuming the role of Assistant Secretary of OSHA, I requested and initiated monthly meetings between the directors of NIOSH and OSHA. These meetings have been held every month since my assumption of office. In addition, working group meetings are held monthly to follow up on topics discussed by the directors. Progress, while real and

discernable, has been slow. The goals and budgeting, indeed the entire operation of NIOSH is in a different organizational scheme than those of OSHA. NIOSH is in the Department of Health, Education and Welfare, and OSHA is in the Department of Labor. I would urge that the coordination heretofore developed be continued and expanded, but it appears to me that this relationship will never be an effective, efficient one until NIOSH is incorporated into OSHA. By a satisfactory relationship, I here mean that the research and data gathering functions of NIOSH be responsive to the regulatory priorities conceived and agreed upon by NIOSH and OSHA. At the present time, each Agency is proceeding with its own priorities; the planning schemes have not been intermeshed. There are many administrative and bureaucratic reasons for this situation which will not be dwelled upon here. The point is that incremental progress is possible and will continue to be made, but the problems which face both Agencies in the American workplace cannot wait upon the slow rate of progress demonstrated heretofore and predicted for the future. Only by placing NIOSH under the jurisdiction of OSHA will major progress be made in a relatively short time.

As an example of NIOSH failure to understand or respond to needs, I will relate our experience with requests for medical evaluations of personnel at facilities where an emergency situation occurs. Personnel of the OSHA Emergency

Office must often reach decisions which might result in closure of a facility. Requests to NIOSH for rapid surveillance of personnel in the plant have not been rapidly acted upon. In addition, requests for medical surveillance of personnel in plants undergoing abatement in programs requiring more than one year, have not been responded to by NIOSH. Thus, requests for medical surveillance in literally hundreds of facilities undergoing abatement for lead were made by OSHA in late summer of 1976. NIOSH has not yet responded. The priorities of NIOSH are simply not geared to the regulatory needs of OSHA.

Other agencies with which OSHA should have intimate relationships include EPA, the National Cancer Institute and the National Institute of Environmental Sciences. One might also mention FDA. With respect to EPA, there were few ties prior to December 1975. In fact, the two Agencies had been adversaries in hearings called to obtain information relative to a noise standard for the occupational environment. Because of my extensive involvement with EPA prior to coming to OSHA (For three years I had chaired the Air Pollution Grants Research Advisory Committee and also served on the Science Advisory Board), ties were established. EPA reviewed engineering provisions for the OSHA Coke Oven Standard issued in November, 1975. Indeed, during this review process EPA discovered that certain OSHA requirements were in conflict with engineering requirements related to EPA's regulation of air pollutant emissions

to the ambient air. These differences were reconciled. The new Toxic Substances Control Act calls for intimate ties between EPA and OSHA. During the past several months extensive discussions have been held between EPA and OSHA personnel on the subject of the Toxic Substances Control Act. I have personally met with representatives of EPA to fully inform them of OSHA procedures and concerns. OSHA will assign full time personnel to be responsible for appropriate coordination with EPA under the Toxic Substances Control Act. Thus, the groundwork has been laid for continuing coordination with EPA. These initial efforts should be supplemented and reinforced.

Members of the National Cancer Institute and of the National Institute of Environmental Health Sciences have been consulted during the formulation of a proposal for identification, classification and regulation of carcinogens. OSHA hopes to issue this proposal early in 1977. I have attended meetings at the invitation of NIEHS and NCI, as well as meetings devoted to regulation of materials which could affect genetic transformation. The latter meetings were called at the invitation of the Director of the National Institutes of Health. These ties should also be continued. It is essential for OSHA to be aware of new scientific developments related to industrial processing and chemical toxicity. OSHA should be represented on committees concerned with these developments and should be on the mailing lists of professional societies and public interest groups calling for representatives of government agencies to consider new

developments. Only in this way will the Agency have an early start on hazards that can affect the health and safety of those at work. This way, OSHA will not be in the position, which it too often finds itself in, of coming from behind, or playing "catch up ball."

E. Standards Development

One of the two major functions of the Agency is development and promulgation of safety and health standards; the other is ensuring compliance with these standards. In the perception of the public the major failing of performance during the entire period of OSHA's history, including 1976, has been the slow rate of promulgation of health standards. The subject of Agency health and safety standards efforts will now be discussed.

1. Health Standards

On occasions I have referred to the development of OSHA standards for agents affecting health as a seminal subject. In my opinion, much of the health standards promulgation effort is research in its truest applied form. In addition to the very difficult issues which must be resolved prior to either proposal or final promulgation of the health standard, the legal-administrative procedures which must be followed are cumbersome. In the latter regard, it is necessary to develop a proposal (in coordination with impacted groups, according to

recently articulated policy), to hold a hearing on the proposal, to follow the hearing with a post-hearing commentary period, and then to finally promulgate a standard. In addition, in 1975 an Executive Order required the preparation of an inflationary impact statement to accompany each newly promulgated standard. The requirement for an environmental impact statement also exists. At the optimum rate of progression, it is believed that health standards can be promulgated in a period of approximately 14 months from inception of effort. The Agency has never met this time frame. Standards promulgation has required, at best, 18 to 22 months.

Many improvements have been made, and will continue to be made in the coordination of attorney effort from the Solicitor's Office and scientific effort from the health standards office in this development process. It should be recognized that the team approach to standards development is the best approach. Prior to December 1975, OSHA attempted to develop a standard and the Solicitor's Office reviewed it. During the period I have been in office, a team approach involving attorneys and scientific personnel has been utilized. With the resources currently planned for the Health Standards Directorate of OSHA, I estimate that a productivity rate of 15 to 20 health standards promulgated per year is a noble ambition in 1978 or 1979. Obviously, there are thousands of chemicals in the work environment and this rate of productivity will not adequately address the problem. However, this rate of

productivity will, I believe, saturate the ability of the compliance staff to follow up with inspections related to the standards which have been promulgated. Nonetheless, the public will undoubtedly judge the Agency on the basis of standards promulgated, rather than on adequate enforcement action until such time as the sophistication of the public permits it to call attention to the mismatch between compliance activities and standards promulgation.

The above considerations lead to the conclusion that continued development of standards for individual chemical agents is a self-limiting developmental process. The Agency must seek another way of addressing chemical hazards in the work environment. In this regard, we have been searching during 1976 for so-called generic standards. For example, standards would be issued for labelling of compounds, for medical surveillance of employees, and for monitoring of the work environment. OSHA would not wait for development of standards for each agent to regulate each of these specific provisions for that agent. A labelling proposal is on the verge of being ready for the Federal Register and the imminent proposal for identification, classification, and regulation of carcinogens is a generic proposal. I believe that efforts along these lines should be accelerated. Some private sector and union groups are also working with their internal commitments to develop generic standards.

It must also be recognized that the state of science and technology is not adequate to fulfill the legal burdens of proof which the Occupational Safety and Health Review Commission and the courts have been requiring of the Agency. In most cases, a dose-response curve does not exist for the effects of the agent on the population at risk. Also, in the real world the population at risk is exposed to a multiplicity of hazards and the effects produced in the human body by the various agents are often in the form of a general medical condition, i.e., emphysema, bronchitis, cancer. These medical conditions cannot be uniquely associated with the agent that is being regulated. All of these uncertainties, which we attempt to treat in our standards documents, are fertile grounds for legal challenges by those who are not committed to abiding by the standard in question.

It is clear that delay of implementation of a standard saves a great deal of money for those impacted by the standard. Indeed, rough estimates by OSHA indicate that the legal costs of ensuring delay through challenge in the courts represents a small fraction of the costs of compliance, costs which would have been expended during the period that the challenge holds the standard in abeyance.

Appended to this report (Appendix C) is a summary document of the status of inflationary impact statements being prepared for health standards under development. Also included

is a summary table of the projected standards for 1977. It must be stressed that a valid priority system has not yet been developed by OSHA for health standards development. A priority system is being discussed with the National Institute of Occupational Safety and Health, as well as internally. While great progress has been made in the administrative structure and procedures followed by the health standards section of OSHA (additional positions have been allocated for hiring in 1977, particularly for senior supervisory personnel), the development of adequate resources in the Office of the Solicitor will in the future be the constraint on the rate of development of health standards. As noted above, development of a health standard requires a team effort. While OSHA has been receiving an allocation of positions for expansion, staffing of the Solicitor's Office has been frozen by the Congress. As this report is being written, discussions are in progress to arrange for transfer of positions allocated to OSHA to the Office of the Solicitor to permit additional personnel in the Solicitor's Office to be assigned to health standards development. I strongly urge that this procedure be initiated. The increased staffing in OSHA, without concomitant staffing in the Solicitor's Office, will not materially increase the rate of productivity of health standards; they will languish in the hands of the Associate Solicitor for OSHA who cannot allocate adequate resources to them.

2. Inflationary Impact Statements

In recent months a major controversy has developed on the subject of inflationary impact statements which must be prepared in conjunction with each health standard. The requirement for an inflationary impact statement was set by Executive Order in 1975. At the time of the Executive Order it was not clear what the format of an inflationary impact statement was to be, nor was the capability to prepare these statements in OSHA. The Secretary of Labor issued an order vesting the authority for certification of inflationary impact statements prepared within the Department of Labor in the Office of Planning, Evaluation and Research (ASPER). Thus, although OSHA is required to prepare these documents, OSHA must submit the final products to ASPER for certification prior to issuance of the Federal Register notice of standard and IIS.

A large number of standards without accompanying IIS documents were placed in the Federal Register in the fall of 1975. Subsequently, preparation of IIS documents proceeded utilizing contractors because OSHA staff with capabilities to prepare these documents had to be hired. OSHA has been hiring such staff throughout 1976. Part of the new OSHA reorganization scheme is an Office of Inflationary and Economic Impact Assessment. However, during the period of evolution of these documents, namely, the entire year 1976, it became increasingly clear that the perception of ASPER as to what constitutes an

IIS and the perception of OSHA in this regard, were vastly different. I stated as a matter of OSHA policy that economic assessment should be performed prior to issuance of the standard. The purpose of this economic assessment is to provide the Agency with sufficient insight into its regulatory action to adjust time periods for compliance for different sectors impacted by the standard. ASPER, on the other hand, is primarily based in economic theory and believes that a classical cost-benefit analysis should be performed for each standard. This analysis would determine the dollar value of benefits, i.e., deaths, disease states, injuries, etc., in each sector impacted, and would contrast this dollar value with the costs of control of the hazard. ASPER would then selectively apply the regulation to those sectors where the benefits exceed the cost.

As Assistant Secretary, I have declined to have OSHA perform such dollar analyses of benefits. In the first place, the methodology associated with such analyses is in its formative stages. The variance placed on any estimates of dollar benefits of disease and death is so great as to be virtually useless. Furthermore, there is the philosophical question of whether or not OSHA and the Department of Labor, charged under the Act to provide, insofar as possible, a safe working environment to every man and woman in the United States, should approach its responsibilities by placing dollar values on benefits to determine if the benefits of the Occupational Safety and Health

Act should be brought to all sectors. I have assumed that these benefits should be brought to all sectors. The only question to be resolved is that of the time period allocated to the highly impacted sectors to permit institution of the required controls to ensure safe and healthful environment.

The conflict between OSHA and ASPER has not been resolved as of this date; the Executive Order has been extended into 1977. The issue came to a crucial head with the inflationary impact statement for Lead which was prepared by a contractor. The document did not meet the certification requirements of ASPER, but it did meet the needs of OSHA. ASPER ruled that a new contract for an IIS be let, one which would require approximately another twelve months for completion. I indicated that such delay was intolerable. Fortunately, the Secretary and Under Secretary authorized the gathering of additional information which would overcome some, but not all, the concerns of ASPER for a "total" IIS. The hearing for the Lead IIS and proposed standard has been scheduled for March 15, 1977. The controversy which arose in conjunction with the Lead IIS was, I believe, only the first of many which will arise until a clear decision is made by the Secretary of Labor as to the content of an inflationary impact statement. I have personally recommended that the certification authority for inflationary impact statements relative to OSHA standards be transferred from ASPER to the office of the Assistant Secretary of Labor for OSHA. I do not believe it possible to adhere to the requirements laid down by ASPER and to promulgate standards in a timely manner.

Even more important, I do not see the relevance of much of the information desired by ASPER in these IIS documents. It is essential that this matter be resolved at the earliest possible date.

F. OSHA Relationships With Members of Congress

In December of 1975, there were alarmingly few members of the Congress who were well-informed with respect to OSHA and its activities. It was absolutely essential to plan for, and to initiate steps which would build the base of understanding of OSHA in the Congress. Therefore, I immediately moved to secure the full-time services of one OSHA employee on the Hill. The function of this individual was to inform members of the actions, and the reasons for the actions of OSHA, and to carry concerns of members on the Hill back to OSHA. This individual now reports to the Office of Legislative Affairs of the Department of Labor.

In addition to the above full-time person added to the staff and working throughout 1976, a process of information transfer was established between our own OSHA Office of Legislative and Interagency Affairs and the Hill. During 1976 a complete information book on new initiatives of the Agency was distributed to each member of the Senate and the House. Briefings were held with staff of members of the House and Senate. I participated in these briefings, which were of a general nature. Briefings on specific topics were also undertaken. One in particular was concerned with revision of consensus

safety standards. I personally visited with many members of the Senate and the House and also met with groupings of members. The purpose of all of these meetings was to inform and to answer concerns. I believe that steps have been taken to establish an on-going program with members of the Congress.

It would be appropriate at this time to review in detail the experiences of 1976 in establishing a broader base of understanding on the Hill for OSHA. I recently met with the Deputy Under Secretary for Legislative Affairs of the Department of Labor and reviewed his perceptions of the operations of the full-time staff member for OSHA and the interaction of that person with the OSHA Office of Legislative and Inter-agency Affairs. The Deputy Under Secretary had several suggestions for improvement of the initial procedures utilized in 1976. Others at OSHA have suggestions for improvement. Certainly, the experiences gained in this first year of an extended effort to develop a better basis of understanding of the Agency on the Hill should be placed in perspective for the purpose of launching a second year of more effective operation.

G. OSHA Relationships With the Public

The mandate to the Agency to protect approximately 65 million employees in approximately 5 million establishments requires an extensive transfer of information to employees and employers, as well as to the general public. Prior to 1975 the

Agency had never geared up for such a massive public and consumer affairs effort. The reorganization of the Agency in 1975 created an Office of Public and Consumer Affairs operating out of the Office of the Assistant Secretary. It is projected to be a large effort. The utilization of audiovisual aids as well as printed materials is envisioned. At the present time, consideration is being given to a policy which would allocate a fixed percentage of the OSHA budget (tentatively set at 5 percent) to employee/employer educational materials. In addition, plans are being implemented for a hardware system which will permit the rapid transfer of information between the National Office, Regional Offices, and Area Offices. The flow of information would be in two directions. The rationale for planning for this extensive approach to information transfer is that OSHA covers many, many subjects and they are detailed. The actions of the Agency are often misunderstood. The past image of the Agency smacks of a dictatorial nature. The initial six years of Agency activity carry one major lesson in this regard: OSHA will not prevail if it does not explain its actions satisfactorily.

Unfortunately, there has been some resistance within the Department of Labor to the very concepts outlined above. It appears that within government the term public affairs is confused with public relations. OSHA is not intent on image building. OSHA is intent on information transfer. Perhaps more than any other agency in the Department of Labor it must engage

in this type of activity. The function cannot be fulfilled by the Information Office of the Department of Labor because that office does not understand many of the technical components of the information which must be transferred. It would be gratifying to be able to state that after a year of explaining this position within the Department of Labor the public affairs efforts of OSHA will move forward smoothly. I do not think they will. There continues to be increasing suspicion of the massive information transfer effort that the Agency is gearing up to perform on an on-going basis. I believe this effort is essential to the success of OSHA and must be further supported and defended.

Regular sessions have been scheduled during 1976 with reporters covering OSHA. The sessions have been held at intervals of approximately six weeks, with some deviation from this schedule. The scheduling of news interviews has supplemented interviews called for special occasions. A rapport has been built up with the news media because of these scheduled events. I believe a degree of trust has been engendered in those members of the media covering the Agency on a regular basis.

In addition, virtually all requests from the media for interviews have been honored. A major philosophy espoused during 1976 was that OSHA desires to discuss its activities and is greatly appreciative of accurate and reliable reporting of these activities.

IV. Additional Issues Which Require Policy Decisions in the Immediate Future

A. Relationship of Federal OSHA to States

The Occupational Safety and Health Act of 1970 conceived a federal-state partnership. States were permitted the option of operating programs "at least as effective as" that of the Federal Government. States electing such an option have three years to develop fully operational plans; a fourth year is allotted for solo performance by the state to demonstrate the efficacy of its procedures. At the conclusion of the fourth year, federal OSHA can, but does not have to make a decision concerning the ability of the state to continue without federal oversight while still receiving federal matching funds. Several states are now in their fourth year of operation.

The problem with the procedures described above is that criteria for evaluating states in their fourth year of performance were never developed by the Agency during 1971-75. During 1976 such criteria were developed and a meeting with the State Labor Commissioners of states with plans is scheduled for February, 1977 to review the criteria. I intended to transmit to the Commissioners the decision not to uncouple states from federal OSHA for solo performance at the end of their fourth year if they do not have a smoothly functioning and effective program for abatement of health hazards, as well

as a program for abatement of safety hazards. During 1976 federal OSHA embarked on a program of improvement in the area of occupational health and states must also assume this responsibility. It is inconceivable to me that a state be granted federal certification without an occupational health program. There certainly can be a lesser degree of monitoring of the state in the safety area during the fifth year of plan operation, while continuing to closely monitor the state occupational health program. In any event, these matters must be discussed with State Labor Commissioners and program managers at the earliest possible date.

B. Federal Agency Occupational Safety and Health Programs

The Act delineates an advisory capacity for federal OSHA in its dealings with federal agencies. During the years 1971-75 extremely slow progress was made in this area. In fact, the General Accounting Office report issued in early 1976 entitled "Safety in the Federal Workplace" condemned the efforts of federal agencies to date. The Assistant Secretary for OSHA is chairman of the Federal Advisory Committee on Occupational Safety and Health. In this capacity I attempted during 1976 to accelerate federal agency safety and health activity. I personally accompanied the director of the OSHA Federal Agency Programs office to other federal agencies to indicate the necessity for more rapid progress. It appears to me that there has

been an increased tempo of progress in this area during 1976, but still far too little for complacency.

It is my opinion that until federal OSHA is given more substantial tools to deal with federal agencies, tools with authority as well as advisory capacity, the federal agency program will continue to progress at a disappointingly slow rate.

There is no philosophical basis for differentiating between the millions of employees in federal agencies and those employed in the private sector. Federal employees have a right to the same degree of coverage which OSHA is so assiduously attempting to deliver to those in the private sector. Certainly, continued increased attention by the Secretary to this sector of OSHA activity and increased effort by the Assistant Secretary for Administrative Programs in the Department of Labor to implement Labor Department health and safety programs will help. A temporary loan of 10 positions from the OSHA staffing allocation to the Department of Labor was authorized by me at the close of 1976 to permit the Department of Labor to move forward with its health and safety program. It is difficult for the Assistant Secretary of OSHA to urge other federal agencies to promote health and safety when the Department of Labor is also faulted by the General Accounting Office for its slow progress.

C. Jurisdictional Issues With Other Agencies Under the
4(b)(1) Clause of the Act

During this year of tenure as Assistant Secretary, I was deeply involved with issues under the 4(b)(1) clause of the Act. These issues arise because the Act does not clearly assign responsibility to OSHA or other federal agencies for coverage of their employees when their standards are inadequate. The coverage of railroad employees by the Federal Railroad Administration (FRA) is illustrative of this issue. Jurisdictional disputes are extremely frustrating matters with which to deal. They often reach irreconcilable points. With respect to the FRA, that agency has locked our inspectors out of the premises. OSHA is hoping to resolve the dispute in court. It is a tragedy that two federal agencies come to this point in administration of a program designed to protect the health and safety of employees. During the six years of the Act approximately 55,000 railroad employees have not had satisfactory health and safety services delivered to them by either the FRA or OSHA.

I submitted a memo to Secretary Usery indicating my frustration in resolving these jurisdictional disputes. This situation could prove more amenable to solution in a new Administration if direct Executive Office action is taken to clarify agency responsibility. However, the conclusion of my memorandum to Secretary Usery was that amendment of the Act was the most promising recourse for resolving jurisdictional disputes.

Nothing has happened in the interim since submission of the memo to alter my opinion on this matter.

D. Criteria for Professional Technical Personnel and Associated Salary Levels

As OSHA continues to achieve higher levels of technical and scientific sophistication in its operations it becomes increasingly difficult to hire individuals to staff the Agency. As Assistant Secretary I visited with the Civil Service Commission on at least two occasions to explain the needs of the Agency. There is a prevailing belief that the Agency operates at a lower level of technical sophistication than the National Aeronautics and Space Administration or the Energy Research and Development Administration, for instance. This is not a valid conclusion. The technical aspects of occupational health and safety are as subtle and difficult as those which challenge the two agencies noted above, and other government agencies which have been allocated staffing patterns at higher grade levels. An improved approach to staffing of OSHA must be endorsed by the Secretary of Labor and the Civil Service Commission must be convinced of the correctness of this posture.

Increased emphasis in the health area has placed great demand on industrial hygienists. Annual salaries for qualified industrial hygienists increased in 1975 by several thousand dollars. As noted in this report, the Agency has

undertaken a training program for newly hired industrial hygienists. If the problem of grade assignment and salary level is not resolved the agency will lose those hygienists trained under the OSHA career development training program. I urge that emphasis be placed on securing higher level positions for the Agency and altering current job descriptions for health and safety personnel so that supervisory responsibilities are not required to advance technical and scientific personnel beyond the GS-12 level. Another alternative would be to petition Congress for a separate salary classification for the needed specialists, one competitive with that of the private sector.

E. Support Functions for the Agency

The "bread and butter" support functions for any agency include adequate space for personnel, adequate transportation for its members, adequate numbers and quality of clerical personnel, and hardware for transmission of information, typing, photocopying, etc. Most of these items are worked out by GSA and regional directors in the Department of Labor. We are having difficulties in many of our regional offices securing minimal allocations of adequate space for our offices. This matter has been called to the attention of the Assistant Secretary for administrative matters in the Department of Labor, but progress is slow. The same situation applies to availability of cars for our compliance officers. Transporta-

tion to sites for compliance activities is crucial for the work of OSHA. Not only must there be a sufficient number of automobiles, but they must be of the appropriate type because health compliance personnel have a large stock of apparatus and instrumentation to transport to the site.

The occurrence of emergency field situations which require immediate attention of agency personnel necessitated my authorizing ordering of hardware for a rapid transmittal system for information from national office to regional offices to area offices. Preparations for ordering of this hardware system, so essential to deal with critical situations in the field, has thus far consumed over four months. At the time of this writing, I am not sure that orders are placed. There is apparently some question of this system partially duplicating systems in the Department of Labor. I cannot overstress the need for such a system for the Occupational Safety and Health Administration. When a toxic chemical situation such as those for vinyl chloride, kepone, or leptophos occurs in the field, there must immediately be transfers of all information from the localized site to the national office. There must also occur transfer of information from the Technical Data Center to sites throughout the country where the same chemical is encountered. Continuous dialogue between members of the field and members of the Washington office is required. The hardware system desired should be placed in operation as soon as possible.

In summary, it is necessary for both members of the Department of Labor administrative staff and for the GSA to recognize that the nature of the work of OSHA demands some preferred attention, if you will. Life and death matters are, quite literally, at stake.

F. Occupational Safety and Health Review Commission

The Act established a Review Commission composed of three commissioners to review contested citations. The Review Commission establishes regulatory policy. In my opinion, many of the decisions of the Review Commission have been misdirected. I urge that the new Administration carefully consider the composition of the Review Commission because it has an enormous influence on the activities of OSHA. It can, with one decision, negate Agency policy. It is then necessary for the Associate Solicitor for OSHA to contest the decision of the Review Commission in a Court of Appeals. The litigious activities engendered require time and effort. The uncertainty of Agency behavior in the interim aggravates the clients of OSHA, who understandably seek some firm directions in Agency policy.

G. Statistical Approach to Evaluating Effectiveness of OSHA

Since its inception, OSHA has been pressed to establish a data gathering and evaluation system to judge the extent of occupational disease and injury and the impact of the Agency

on these events. Considerable progress was made by BLS in the area of safety statistics data gathering and reporting for prevalence of injuries and fatalities in the entire population at risk by sampling employers across all SIC categories. In fact, the statistics for 1973, 1974 and 1975 are encouraging, showing a decrease in total injury rates.

Progress has not been made in gathering data to show 1) the effect of OSHA inspections in specific industry sectors or 2) the incidence of occupational disease and death in the working population. In order to accelerate progress in these tasks, an Office of Statistical Studies and Analyses was created with the reorganization of 1976. This office is engaging in a variety of prototype studies and also serves as the OSHA liaison with BLS. It is staffed with persons having statistical and epidemiological expertise. This office must be carefully cultivated and nurtured if progress is to be made with answering the questions discussed above.

Other questions being asked by members of this staff include the analysis of accident sites on the body and disease states in particular industrial sectors and their relationship to OSHA standards, or the need for standards.

V. Conclusions

This status report presents a large array of issues, policies, actions and philosophy which have guided my activities and those of the Agency during 1976. I have not delineated

in a staccato manner the order in which a new Assistant Secretary for OSHA should approach pending matters. Rather, the report has attempted to place in perspective each of the major issues. There are others, but they are judged to be less significant.

There are some guiding principles. All OSHA actions should be based on a defensible, objective technical-professional weighing of the facts relative to the issues. The reasoning resulting in decisions should be elaborated upon with OSHA clients, professional groups and the public. The consistent reliance on facts and a readiness to defend objective decisions made by knowledgeable individuals will, with certainty, make OSHA a professional Agency less subject to criticism, controversy and ridicule. During 1976 I attempted to gauge all my actions as Assistant Secretary by these criteria.

APPENDIX A

ORGANIZATION

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
ASSISTANT SECRETARY700 Office of the Assistant Secretary

a. Mission. To advise and assist the Secretary on all matters related to the policies and programs that are to assure safe and healthful working conditions for the working men and women of the nation, and to provide executive direction to the occupational safety and health program.

b. Functions.

(1) Advises and assists the Secretary in the formulation and execution of policy and the establishment of national priorities for job safety and health programs.

(2) Provides leadership for job safety and health programs in the application of broad policy, program priorities, and emphasis.

(3) Provides executive direction to insure attainment of longrange goals through:

a. development of job safety and health standards,

b. enforcement of these standards,

c. encouragement and assistance offered to States in developing and operating their programs to assure safe and healthful working conditions,

d. conduct of information, consumer affairs, and training programs.

(4) Provides executive direction for public affairs; policy analysis, integration, and evaluation; legislative and interagency affairs; and equal employment opportunity programs; and regional programs.

ORGANIZATION

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

702 Office of Public & Consumer Affairs

a. Mission. To advise the Assistant Secretary on public and consumer affairs matters and to direct and guide the operations of the agency's public hearings, its advisory committees, its information program, and other related activities.

b. Functions.

(1) Initiates, plans, coordinates, and supervises public hearings (as mandated by the Occupational Safety and Health Act of 1970) as well as manages all advisory committees in their deliberations of policy recommendations to the Assistant Secretary.

(2) Fosters public participation in the policy and regulation formulation processes of OSHA.

(3) Develops and implements approved long range plans for Public and Consumer Affairs Programs (designed to assure optimum results with minimum expenditures of time and money); also coordinates and develops information plans for satisfying special requirements as new agency policies, changing circumstances on existing directives or crisis situations may dictate.

(4) Provides, at national office level, through a "one stop shopping" concept, a point of contact for all queries from the news media, the general public, consumers, and special constituencies such as trade and professional groups and trade unions; coordinates with the Legislative and Intergovernmental Affairs staff concerning all information intended for distribution to the Congress or its committees.

(5) Plans and supervises a total staff information program, internal and external, conforming with experimental policy and guidelines aimed at informing employers, employees, their groups and associations of the goals, requirements, accomplishments and results of Federal and State occupational safety and health programs.

ORGANIZATION

Office of Public & Consumer Affairs

(6) Develops and implements the annual OSHA information and consumer affairs program plans describing OSHA program objectives, major efforts, materials to be developed and informational activities relating to each major program objective in order to assure that information flows quickly, clearly and continually to all affected publics; serves as staff advisor to all operating heads on matters affecting the public at large or specific publics.

(7) Plans, develops and coordinates distribution of informational material affecting the public.

(8) In accordance with Departmental procedures, plans, prepares and markets news releases, photo news releases, audio and video news and features, as well as public service material, motion pictures and slide presentations, exhibits, an official monthly magazine, and other educational or informational booklets, pamphlets, brochures, flyers, etc., plus an internal newsletter for OSHA employees.

(9) Reviews for public information and consumer affairs policy, editorial content, and format all educational materials prepared by other offices of the agency whether such materials are developed by agency personnel or under contract with outside experts.

(10) Provides to the Assistant Secretary public information policy guidance for agency field installations and exercises coordination control over collateral duty public and consumer affairs officers (OSHA Regional and Area Directors) in more than 125 offices nationwide to insure conformity to departmental policy and standards as well as that of the agency.

(11) Maintains liaison with information professionals within and without the Labor Department to insure, to the extent possible, consistency of approach, particularly among other regulatory agencies with parallel interests such as CDC, EPA, FDA, and others.

ORGANIZATION

Office of Public & Consumer Affairs

(12) Assigns to appropriate divisions of the Office of Information and Consumer Affairs applicable portions of approved public and consumer information plans, programs and projects and coordinates the completion of each such assigned work task to assure timely and simultaneous completion.

(13) Exchanges information with trade and professional associations, labor unions, universities and other organized groups for the purpose of assuring effective delivery of informational material on OSHA and its activities.

ORGANIZATION

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
ASSISTANT SECRETARY703 Policy Analysis, Integration and Evaluation
Staff

a. Mission. To analyze and develop policy options with respect to the mission and programs of OSHA, to integrate and coordinate policy analysis and decision-making which cut across organizational lines not only within OSHA but also with other agencies of the federal government; and to advise the Assistant Secretary on policy, long long term future planning, research and evaluation matters, and economic considerations relating to overall national OSHA programming.

b. Functions.

(1) Develops, recommends, and advises on policies relating to overall national OSHA programs, making determinations of economic and programmatic ramifications.

(2) In cooperation with OSHA primary program offices, develops long range goals, objectives, plans, priorities to modify, improve, or extend overall occupational safety and health programs and recommends methods for their implementation, except for special programs and projects assigned to the Field Coordination Staff.

(3) Evaluates the effectiveness of major OSHA programs in achieving the objectives of the Occupational Safety and Health Act.

(4) Develops new approaches and evaluates existing systems and guidelines used by other OSHA organizations in reviewing and evaluating program operations.

(5) Develops a coordinated program of evaluation designed to meet the needs of the Occupational Safety and Health Administration, determining its effectiveness and the cost of improving or changing a program, such as relations to other agencies, and Federal or State programs.

(6) Provides advice and insight to the Assistant Secretary about the probable effect in terms of costs and benefits of alternative strategies and possible courses of action available.

ORGANIZATION

ASSISTANT SECRETARY

704 Office of Legislative & Interagency Affairs

a. Mission. To ensure that the Occupational Safety and Health Administration is fully responsive to Congressional interest in issues relating to OSHA's policies and program attainments, and to conduct this activity in conjunction with the Office of Legislative Affairs, to assess the Agency's legislative requirements both in terms of proposed Congressional actions and the Department's legislative program; and, to serve as the focal point for jurisdiction issues for the Agency's relations with other Federal agencies having standards setting or enforcement responsibilities in the area of safety and health.

b. Functions.

(1) Analyzes Congressional understanding and knowledge of OSHA through Agency and Departmental contacts with Congress and through written materials.

(2) After consultation with OLA for the Department's position, prepares OSHA and DOL officials for appearances before Congressional committees seeking information concerning OSHA.

(3) Conducts analyses of current, proposed or filed legislation impacting OSHA.

(4) Develops legislative option papers for consideration by OSHA executive staff.

(5) Coordinating with OLA, responds to Congressional visits of the Agency's executive staff or technical experts.

(6) Informs OSHA executive staff and program officials of actions and statements made by members of Congress which could impact the program.

(7) Researches, prepares or reviews all responses to General Accounting Office reports and other program reports and documents sent to the Congress.

ORGANIZATION

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
ASSISTANT SECRETARY

(7) Using mathematical, statistical, econometric and other scientific methods, conducts research on a variety of diverse factors which affect national OSHA programs and, determines the best mix, and use of, quantitative decision processes to develop programs that will result in better safety and health at the workplace.

(8) Constructs, manipulates, validates and appraises models relating to policy development and strategic program planning; and to the solution of specific problems at the request of the Assistant Secretary.

(9) Reviews proposed planning and programming documents submitted by all echelons of OSHA for policy implications and probable effectiveness in accomplishing the agency mission, goals, objectives, and priorities.

(10) Reviews all governing legislation, Executive Orders, and Secretary's Orders for their impact, program, and policy implications.

(11) As directed by the Assistant Secretary, attends Congressional hearings to provide agency views on proposed legislation; to provide information on agency policies, programs, and activities; and to defend agency requests for appropriations.

ORGANIZATION

Office of Legislative & Interagency
Affairs

(8) Maintains liaison with other Federal agencies involved with safety and health standards-setting and enforcement through interagency agreements, memoranda of understanding, and personal contact.

(9) Coordinates the requirements of section 4(p)(3); handles any correspondence and briefing material dealing with section 4(p)(3) and any jurisdictional issues.

(10) Carries out special projects regarding legislative affairs or interagency coordination assigned by the Office of the Secretary or Undersecretary.

ORGANIZATION

Assistant Secretary

705 Equal Employment Opportunity Staff

a. Mission. To advise and assist the assistant Secretary in planning, establishing, implementing and maintaining the OSHA Equal Employment Opportunity Program.

b. Functions.

(1) Develops and assists in implementing and monitoring affirmative action plans for achieving equal employment opportunities in OSHA.

(2) Initiates and conducts surveys and studies to determine the effectiveness of the Equal Employment Opportunities Program, as a basis for program evaluation and policy development.

(3) Plans and conducts studies of major EEO problem areas and recommends solutions or corrective actions which may involve program or policy changes.

(4) Counsels employees and management officials on the EEO program; career development planning; EEO complaint and appeals procedures; and training and employee development opportunities, in conjunction with the agency Office of Personnel Management.

(5) Participates in or conducts special occupational analyses to identify available job opportunities or to develop new opportunities in which underutilized employees may make full use of current skills.

(6) Participates in the aggressive, positive recruitment of minority candidates for present and anticipated vacancies by maintaining contracts with universities, colleges, professional and community organizations, and others.

(7) Maintains liaison with the Office of Training and Education in OSHA and the OSHA Training Institute to promote and assure positive recruitment of minorities and females by institutions receiving training and education grants under the Williams-Steiger Act.

ORGANIZATION

Equal Employment Opportunity Staff

(8) works with the Civil Service Commission, the Departmental Office of Equal Employment Opportunity, and the agency Personnel Office to further equal employment opportunities.

ORGANIZATION

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

706 Office of Field Coordination and Experimental Programs

a. Mission: On behalf of the A/S, to coordinate the OSHA field programs and to serve the Field as a single source of integrated program guidance and policy interpretation for Regional Administrators (RA's); to serve the National Office by representing the interests of the RA's in the development of program plans and policies; and to provide coordination in the design and development of special programs.

b. Functions:

(1) Guides Regional Administrators on technical issues by translating and interpreting program requirements.

(2) Informs RA's on methods to be used and priorities to be followed in carrying out special program plans and applying special program policies.

(3) Represents the regions concerning all policy decisions made by the Assistant Secretary on program and administrative issues.

(4) Designs special programs to respond quickly to dramatic developments in the occupational safety and health field.

(5) Provides executive direction to a national program and staff to assure the timely and effective handling of complaints of discrimination under the provisions of Sec. 11(c) of the enabling legislation.

ORGANIZATION

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

710 Directorate of Health Standards Programs

a. Mission. To provide workplace standards and regulations to assure healthful working conditions for the Nation's workers.

b. Functions

(1) Participates with the Assistant Secretary in developing, evaluating, and determining policy direction with respect to occupational health standards and related programs.

(2) Determines priorities for and directs the development, promulgation, amendment, or revocation of occupational health standards.

(3) In coordination with the Directorate of Technical Support, determines the need for studies to evaluate the technological, economic, and environmental consequences of proposed occupational health standards.

(4) Identifies proposed OSHA health standards which require environmental impact statements in cooperation with the Directorate of Technical Support, provides input to the preparation and issuance of environmental impact statements.

(5) In cooperation with Directorate of Technical Support, participates in the issuance of inflationary impact statements for specific OSHA health standards, as required.

(6) Maintains liaison with appropriate agencies including NIOSH, EPA, AEC, FDA, DOT, and OHA on research, demonstrations, and experiments conducted by them relating to occupational health standards. It identifies needs and priorities for research required for standards development; obtains and maintains current information required for inclusion in occupational health standards; e.g., dealing with toxic materials, personal protective equipment and environmental monitoring methods.

ORGANIZATION

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
Directorate of
Health Standards Programs

(7) Represents the Assistant Secretary in the activities of NACOSH and ad hoc advisory committees on health standards and related issues.

(8) In coordination with the Field Coordinator and the Directorate of Federal Compliance and State Programs, reviews interpretations, directives, and variance requests as they relate to the development of health standards.

(9) Processes, evaluates, and assigns priority to petitions requesting health standards development.

(10) Participates in discussions with labor, industry, and other agencies on health standards policy.

ORGANIZATION

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

720 Directorate of Safety Programs

a. Mission. To provide workplace standards and regulations to assure safe working conditions for the Nation's workers.

b. Functions.

(1) Gathers relevant information and performs analyses in order to develop, promulgate, modify or revoke occupational safety standards to assure safe employment.

(2) Develops and issues regulations as necessary under the Act in support of the safety standards program.

(3) Plans, organizes, and directs the safety standards programs, establishes priorities for safety standards and coordinates the program efforts with the other units in OSHA and in the Department and with other regulatory organizations.

(4) Develops criteria and examples for assisting employers, employees, and others in complying with standards and to promote the development of uniform standards application procedures.

(5) Establishes the policy for the utilization and coordination of national consensus standards and others. Reviews national consensus standards, Federal standards and others. Makes evaluations and determinations as to whether such standards are appropriate for use by OSHA.

(6) Maintains liaison with AIA and other research groups and administers contracts on research, demonstrations and experiments conducted relating to occupational safety and obtains correct information required for inclusion in the occupational safety standards.

ORGANIZATION

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
Directorate of Safety Programs

(7) Determines the need for establishing ad hoc advisory committees to assist in the standards development functions.

(8) Develops policies, procedures and plans for cooperation with HEW and others concerning needs and priorities for research for safety standards development.

(9) In coordination with the Directorate of Technical Support, participates in the development of interpretations of OSHA safety standards having nationwide application and in the preparation of environmental and inflationary impact statements and in evaluation of petitions and variances for those issues relating to occupational safety standards.

(10) In coordination with the Directorate of Training, Education and Consultation assists in the technology transfer of relevant material and information from new occupational safety standards.

ORGANIZATION

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
ASSISTANT SECRETARY730 Directorate of Administrative Programs

a. Mission. To provide administrative management support to the OSHA in the areas of management data and statistics coordination, personnel management, program budgeting and planning, financial control, administrative management systems, and National Office administrative services.

b. Functions.

(1) Performs studies to determine statistical measures appropriate to the development and coordination of an occupational safety and health statistical program and to provide adequate data for management decisions concerning program priorities, plans, and resource allocations.

(2) Provides a personnel management program to include staffing, position classification and employee development.

(3) Provides a financial management program to include program budgeting and planning, financial control, and grants management.

(4) Conducts a program of administrative management systems studies, analysis, development, implementation, and review to provide advice, guidance, assistance, methods, and procedures to include the areas of records and organizational management.

(5) Provides for the design, programming, and operation of the OSHA management data processing systems.

(6) Provides for a variety of other administrative services including mail, reproduction, printing, publication, distribution, procurement, space, telephone, and property management.

ORGANIZATION

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

740 Directorate of Federal Compliance and State Programs

a. Mission. To provide for the development, evaluation, and performance analysis of the Federal compliance program in the Regions and of the State Occupational Safety and Health programs including consultation and public employee programs.

b. Functions.

(1) Develops a comprehensive and integrated national compliance program and provides guidance for the development of regional compliance programs to insure effective compliance with occupational safety and health standards.

(2) Plans, develops and manages a comprehensive regional planning and program performance evaluation system and evaluates the operation of the Federal compliance and State Monitoring programs.

(3) Develops a program to encourage States to assume the fullest responsibility for safety and health programs and assures that such programs meet the effectiveness criteria set by the Act.

ORGANIZATION

DIRECTORATE OF TRAINING, EDUCATION, & FEDERAL
AGENCY PROGRAMS750 Directorate of Training, Education, Consultation &
Federal Agency Programs

a. Mission: To educate and train employers and employees in the recognition, avoidance, and prevention of unsafe and unhealthful working conditions, to provide for a program of consultation and advice to employers and employees and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses, to improve the skill and knowledge level of personnel engaged in work relating to the Act, and to provide for a program enabling employers to conduct periodic safety and health inspections. Also, to provide for a program of guidance to Federal agencies and for reporting progress to the President.

b. Functions:

(1) Identifies program requirements and develops program plans and courses of instruction in order to implement a program of education and training in occupational safety and health.

(2) Develops and implements plans to encourage employers and employees to participate in programs of voluntary compliance consistent with standards of occupational safety and health.

(3) Issues guidance to, evaluates performance of, and encourages participation of Federal agencies in occupational safety and health programs for Federal employees.

ORGANIZATION

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

760 Directorate of Technical Support

a. Mission: To serve as the principal source of agency expertise with respect to scientific and engineering issues involved in the overall Occupational Safety and Health field and to provide technical assistance and support to all other National office and field organizations of the agency.

b. Functions:

(1) Keeps abreast of changes in the State-of-the-art and technological developments in the workplace to carry out the agency engineering feasibility program.

(2) Manages a centralized program to provide technical interpretations and clarifications of OSHA standards, rulemaking, and related matters.

(3) At the request of the region, participates in providing technical assistance to State government agencies.

(4) Provides for a national review of complex abatement plans and agreements.

(5) Provides for the administrative and technical processing of variances from OSHA standards.

(6) Manages the agency environmental, inflationary and economic impact programs.

(7) Provides chemical analyses and instrument calibration laboratory assistance to the field.

(8) Provides for a national Technical Data Center to serve as a clearinghouse of occupational safety and health data, including toxicological data for chemicals.

(9) Plans, develops, coordinates and operates an international technology exchange program.

APPENDIX B

ABSTRACT

Because of the nonavailability of sufficient numbers of qualified industrial hygienists to assume roles as health compliance officers in the Occupational Safety and Health Administration, a three year career development program for trainee industrial hygienists has been initiated. The present and projected personnel needs in the occupational health field in the U.S. are presented, together with a general description of the OSHA career development program. The program is a response to current needs; it will be curtailed when university graduates are available to meet agency needs.

OSHA Response to Occupational Health Personnel Needs and Resources

MORTON CORN, Ph.D.* and EARL D. HEATH, Ph.D.**

*Assistant Secretary of Labor

**Director, Office of Training and Education
Occupational Safety and Health Administration
U.S. Department of Labor

INTRODUCTION

For at least five years there has been a recognized, serious personnel shortage in the occupational health sciences in the United States. It is our purpose in this article to review the response of the Occupational Safety and Health Administration (OSHA) to this shortage until such time as this Nation's colleges and universities are able to provide adequate numbers of professionals to staff programs in government, industry, labor organizations, and the academic and research communities. It should be noted that the OSHA program described below was initiated solely because of the nonavailability of adequate numbers of qualified personnel in selected occupational categories needed to implement the Federal program under the Occupational Safety and Health Act of 1970.

ESTIMATES OF INCIDENCE OF OCCUPATIONAL DISEASE IN THE UNITED STATES

The annual number of both acute and chronic diseases and deaths in the United States associated with exposure to physical and chemical agents substances in the workplace is not known. Estimates vary from 200,400 occupational illnesses reported in 1974 Bureau of Labor Statistics data,¹ to 390,000 new cases of occupational disease each year reported in U.S. Department of Health, Education and Welfare data. Indications are, however, that these figures may underestimate the problem because all currently used methods for assessing the extent of occupational illness have certain limitations, some of which are described below.

The primary reasons for the lack of accurate statistics on occupationally induced illnesses and deaths is the problem of recognition. Diseases which are not diagnosed, or that are not readily recognized as associated with the worker's environment, are not reported on forms gathered either by the Bureau of Labor Statistics or by State Workmens' Compensation systems. Over-exposure to selected well known toxic substances, noise or other physical hazards which result in acute illness or death are likely to be recognized as occupationally induced and probably will be reported. Many workers, however, are exposed to low levels of known toxic substances, or to substances not currently recognized as toxic. These substances may produce or aggravate chronic diseases which go undiagnosed, or are not associated with the worker's environment. Alternately, the disease may not appear until many years later when the worker is employed at another job, or even retired. These diseases, for the most part, are not reported as being job related.

An experimental method for determining the extent of occupational disease was undertaken in the States of Washington and Oregon. This Pilot Study for Development of Occupational Disease Surveillance Method² measured the extent of illness present in workers at the work site. Among the 908 participants in the survey, 1,100 conditions were medically diagnosed, 31 percent of which were categorized as "probable occupational" in origin. Although this method can provide useful information on a number of possibly unreported diseases, hearing loss for example, it still fails to reveal information on diseases less easily diagnosed or those of a long-term nature such as occupationally caused cancer.

Since the inception of the Occupational Safety and Health Administration (OSHA) in 1970, the Department of Labor's Bureau of Labor Statistics has conducted a yearly survey for OSHA, based on injury and illness records which employers covered by the Occupational Safety and Health Act of 1970 are required to maintain.³ These statistics have enabled OSHA to direct some of its efforts to specific industries and occupations with more precision than was previously possible. Historically, however, special emphasis by OSHA has been directed toward industries having high injury rates.

RECENT OSHA EMPHASIS ON HEALTH

Since assuming direction of OSHA, one of us (M.C.) has attempted to place an increased emphasis on health hazards, while not reducing the attention directed by the agency towards safety hazards in the workplace. Statistics released by the Bureau of Labor Statistics and other data sources will be used by OSHA, not as a definitive measure of the number of occupationally caused illnesses and deaths, but rather to indicate the relative extent of illness and deaths attributable to toxic substances associated with specific industries and occupations.

While it is the goal of the entire health community to improve current occupational disease estimates, efforts by OSHA cannot wait for precise data. The objective of the Occupational Safety and Health Act of 1970 is to "... assure so far as possible every working man and woman in the Nation safe and healthful working conditions..." This mandate means that any occupational disease which can be prevented by

actions authorized by the Act cannot be ignored. It is the intent of the agency to optimize the utilization of its resources, but within the framework of present resources there is no lack of problems to address.

OSHA depends to a great extent upon the effectiveness of the Compliance Safety and Health Officer (CSHO) inspecting the workplace for the presence of hazards which, if left unattended, could result in serious physical harm. The compliance officer is the front line of OSHA's enforcement endeavor. The compliance officer is expected to exercise individual judgement in evaluating the workplace situation, but at the same time to perform his or her duties in a relatively uniform manner, one consistent with OSHA's national enforcement objectives and priorities.

During the first five-year period of the agency, emphasis was almost exclusively on the safety aspects of the work environment. During these years, OSHA measured the effectiveness of the compliance officer largely on the basis of the number of inspections made and the number of citations issued. Efforts to achieve these goals obscured the need to focus on some of the more serious hazards, especially those in the health area, where time per inspection usually exceeds that required in the safety area. In general, the recognition, evaluation and control of agents affecting employee health in the work environment is a more complex matter than recognizing, evaluating and controlling safety hazards. Instrumentation and chemical analysis of samples are usually part of inspections involving assessment of hazards

to health. During this early period of OSHA, the training of compliance officers did not receive a high priority. Inspections and the resulting citations reflected, for the most part, educational and experience background of the individual compliance officers and not necessarily the realities of the situation. In 1975, for example, less than 10 percent of inspections were related to chemical and physical agents which may affect health. Of the 100 most frequently violated safety and health standards which led to citations, only one was a health standard. The remaining 99 were alleged violations of safety standards. Inadequate training and inspection procedures contributed to varying interpretations of standards and citation types, levels of fines, and varying abatement periods.

OSHA RESOURCES IN HEALTH

Past hiring practices clearly reflected OSHA's emphasis on safety hazards. At the end of the Agency's first year, OSHA employed 422 safety inspectors, but only 54 industrial hygienists. By the end of Fiscal Year 1975, OSHA had only 205 industrial hygienists available to make health inspections, out of a total field staff of 1,102 compliance officers.

In order to improve the balance between safety and health inspections, virtually all of the new compliance officer positions authorized during Fiscal Year 1976 were designated for health compliance officers, thus increasing the industrial hygiene staff to 450 positions, while maintaining the safety staff at the 1976 level of 1,050 positions. As of August, 1976, 350 of the authorized positions had been filled. In

addition, 29 industrial hygienists are now employed in the OSHA National Office. OSHA hopes to increase the compliance activity in Fiscal Year 1977 by 178 positions. It is estimated that a field staff of 560 industrial hygienists, when fully trained, will be able to conduct approximately 17,000 health hazard oriented inspections each year.

INDUSTRIAL HYGIENIST GRADUATES FROM TRAINING PROGRAMS FROM 1970 THROUGH 1975

As OSHA has attempted to increase its industrial hygiene staff, it has become painfully apparent that the available supply of personnel in the occupational health field is totally inadequate to meet the demand. There is a serious shortage of occupational health professionals, including occupational physicians, nurses, engineers, industrial hygienists -- men and women who are professionally qualified to deal with the effects of the occupational environment on workers, and to assess and recommend modification of those conditions which are associated with injury and disease. The shortage of occupational physicians is especially acute. Reportedly, only 5 occupational physicians are certified each year. In 1975, the need for occupational physicians was estimated to be 1,750. The need for industrial hygienists and other occupational health scientists is even greater. According to estimates made by the National Institute for Occupational Safety and Health (NIOSH), the demand from private organizations, from government and from the academic and research communities is 300 per

year, while each year an average of only 75 graduate from accredited programs in industrial hygiene. In 1974, Dolinsky reported the census of certified industrial hygienists at 600, with a reported deficit of 4,000.⁴ In 1975, NIOSH reported the census at 500 with an estimated current need of 5,500.⁵ Working with these figures, OSHA prepared the "Summary of Occupational Safety and Health Manpower Forecast" (Figure 1).

If past experience with entry of industrial hygienists into the labor market is any indication, it does not appear likely that the shortage of occupational health scientists will be remedied in the near future. In fact, because industrial hygienists are in such demand, their salaries are increasing to the point where it is doubtful whether OSHA, as an agency, will be able to retain many of those it now employs. The shortage is driving more of the truly qualified personnel out of government and into higher paying positions in private industry.

To compound the problem, the Federal Government has not been adequately supporting higher education in terms of training grants. Universities cannot cover the entire cost of highly specialized and expensive training with tuition alone. Those who drafted the Act clearly recognized that available trained personnel are essential to carry out the law. Section 21.(a) of the Act assigns the Secretary of Health, Education, and Welfare the responsibility to conduct "... education programs to provide an adequate supply of qualified personnel to carry out the purposes of this Act..." NIOSH operates grant programs

SUMMARY OCCUPATIONAL SAFETY AND HEALTH MANPOWER FORECAST*

Specialty	Present Census	Present Needs	Projected Needs 1980	Projected Needs 1985	Projected Deficit 1980	Projected Deficit 1985	Assumed Annual Growth Rate
Occupational physicians (Board certified)	500	1,700	1,971	2,285	1,392	1,614	3%
Industrial physicians (Short post-graduate course work)	2,700	6,900	8,806	11,239	5,360	6,841	5%
Industrial hygienists	500	5,500	8,081	11,874	7,346	10,795	8%
Safety professionals	3,000	8,700	14,011	22,566	9,179	14,785	10%
Certified occupational nurses	1,000	9,400	11,997	15,312	10,721	13,683	5%
Industrial nurses (Short-term training)	17,000	36,700	46,840	59,780	25,143	32,089	5%
Occupational safety and health specialists	15,000	24,000	38,650	62,246	14,492	23,340	10%

*Present needs and census figures from "Plan for Estimating Occupational Safety and Health Needs"
Unpublished NIOSH paper, January 16, 1973.

NOTE: The projected increases in manpower are based on the following assumptions:

- 1) Growth of industry at an accelerated pace.
- 2) Continued introduction into the workplace of materials and processes that will require increased knowledge and skill to recognize, evaluate and control their attendant hazards.
- 3) Increased emphasis on creating and maintaining a corps of highly qualified occupational safety and health professionals, both in the public and private sectors.

FIGURE 1

to train occupational health scientists, but has not been able to fund enough programs or students to meet even OSHA's needs. The current American Industrial Hygiene Association (AIHA) membership of some 2,600 members is but one indication of the scarcity of qualified industrial hygienists.

OSHA MOVES TO MEET SHORTAGE ON INTERIM BASIS

It was clear in 1976 that if OSHA was to develop an effective program for assessing and abating health hazards in the workplace, the agency must itself perform training. We could not wait. The hazards exist and deaths and illnesses are occurring in the workplace daily.

The training is being accomplished in two ways. The first approach involves an intensive two-week program of health training for each of OSHA's safety compliance officers. This training began on September 13, 1976, and will continue throughout 1977 at four locations throughout the country--the University of Washington, Seattle; Tulane University, New Orleans; Temple University, Philadelphia; and Biospherics, Inc., Silver Spring, Maryland. The first week of training concerns concepts of industrial hygiene and the recognition of health hazards. The second week, taught by OSHA compliance officers, concerns OSHA policies and the identification, use and maintenance of instruments for measuring selected health hazards, and the procedures for obtaining and interpreting measurements of these hazards.

In the second approach OSHA has launched an imaginative, comprehensive three-year apprentice program of training and professional development for entry-level health compliance officers. New industrial hygienists with the necessary academic qualifications are being recruited at the entrance level grades. In order to qualify for an entry level position as an industrial hygienist with OSHA, an applicant must have completed a 4-year program of studies at an accredited college or university leading to a bachelor's or graduate degree in industrial hygiene, or have a degree in a biological or physical science or in chemical engineering which included at least 30 semester hours in any combination of the following: chemistry, physics, engineering, health physics, environmental health, biostatistics, biology, physiology, toxicology, or epidemiology. Four years of technical experience comparable to that which would have been acquired through such a program of studies will also qualify an individual for an entry-level industrial hygiene position.

During the first year with the agency, each industrial hygiene trainee will complete a rigorous program consisting of 10 weeks of classroom training, 35 weeks of on-the-job training, and 4 weeks during which the individual will complete self-instruction packages. Segments, not to exceed three weeks, of classroom training will be completed at the OSHA Training Institute. Each increment of resident instruction will be preceded and followed by highly structured on-the-job training with various scenarios written for each group of individuals with similar backgrounds and according to the hazards indigenous

to the particular area in which they will work. Self-instruction packages will be designed to both support and reinforce the preceding and subsequent formal training. Seminars will also be conducted at the Regional level, addressed to local and regional technical, administrative, and policy issues. New hires will be evaluated six times during their first year -- on three occasions by the Institute staff, and on three occasions by the individual's supervisor. A chart showing the first year of this three-year training program for entrance level industrial hygienists is shown as Figure 2.

By the end of the first year, the apprentice industrial hygienist will be able to use all basic sampling devices and instrumentation properly, to recognize common industrial processes and their associated hazards and OSHA applicable standards, and to determine engineering controls and abatement periods. He or she will have developed sufficient skills to be able to conduct a solo site inspection in at least certain types of establishments. During this year the apprentice will accompany and be under the supervision of senior health compliance officers.

By the end of the second year, the apprentice will be able to conduct general schedule inspections in many types of establishments. After the third year, the apprentice will be able to conduct follow-up inspections, complaint investigations, and fatality and catastrophe investigations. In addition, the apprentice will have developed special expertise in at least one area of the field of industrial hygiene to the extent that he or she could appear as an expert OSHA witness in contested cases and hearings in their area(s) of expertise. The degree to

which solo site visits are undertaken by the apprentice during the second and third year of employment will depend both on the skill and knowledge of the individual, as well as the needs in the local area.

CONCLUDING REMARKS

Precise information on the number of workers who suffer death or disablement as the result of toxic substances in the workplace is not available. The precise shortage of occupational health manpower, likewise, is not subject to an accurate portrayal. Despite the absence of precise figures that could withstand scientific scrutiny, the evidence that is available in both instances clearly calls for decisive action. This is the reason that OSHA has moved forcefully in the health area with regard to its inspection priorities and its staffing. This is the reason that OSHA has undertaken a massive training effort to place fully qualified health compliance officers in the field in as short a time as possible. Until such time as adequate numbers of such personnel are available from this Nation's colleges and universities, OSHA will continue to have to "grow its own." To do less would not be keeping faith with the American worker.

REFERENCES

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3. Occupational Safety and Health Administration, U.S. Department of Labor: Recordkeeping Requirements Under the Occupational Safety and Health Act of 1970. Revised 1975.
4. DOLINSKY, E. M.: Health Maintenance Organizations and Occupational Medicine. Bulletin of the New York Academy of Medicine, Second Series, Vol. 50, No. 10, 1974, p. 1126.
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APPENDIX C

IIS WEEKLY STATUS SUMMARY

(30 December 1976)

CURRENT ISSUES:

The following issues were discussed at a meeting between ASPER and the Office of Technology Assessments (TAS) on December 28, 1976.

- ASPER suggested that they not review first drafts on a regular basis. TAS objected to this. This issue is yet to be resolved.
- Drafts will be sent out for peer review only after internal reviews by ASPER and OSHA and incorporation of their comments.
- Formal transmittal slips will accompany all documents sent by OSHA to ASPER.
- ASPER will be kept informed of the relative document review priorities through their participation in the weekly IIS meetings.

The following problem/status items are currently under consideration.

- Arthur Young & Company has initiated SOW's for cadmium, silica, laboratory provisions for carcinogens, and organophosphates. Also, the issue of future work in the SCP area is under consideration. An issue paper is to be prepared for hazardous materials labeling.
- Arthur Young & Company is preparing an analysis of the implications of the expiration of Executive Order 11821.
- A Task Order on Arthur Young's continued role as integration contractor has been prepared and approved by COTR.

CURRENT DEVELOPMENTS IN IIS ACTIVITIES:1. Documents Currently In-House

<u>Substance/Hazard</u>	<u>Draft</u>	<u>Review Status</u>
Ammonia	Final	Document received 10/21. Now under review by OSHA/ASPER/Sol. AY review complete since 11/1.
Asbestos	Final	OSHA is reviewing ASPER comments, received 10/4. Comments returned to CONSAD 11/5. CONSAD is awaiting directive from OSHA regarding ASPER's comments on benefits. CONSAD is estimating the additional effort required to analyze NIOSH's new recommended exposure limit.

<u>Substance/Hazard</u>	<u>Draft</u>	<u>Review Status</u>
Benzene	First	Document received on 10/6. Still in review by Sol. AY review complete (10/29). ASPER comments received 12/20 and transmitted to contractor to review. OSHA/AY comments returned to contractor 12/30.
Beryllium	Final	Document received on 9/27 now under review by solicitor, ASPER, peers. AY and P.O. review complete (10/15). A revised draft of Benefits has been reviewed and edited on 12/7.
Carbon Monoxide	First	Document was received in June and has been reviewed by Sol. and AY. No P.O. review yet. The contractor has copy of existing comments.
Employer Related Housing	First	First draft received on 9/27. Review comments have been returned to the contractor. Review by peers still under way. Draft standard was given to the contractor (11/11). ASPER review complete (12/9); document was found unacceptable as is. Revised document received 12/22. Now under review by AY/OSHA/Sol./ASPER.
Lead	Final	ASPER has criticized the document. A response was prepared on 11/12. AY has made exposition improvements in the document. DB Associates have been issued task order to improve document.
MDI/TDI	Final	Document sent for certification, but there is no approved proposed standard.
Methyl Chloroform	First	Document received 10/21. Now under review by OSHA/Sol./ASPER. AY review completed on 11/12.
MOCA	First	Document reviewed on 9/28. Currently under review by peers. AY and OSHA, Sol. review complete. Document was returned to contractor on 11/23. ASPER comments received 12/15. Document found unacceptable as is. Contractor asked to review ASPER's comments.

<u>Substance/Hazard</u>	<u>Draft</u>	<u>Review Status</u>
Noise/Cotton Dust	First	Document was delivered on 10/27 and is under review.
Perchloroethylene	First	Document received 10/21. Under review by Sol./ASPER. AY comments complete 12/13.
SCP (B&C)	Final	Styrene document received on 11/5. AY/OSHA/Sol. review complete 11/23. Contractor agreed at meeting to make the required changes. Estimated completion date was due last week.
Sulphur Dioxide	Final	Document received on 10/21. AY/OSHA review complete. Benefits section being revised by OSHA/Sol. Document sent for certification 12/16. Additional corrections pages will follow next week.
TCE	Final	Document received on 10/6. Now in the process of being certified. Signed by Dr. Corn on 11/3 but not yet by ASPER.

2. Other IIS Activities

<u>Substance/Hazard</u>	<u>Draft</u>	<u>Comments</u>
Abrasive Blasting	N/A	SOW sent to contractor for his review and submission of new estimates. Contractor began work on 11/15. Meeting discuss work plan held on 12/3. OSHA will provide clarification to contractor on certain aspects of work plan.
Asbestos/Construction	1/13	Work in progress. Meeting held on 12/3 to discuss alternative proposed control strategies. Draft report on technological feasibility of alternative control strategies received 12/15. Now under review by OSHA/Sol./AY.
Chromates	N/A	Revisions in progress on the main body of report since 9/27 on Appendices since 10/28. Meeting held on 11/19. Document due in on 1/31.

<u>Substance/Hazard</u>	<u>Draft</u>	<u>Comments</u>
Conveyors	N/A	Task Order signed on 11/18. Work in progress.
Hazardous Materials Labeling	N/A	An issue paper is under preparation since 11/4.
Laboratory Provisions	N/A	SOW in preparation. First draft under review.
Multiple Piece Rims	N/A	Work has proceeded toward development of Inflationary Impact Assessment. Work completion will require a decision on the regulatory approach.
Organophosphates	N/A	SOW in preparation.
Silica	N/A	SOW in preparation.
SCP	N/A	Revised SOW's were approved at meeting on 12/14.
SCP (Sets B&C)	11/19/76	Work in progress. Some additional funds have been requested.
Toluene	1/19/77	Task Order signed on 10/21. Work now in progress. Progress meeting held on 12/6. Work is proceeding on schedule.
Tunneling	N/A	A Task Order signed on 11/8. Work in progress.

3. Other Related Activities

<u>Substance/Hazard</u>	<u>Due Date</u>	<u>Comments</u>
Information Requirements	N/A	SOW in Contracts for approval.
Vinyl Chloride	N/A	Meeting held on 12/28. SOW due in 2 weeks.

4. ASPER Review Status

<u>Substance/Hazard</u>	<u>Draft</u>	<u>Date Sent</u>	<u>Date Received</u>	<u>Comments</u>
Ammonia	Final	10/21/76		For review
Asbestos	Final	7/14/76	10/4/76	Comments returned to CONSAD for review.
Benzene	First	10/ 7/76	12/20/76	Transmitted to contractor for review.

<u>Substance/Hazard</u>	<u>Draft</u>	<u>Date Sent</u>	<u>Date Received</u>	<u>Comments</u>
Beryllium	Final	9/27/76		
Chromates	First	12/30/76		For review
Diving	Final	11/ 1/76	11/ 2/76	Certification obtained
Employer Related Housing	Revised	12/22/76		For review
MDI/TDI	Final	Since June 11/17/76		For review For certification
Methyl Chloroform	First	11/ 9/76		For review
MOCA	First	9/28/76	12/15/76	Comments returned to Contractor for review
Perchloroethylene	First	11/ 9/76		For review
Styrene	Final	11/ 9/76		For review
Sulfur Dioxide	Final	12/17/76		For certification
TCE	Final	10/ 7/76 10/29/76		For review For certification

5. Reports Due During Next Week

None

OSHA HEALTH STANDARDS ACTIVITY REPORT

<u>PROPOSAL</u>	<u>CRITERIA DOCUMENT RECEIVED</u>	<u>ADVANCE NOTICE</u>	<u>PROPOSAL DATE</u>	<u>END OF COMMENT PERIOD</u>	<u>IIS AVAILABILITY</u>	<u>HEARING DATE</u>	<u>CLOSE OF HEARING RECORD</u>	<u>OTHER</u>
Employment Related H038	(N/A)	(N/A)	9/23/74 39 FR 34057	12/15/74		1/75-2/75- 7/76-8/76	08/31/76	Proposal withdrawn 5/4/76
Noise H011	8/14/72	none	10/24/74 39 FR 37773	4/31/75	6/25/76	6/23- 7/10/75; 9/21/76- 10/7/76	12/06/76	
Inorganic Arsenic H037	1/21/74 Revised 6/23/75	6/11/74	1/21/75 40 FR 3392	4/3/75	6/24/76	4/8-16/75; 9/8/76- 9/18/76	11/02/76	Fact Finding Hearing 9/20/74
VOCA H050	(N/A)	none	2/03/75 40 FR 4932	3/10/75		4/1-2/75		Original standard 1/29/74. Vacated by court action 12/17/74
Standards Completion Project - Ketones:	(N/A)	none	5/8/75 40 FR 20202	7/21/75	7/9/76	9/3-8/75; 9/14/76	10/14/76	
2-butanone 2-pentanone cyclohexanone hexone methyl (N-amy1) ketone SCP-1								
Coke Oven Emissions H017	2/28/73	9/19/73	7/31/75 40 FR 32267	9/30/75	3/12/76	11/4/75- 1/8/76; 5/4-14/76	7/28/76	Final published 10/22/76

<u>PROPOSAL</u>	<u>CRITERIA DOCUMENT RECEIVED</u>	<u>ADVANCE NOTICE</u>	<u>PROPOSAL DATE</u>	<u>END OF COMMENT PERIOD</u>	<u>IIS AVAILABILITY</u>	<u>HEARING DATE</u>	<u>CLOSE OF HEARING RECORD</u>	<u>OTHER</u>
Lead H004	1/5/73	none	10/03/75 40 FR 45934	1/16/76	1/4/77	3/15/77		
Toluene H026	7/23/73	11/5/75 none	10/06/75 40 FR 46206	1/20/76				
Standards Completion Project - Sets B & C: p-tert-butyltoluene cumene ethyl benzene alpha-methyl styrene styrene vinyl toluene cyclohexane camphor mesityl oxide 5-methyl-3-heptanone ozone SCP 2/3	(N/A)	B-1/27/75 C-2/3/75	10/8/75 40 FR 47262	1/15/76				
Asbestos H033	1/21/72 (2/12/76 (rev.))	none	10/09/75 40 FR 47652	4/09/76				Standard promulgated
Beryllium H005	6/30/72	none	10/17/75 40 FR 48814	2/02/76				
Trichloroethylene	7/23/73	12/27/73	10/20/75	2/20/76				

<u>PROPOSAL</u>	<u>CRITERIA DOCUMENT RECEIVED</u>	<u>ADVANCE NOTICE</u>	<u>PROPOSAL DATE</u>	<u>END OF COMMENT PERIOD</u>	<u>IIS AVAILABILITY</u>	<u>HEARING DATE</u>	<u>CLOSE OF HEARING RECORD</u>	<u>OTHER</u>
H048			40 FR 49032					
Sulfur Dioxide H039	2/11/74	none	11/24/75 40 FR 54520	3/23/76				
Ammonia H053	7/15/74	12/27/74	11/25/75 40 FR 54684	4/26/76				
Chromates (Chronic Acid) H054	12/03/75 (07/17/73)	05/07/76 (01/07/74)						
Toluene Diisocyanate H015	07/13/75	none						
Inorganic Mercury H028	08/13/73	01/18/74						
Sulfuric Acid H056	06/06/74	08/30/74						
Chloroform H008	09/11/74	12/27/74						
Cotton Dust H052	09/26/74	12/27/74	12/28/76	3/4/77	12/28/76	4/5/77		
Benzene H039	07/24/74	none						

<u>PROPOSAL</u>	<u>CRITERIA DOCUMENT RECEIVED</u>	<u>ADVANCE NOTICE</u>	<u>PROPOSAL DATE</u>	<u>END OF COMMENT PERIOD</u>	<u>IIS AVAILABILITY</u>	<u>HEARING DATE</u>	<u>CLOSE OF HEARING RECORD</u>	<u>OTHER</u>
Crystalline Silica H006	11/11/74	12/27/74						
Hazardous Materials Labelling H022	12/20/74	02/18/75						
Methyl Chloroform H105	07/01/76	04/16/76						
Perchloroethylene H106	07/01/76	04/16/76						
Amorphous Silica H104	none	12/28/76						
Abrasive Blasting H102	none	06/08/76						
Diving H103	none		11/5/76	12/6/76	11/5/76	12/16/76		Emergency Temporary Standard Issued 6/15/76 41 FR 24273

Mr. SARASIN. Mr. Steiger, I, too, would like to thank you for being with us this morning and for the kind of interest that you have maintained in this legislation over the years. I think that the country should be very grateful for that kind of interest.

You criticized the committee, and I think we would agree with you. I think we have conducted a number of days of oversight hearings. We looked into the problem. We have listened to the witnesses, have taken the testimony, but we have not followed through, and, as I understand your statement, I think that this is the basis of the criticism, the fact that we have not been able to apply what we learned.

I have to agree with you, we have not done as much as we have wanted done. The support that you have given to the bill that both you and I introduced for onsite consultation, I agree, is essential.

The fear that I have, in view of the past history, is that we can lose this bill in the appropriations process. We already lost the ability to do first instance sanctions for those employers of 10 or fewer. My guess is that there will be another attempt to repeal it in the appropriations process. Failing that, there will be an attempt to exclude those employers with 25 or fewer people, perhaps even a greater number.

So little by little, this thing is being nibbled at, and there will not be very much left unless we can take some of the pressure off the bill, and I think that onsite consultation is a good way to do that.

So I also fully support the bill and would hope that this committee, as I said the other day, would not be timid and would be willing to take the position that Congressman Daniels took last year to bring the bill to the floor in spite of some opposition from organized labor.

The point that you make concerning cooperation between labor and management and Government is obviously very well taken. You refer to the noise standard. This is also a matter that concerns me greatly and in an earlier part of your testimony, you talk about an economic impact statement. I think that this is another area where we may have a problem.

The noise standards that have been suggested would have a very serious economic impact on many industries in the country, yet you point out, correctly, I think, that when we get into the health area, with the carcinogens and so forth, that impact statements would be impossible to prepare.

Do you feel that the same difficulty exists with regard to noise standards?

Mr. STEIGER. The Department, as you know, contracted with B.B. & N., or whatever the company is, to prepare an economic impact statement at both the 90-decibel and 85-decibel level. My own view is that you can implement a noise standard, but that it falls unevenly on different kinds of industries, so that you have a series of issues that have to be addressed: for example, do you grandfather as one way to minimize the effect that you would have? Second, you have the engineering standard versus the protective equipment issue. That has to be addressed, and I think more carefully than the Department has thus far done.

If you rely solely on engineering and you do not grandfather, then you are clearly going to have a profound economic impact upon some kinds of industries. The impact on some of those industries, whether it be in the foundry business, in castings, steel, in the cotton industry,

woodworking, would, I am afraid, be of such a magnitude that then George Hansen could come before the subcommittee and give you some names of companies that had, in fact, been put out of business by the Occupational Safety and Health Act.

It is hard for the opponents to do that now, but I think that they could in the future.

My answer to the specific question you raised is that I think you can have an economic impact statement—in fact, I think you have to have one—to assess the last of the issues, which is the tradeoff. What are you getting in lowering the noise level in terms of its cost, and how do you weigh and balance that impact and that measurement? If you had a noise standard that applied prospectively for new construction, for example, mandating engineering as the basis of doing it, then I think that you could effectively have a standard that would not break the act.

Does that help a little bit, in terms of where you want to go?

Mr. SARASIN. Obviously, I am not trying to lead the witness, not by any means. When you ask me if that is where I want to go—I am interested in your reaction.

I would agree with you that an economic impact statement is important with regard to the noise standard, but you did raise a very good point when you talk about the impossibility of such a statement with regard to carcinogens and so forth, and I just wondered if it blended into this area.

Mr. STEIGER. No; it does not, because the point I was raising on the carcinogens was the concept of the generic standard versus the specific standard. You could have, I think, an assessment of the economic impact of the standard that reduces the exposure per 8-hour working day of toxic substances, that you can fairly rationally try to determine; but the generic standard that just talks about, as Dr. Corn has suggested in what he proposed, category 1, category 2, category 3 in terms of determining the level of carcinogens, that is a different problem. It was to that one that I was addressing the difficulty of an economic impact statement as it relates to that concept only.

Mr. SARASIN. In the bill that you have introduced, Mr. Steiger, to apply to the State and local government, do you feel that there is a problem, given the recent Supreme Court decisions, in this area?

Mr. STEIGER. Clearly you have a problem. The bill, as you know, is fairly carefully drawn. It does not just pick up the act and apply it to the public sector. It is much more precise than that. In an effort at the time that we drafted this, along with some pretty good legal help—because I am not a lawyer, as you know—to handle it in a different fashion.

It is, you know, in the case of an employee, if there is an imminent danger, they can request an inspection. If the Secretary determines that there is a pattern or practice of violations or dangers existing, he shall make the inspection—and then you go on with the rest of the bill.

Mr. SARASIN. Let me interrupt you at this point.

What do you mean by “pattern or practice”?

Mr. STEIGER. In my view, it would be a situation where you would have to try to determine whether over some time that you can find evidence to indicate that there has been a failure on the part of the politi-

cal subdivision involved to establish a safety program through the educational process, to provide the same kind of protection that exists to an individual in the private sector. The government has a history of not doing well in the pattern of implementing safety and health standards for that workplace, whether it is a trench or any manner of construction.

It is difficult, I realize. All I can say to you is that we tried to draft a bill, we tried to have the act applied to the public sector in a way that would be constitutional, in a way that would make sure that we did not disrupt the federal system.

You would have to assess now the specific language of the *Usery v. National League of Cities* to see whether the bill meets the criteria. It does not say that you cannot do certain things; they say in the way that we did it under the Fair Labor Standards Act, that it was a constitutional exercise on the part of the Federal Government over State and local units of government.

You have to get your counsel and sit down and assess whether what we tried to do here meets with what the Court has said in effect you can do.

If I remember that decision—it has been some time since I have gone back to read it—they did not foreclose the Federal Government's coming into State and local governments but only the way in which we did it under that act.

Mr. SARASIN. The most hazardous situation that could exist falls under the term "imminent danger" in the act and an imminent danger situation is possibly not part of a continuing pattern or practice.

Would there be any authority under your bill to handle that kind of situation?

Mr. STEIGER. As you know, the way that we have written the bill is that an employee or representative of employees who believe that a violation of section 5(a) exists or imminent danger by the Secretary or his representative, may request inspection. Then you go on to "have the Secretary attempt to determine"—and if you will go to page 3 of the bill on line 9, we say, "If the Secretary determines that there are no reasonable grounds to believe that a pattern or practice of violations or dangers exists but that violations or dangers exist that do not constitute a pattern or practice or do not constitute imminent danger, he shall notify . . ."

The answer is that it would be possible for an inspection to take place in an imminent danger situation, even though it were not classified as an imminent danger.

Mr. SARASIN. Would you suggest that funding be available to communities and States to allow them to comply in some manner, either through the SBA situation or could it be better handled?

What I am thinking of is what has occurred, for example, in my State where we do have a State plan and the State has gone in and investigated local government, the dollars that are required are significant and there is usually no way—or in some situations, there has been no way—to just take that out of the local tax money.

They have either had to bond to attempt to correct or engaged in some kind of borrowing authority of some sort, because they live on a year to year basis.

They are not as able to go out and get the money as someone in the private sector.

Mr. STEIGER. The only fair way that you can do it would be were you to take the bill, modify it to meet the constitutional requirements, if that is necessary, in order to provide an extension of coverage. You would have to put off the date on which it became effective in order to allow political subdivisions the opportunity to bring themselves up to the point where they could have the money available.

Mr. SARASIN. They might not know that. You will not know what is going to satisfy the inspector until he has been there.

Mr. STEIGER. I recognize that, but that is the first step that you have to take in order to give them, because of the budget cycle, enough time to do the work and try and find out exactly how it would apply to them.

Second, no, I would not want to do SBA. No, you would not want to get into that kind of situation at all. If you do it, you have to make it much more direct. You could, for example, say that you wanted to increase the amount under revenue sharing to allow the municipalities to meet the standards.

You could, as I think, frankly, we are going to have to do under the tax code, provide the same kind of treatment meeting occupational and health and safety standards as we do with water pollution standards. There is a recognition that we are imposing a cost upon business and industry that is going to be reflected in higher prices unless we also can find a way to ease that burden.

So I do not know what the right way to do it is, but yes, I can foresee that we might, as the Federal Government in mandating this extension of coverage, want to find a vehicle to provide additional funds.

Mr. SARASIN. You talk about the Review Commission and the work that they are doing? Do you know what is being done with the Hearing Examiner's decisions? Apparently, they are not public knowledge; they are not used as precedent or, if they are, the public does not have any knowledge of what they say.

Mr. STEIGER. I do not know what you are looking for, I guess. The Hearing Examiners—you know the cases that are called by the Commission for review, and those decisions are in fact made available, and I do believe serve as precedent, both for the Commission and its Hearing Examiners and for the Department of Labor—or should, for the Department. I am never sure that they follow through, as I think they should, to take cognizance of the Commission's decisions.

The one where the hearing commissioner makes a decision, because of the petition, that is never called, you run into several thousands. I do not know what you are asking for.

The fact situation in each of those can, in fact, be very different, and that is one of your problems always in a situation like this, because it depends on the particular set of circumstances, the particular facts of the case.

Should they be available? Yes, I guess my answer would be yes, I think they should be made available. I do not know where you want to go with that. I do not know what you are searching for.

Mr. SARASIN. Counsel is pointing out that a section of the act, 12(j) says that the Hearing Examiner's decision shall be considered final. If that is the case, should they be used as precedent, and if they are

going to be used as precedent, where do you find them, or is it necessary?

Mr. STEIGER. I am not sure that it is, because of the fact problem with which you are dealing. As you know, the Commission has, in those cases called for review, attempted, Bob Moran notwithstanding, to set those aside that are dealt with differently by the Commission. Frank Barnako and the members of the Commission have tried to get those cases that involved important kinds of decisions under the act in terms of their operation.

I am not sure. I guess you would have to ask the Commission and the Department of Labor as to whether or not it would make any sense to have the Hearing Examiner's decisions that are never appealed—just that relate to that company that brought the petition—whether they should be available or published or whether they make any difference.

I am not sure that they would.

Mr. SARASIN. Thank you very much, Mr. Steiger.

Thank you, Mr. Chairman.

Mr. GAYDOS. One question, Congressman.

I find it very interesting, your suggestion, that we possibly consider some financial aid to States and local municipalities who would be covered under this act. No. 1, the Federal Government as such, and all Federal employees, are not covered today. Of course, we have other extenuating circumstances, but would it seem unfair or, in your opinion, would a constitutional question be raised because of providing financial assistance to city, municipality, county, or Commonwealth or State and not doing it for industry.

Mr. STEIGER. I cannot tell you whether there is a constitutional issue raised on equal treatment. I do not know the answer to that.

We do, of course, you know make available assistance through the Small Business Administration, helping to meet OSHA standards for companies. That is not the same as a grant of money, no question about that. That is one of the reasons that I think that you would have to fairly, in my judgment, use, I think, the Tax Code as the most effective, direct way to try and meet that problem and give them a faster writeoff on OSHA costs.

Beyond that, you are as well aware as I of the real, deep feelings on the part of the National Association of Counties, the National League of Cities and other organizations that represents political subdivisions that are absolutely furious about the potential of being covered.

I think they are wrong. I think it is unfair to treat the private sector differently from an employee who works at a comparable job in the public sector.

They will, I am sure, push very hard for some kind of assistance. You are going to have to determine the constitutional issue in that. I am not prepared to do that.

Mr. GAYDOS. Mr. Sarasin?

Mr. SARASIN. If I could follow up on that, when we were talking about the same subject and you mentioned revenue sharing, should we talk about an increase of dollars when we do not know where they are going to be sent, or should we be talking about some vehicle for compliance loans?

Mr. STEIGER. If you can find a way of doing compliance loans you are better off, no question about it. I do not know the right way to do it, but on balance yes, you would be better served by going that route and to get to Mr. Gaydos' question of equal treatment under the law.

Mr. GAYDOS. We have had this problem ever since revenue sharing. This is another form of it. Mr. Buchanan.

Mr. BUCHANAN. Thank you, Mr. Chairman.

When you made the point of the double standard between the public and private sector, one of the great problems in this country is that we cannot get at the Nation's largest employer at all in the area of discrimination. In my judgment, the Federal Government is one of the worst discriminators, one of the worst problem cases. How you get to the Civil Service on that subject, I do not know.

So you do have a problem there, a double standard in the public sector. You cover State and local, but there is no way to get the handle on the Federal Government, public employees who comprise the largest pool of such persons.

Mr. STEIGER. That is the issue that is raised in the Government Operations Committee Report on Safety in the Federal Workplace.

Our track record is appallingly bad and you do not have to go outside of this building to start looking for culprits.

Mr. BUCHANAN. I will not interrupt the gentleman, but I would say I would agree on the problem of noise standards because if one were to apply this to the Federal Government and lower the requirement from 90 decibels to 85, the House could never go into session. We would have to suspend action indefinitely.

Mr. STEIGER. That might not be a bad idea.

Mr. BUCHANAN. Unless the individual Members could solve the problem with earmuffs, or something, to cut down on some of the rhetoric and bombast and other noise.

The problem would be insoluble permanently.

But, Mr. Chairman, I will bring up the specific case at the appropriate time, but I have an industrialist in my congressional district, for example, that has a rather modern plant. He stays under the 90-decibel level all the time. He keeps testing. He has his own equipment, so he can test it in all circumstances.

He tested when he was not in operation. He happens to be on a rather heavily trafficked truck route. When he was not in operation at all, he found that he was mostly over the 85—when his plant was not even in operation.

Maybe there is something that could be done by ways of insulation, and so forth. That may get to be a very complicated problem and a difficult area.

Mr. STEIGER. There is no doubt about that. Yes; outside noise is a factor and does influence what the noise level is within the workplace. No question about that. He is not alone.

Mr. BUCHANAN. I just wanted to say, Mr. Chairman, that first of all I commend the Chair—the gentleman from Wisconsin would be interested to know that the chairman, at the beginning of the first meeting of this committee, stated his desire that there be excellence in the work of this committee and his commitment and his concern in this area, and an early area of concentration; the things that you asked

of us may well be done by the subcommittee and, Mr. Chairman, I would like to commend the gentleman from Wisconsin.

I personally, if I were to be asked to choose some members to present some other picture than that caricature of the Congress that is presented in the press and gets stuck in the minds of the people, the gentleman from Wisconsin would be right at the top of the list of my examples I would like to hold before the public. His work has been marked by excellence, and I would say to the gentleman that I commend the importance of his work on this present committee and would not want, in any way, to impede his progress.

I wish he were twins, so he could continue to serve on this committee

Mr. STEIGER. Thank you, very much.

Mr. BUCHANAN. Thank you, Mr. Chairman.

Mr. GAYDOS. We are going to have Mr. Steiger here every morning

Mr. STEIGER. I will not be here every morning, but I will watch carefully because I want to work with you. I will work with you in attempting to have you go through with what you have set up, Mr. Chairman.

I am delighted that you have done it that way, and I am delighted that this subcommittee has been willing to respond in a serious fashion, because I think it is absolutely essential.

Mr. GAYDOS. We have an excellent opportunity to share some of your ideas, because the next witness has indicated that he will not be able to be present and has asked that we take his testimony and incorporate it into the record of this committee hearing.

[The prepared statement of Hon. Kenneth Robinson follows:]

TESTIMONY PREPARED FOR DELIVERY BY THE HON. J. KENNETH ROBINSON, MEMBER OF CONGRESS
FROM THE SEVENTH CONGRESSIONAL DISTRICT, VIRGINIA, BEFORE THE SUBCOMMITTEE ON MANPOWER,
COMPENSATION AND HEALTH AND SAFETY OF THE HOUSE COMMITTEE ON EDUCATION AND LABOR.
MARCH 7, 1977.

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear here today as a sponsor of H.R. 627, which I re-introduced on the opening day of this Congress, and which would comprehensively reform the Occupational Safety and Health Act of 1970. I appear also as a sponsor of H.R. 628, likewise introduced on Jan. 4th, which would amend OSHA to provide that any employer who successfully contests a citation or penalty shall be awarded a reasonable attorney's fee and other reasonable litigation costs. Both bills, I should emphasize, include provisions to be found in other measures under hearing. Finally, I appear as a co-sponsor of House Concurrent Resolution 56, expressing the sense of the Congress that inspections pursuant to section 8(a) of OSHA shall cease pending a determination by the Supreme Court of the United States of the Constitutionality of such inspections.

Briefly, I am here simply to restate my firm conviction that OSHA needs revision from top to bottom. After receiving numerous complaints from farmers and businessmen citing harassment--actual and prospective--by this agency, I have reached the conclusion that if an OSHA inspector were ever to land in heaven, St. Peter would be required to install new front gates, and the good Lord would have to fireproof all the angels' wings and re-string their harps. In fact, the heavenly choir would probably have to give up singing altogether or be in violation of OSHA's noise standards!

Surely no one in heaven or on earth would conscientiously oppose the goals of attempting to insure a safe, healthful workplace for employers and employees alike. But the manner in which this is being done by hordes of OSHA bureaucrats armed with unAmerican powers is deplorable, frightening and, I believe, unconstitutional. Furthermore, the stream of ridiculous rules, regulations and requirements of OSHA are costing people jobs, increasing the cost of consumer goods, shutting down small businesses from one end of the country to the other, and alienating Americans by the drove from their own government.

Let me read you excerpts from letters from my constituents that emphasize the degree of tyranny to which OSHA bureaucrats seem willing to go.

A constituent of mine in Culpeper, Virginia, wrote me about OSHA's visit to the plant of his friend:

"They (OSHA) came to his plant and he was fined \$750 and had to put some useless guards on saws at the cost of \$750, and now they are no good."

A landowner near Sperryville, Virginia, wrote me about OSHA's farm mower requirements: "In my case it would cost \$500 to \$600 to change the power take-off shields on my mowers if, in fact, they can be changed at all due to their age. We are trying desperately to make a profit or to at least break even on the farm but it will certainly be a hopeless procedure this year..."

A fruit grower with a labor camp in the Front Royal area of Virginia, who had just endured his sixth inspection of his camp by governmental units of one sort or another in the middle of his harvest season, wrote me: "Today I received a citation and fine of \$70, also abatement dates, during the harvest season. They were small things, from not posting a notice, to screens and electrical fixtures broken, which my workers had done during the harvest."

These comments represent just a small sampling of the complaints I have received from constituents with farms or businesses who have been stepped on by OSHA. It's long past time that Congress hobbled this agency.

Prior approval of the Congress should be required before OSHA is allowed to issue any substantial regulation or standard whatsoever, and an economic impact statement should be made mandatory. The authority of OSHA inspectors to show up on a first visit and slap citations and fines on unwitting owners and taxpayers should be prohibited as contravening Constitutional due process.

OSHA should not be able to require the replacement of existing, often expensive equipment during its normal lifetime of use unless an extremely hazardous situation has been proved to exist. Businesses should be able to adopt alternative procedures for compliance rather than being forced to conform with regulations that are often written so incomprehensibly, no one can understand them--even with the help of a corps of Virginia, Philadelphia or other meticulous lawyers.

Reasonable times should be permitted for compliance with necessary standards. Employers should not be penalized for violations that are the fault of their employees. Businesses should have free consultative services and technical assistance to assure that working places are kept safe and healthful for employees.

These are just a few of the practical steps that Congress should take to reform OSHA. I fervently hope that this distinguished subcommittee will give fair and reasonable consideration to these and other OSHA reforms at the earliest possible time. Otherwise, I'm afraid we'll wake up some morning and find that only the very biggest and richest corporations and corporate-run farm operations have managed to survive the bureaucratic dictatorship which OSHA has been permitted to become.

Thank you.

Mr. GAYDOS. Let me ask you another question.

We have the noise problem. I have in my district one of the largest forges in the United States—it used to be the largest one in the world until Japan built a bigger one.

Now this forge, pounding out the material for an acceptable product, et cetera, makes a lot of noise. We had a problem again, inside and out, the workers, the departments, and the people living in the area, because the noise really travels. The same problem that you have with the carcinogenic area, where we had kepone inside and out, 50 miles down the river. And the fish happens to be caught and netted and sent out to California. The problem goes out to California.

I do not know how we are going to solve that problem.

You raise the question so effectively, and your suggestions are so good, we are going to have to be very careful as to how we proceed, especially from the economic impact of the problem.

I want to ask a question. We have an inside-outside problem, no matter what we are considering, is that not true, in a certain respect? Practically everything is inside and outside. We cannot be working on the inside and excluding the outside, and vice versa.

Mr. STEIGER. You are right, Mr. Chairman, you cannot.

We do do it, not necessarily in the perfect way, but the noise outside the workplace is dealt with by the Environmental Protection Agency. That is how you get into truck noise, the airplanes, the whole issue of retrofit in reducing the noise of airplanes. It gets you to the neighborhood and gets you to those that live in a specific area where they are impacted by a very high level of noise.

I have yet to figure out whether the noise level standards of EPA apply to night clubs and discotheques where the noise level is so far above any acceptable decibel level, whereas you know—I do not know what the facts are, but my instincts tell me that we have raised a generation of kids in this country where there is, in fact, noise damage, ear damage, as result of what they have heard.

That is a serious problem. You cannot ignore it. I would not impose it upon OSHA. I would, in the workplace, with a ban, I guess. The minute you have done that, you have taken care of everybody else, I would hope.

I would not impose the outside noise requirements on the Department of Labor. They have their hands full, trying to deal with the inside problem.

Mr. GAYDOS. We have problems in tightly packed neighborhoods. In my district, where they are very close, if you have a neighbor living next to you and he has an air-conditioner in his window—and you raise your window and a lot of air conditioners make a lot of noise—you start with that simple example and you can parlay that all over the country.

Noise, the control of noise, who starts it and how you can control it.

Mr. STEIGER. With any luck, over the period of next 25 or 50 years this country will be able to do a more effective job than it has in attempting to deal with that kind of problem. The same is true with the Toxic Substances Act as a way to begin to assess introduction into the workplace, the effect that certain agents, certain chemicals have.

That is a long-run process. That is not going to happen overnight. I think it would be unrealistic to expect that that would change in the next 20 years.

Mr. GAYDOS. Since advent of the 10-employee-exclusion rule, there are a lot of our colleagues that are pushing to increase that to 25. What do you think about that? Do you think it is practical or proper at this time?

Would you support a 25-employee exclusion in the act?

Mr. STEIGER. No, Mr. Chairman. I clearly do not support any exclusion, frankly—10, 5, 25, or 50. It makes no sense, for two reasons.

What you are saying when you do that is, No. 1, that somehow size is indicative of safety hazards, and it is not; of exposure to health hazards, it is not. It has nothing to do with that issue at all, because a small workplace can be just as dangerous as can the large workplace.

I have one in my own district with which we are having some OSHA problems right now in a plating operation. It is a very small shop, but the exposure to substances is just unbelievable. So I do not believe in exclusion, that that is the right approach to the issue.

Second, if we have not learned anything in the welfare system and all the laws and regulations on welfare—it is a cliff problem. The minute you say you are going to make it 10 or less, what you have done is inhibit people from hiring, if in fact they were going to, because they will say, the hell with you. I do not want to get OSHA here, I will keep under that limit.

We are working against ourselves in terms of expanding employment opportunities because we give a disincentive for the employer to hire. That makes no sense to me, economically or any other way.

Mr. GAYDOS. Since you make such a cogent argument, how do you respond to those supporters who say that now you are right back into the economic impact of the problem. How do you answer that?

Maybe that small businessman will go out of existence and operation more readily than a larger one that can absorb compliance costs and roll with the punches?

Mr. STEIGER. The problem that you have, it is like the noise problem. It falls unevenly.

No one can rationally make the argument that we are putting small business out of existence, because there are millions—I do not know what the figure is. If the act covers 5½ million workplaces and most of them are small, the impact that comes will not be the same for every small business.

So that size is not a determinant of economic capability to meet a standard at all, and I do not think that that argument is a very good one. I do not think that that argument looks at the situation faced by those employed in the workplace.

Mr. GAYDOS. I read the Enquirer—I do not know if you read it or not, the National Enquirer. In a recent publication, they have an agricultural employee who happens to be a reporter, and he went down to one of these migrant operations and he joined them and he goes into details: how much he was paid, how he ate, how he slept, under what conditions, and things like that.

In reading that article, which I read with great interest, the thought struck me—we are talking about farms and migrant workers and

the application of OSHA and the standards. Every item that he reiterated time and time again in his discussion in the article was in violation of our rules and regulations. Every one of them there.

Sometimes I wonder. You have a large farm area in your State. Do the farmers have a sensible or practical argument? Are they fair in the position they take that OSHA does not seem to be working, as far as they are concerned?

Mr. STEIGER. You have a situation in terms of agriculture where most farmers, just by being in the business, are very independent. One of the reasons that they are there—look at the dairy farmer in Wisconsin who gets up very early, milks his cows twice a day, has no choice on that, does not make an awful lot of money on it, especially if it is a young farmer, and they resent anybody coming in to tell them what to do, because that is their very nature.

I do not think, however, that one can ignore the fact that agriculture, I think still—unless I missed a statistic somewhere—ranks the third most hazardous occupation in the United States.

You cannot stop from being concerned over the number of deaths and accidents that take place in agriculture. The Department of Labor made a serious error in its failure to exercise good commonsense, good judgment, if you will, in the publication of that pamphlet produced by Purdue University. No excuse for the Department to have allowed themselves to get into that kind of position so that they will be the butt of everyone's jokes, for some very good reasons.

That is one of my criticisms of the Department. I do not want to leave the Department out of being criticized this morning, having done it for everybody else, because they can also take some criticism.

But American agriculture is governed, as you know, uniquely by a set of vertical standards. They are not covered by horizontal standards, they are covered by vertical standards for a very good reason, because there is a recognition that it is a very particular segment of the workplace that is mostly sole proprietors, mostly small, and I think that the Department, with that one exception, has done a very good job in responding to the very legitimate complaints of the initial rollover standard, initial machine guarding standard.

In most cases, the Department responded to the criticism and modified their standards, made them in perspective, did not mandate retrofit in the machine guarding operation, as they should not have.

So I think essentially you have seen the Department in this case who has been aware of the problem, has used sensitivity and, by and large, good judgment in the application of standards and the development of standards. They have a problem of continually trying to work with the Department of Agriculture. I hope this will improve as time goes on; and they have not done as well as I would like to see them do in using the resources of the agriculture community.

You have 4-H Clubs, thousands of 4-H Clubs across the United States who have safety as a part of their operations and the Department has to do a better job of tapping that resource, the county agent network and the 4-H community in the United States to help in the implementation of any additional standards that are coming down the road, and there are some in the agricultural community.

But exclusion for agriculture is not a very rational idea.

We have from the very beginning, as you know—one of the first inserts we ever put in the record after the act was passed dealt with the issue of coverage of family farms and the trade between this family and that family, and working. Were they covered? The answer was no, they were not covered.

So the family farm that hires nobody is not covered by the act, but the standards have an effect on them, by and large for the good, because now you are going to get more roll-over protection, now you are going to get better guarding on the equipment that those family farms buy. That is very important.

I look at the number of tractor accidents that take place in my home district, and it is just incredible, the number that still take place as a result of turning over, tipping over, or in some cases, power take-off shaft operations.

Mr. GAYDOS. I think that you would be interested in knowing that I repeatedly challenged the last 2 or 3 years—and I think you were present at some of the hearings—many of our witnesses to show us factual, provable situations or examples where one company or one farmer went out of business because of these regulations.

All of them, without exception, all of them said that they could not. However, there is one area that I discovered where I might have to retract that type of question or inquiry; that is the small farm. It seems that there has been an acceleration of the number of small farmers going out of business since around 1972.

Mr. STEIGER. No, sir you are absolutely wrong.

Mr. GAYDOS. We have always had a decrease, for many reasons, but it has been accelerated since 1972.

Now I will yield to you.

Mr. STEIGER. You would be absolutely wrong if you associated as being responsible—

Mr. GAYDOS. I am suggesting—

Mr. STEIGER [continuing]. For the decline in smaller farms. It is a fact of life. Interestingly enough, the decline has gone down, not accelerated, at least nationwide or in Wisconsin. I cannot speak about the Pennsylvania farm situation.

But the number of farms going out has, in fact, declined as compared to 10 years ago or 20 years ago, in part because there are fewer farms. To be fair, you have to look at that side of it as well.

But the impact of OSHA on agriculture at this point, it is minimal and will not, I think, be considered a factor. What you are going to see, as one effect of OSHA, is the reduction in the use of migrant labor. That is one of the issues that is raised, one of the standards that you know has been published, promulgated, withdrawn. It is in a state of confusion right now as to where it is. I do not know where the housing standard is.

But one of the effects the act is going to have—not just this act, but there has been lots that has been done in the migrant labor field. You will have less migrants being employed each year than you ever had before.

Mr. GAYDOS. Again, you would be happy to know that one of the first questions to be asked when we have the administration before us is how they let that assinine, self-contradictory, childish type of

publication on farm regulations and standards be released, inviting all of the criticism and other adverse results. I do not know how they did it.

Mr. STEIGER. A classic case where they should use the advisory committee concept for checking. All they needed to do was to have one farmer or rancher read the damn thing and you would have known you were in trouble.

I have great respect for those in colleges and universities, but I think that you have to use a little rational commonsense in attempting to deal with the American public, and with those in that field, particularly.

Mr. GAYDOS. Would you say those who prepared that were LTG?

Mr. STEIGER. I frankly would use something else, if John Buchanan were not here.

Mr. GAYDOS. I yield to the gentleman.

Mr. BUCHANAN. If he would like to use the term, sort of bad—

Mr. STEIGER. The problem is that it does not say it strong enough. It is much too subtle.

Mr. GAYDOS. The fact is, the administration is going to have some kind of affirmative response. We have been informed that 35 percent of their regulations that exist today are under consideration. I hope that we can encourage more action along those lines.

I think all of us have to be fair when we say that this is something new and they are going to have to make some mistakes. I hope the mistakes are kept at a minimum.

Let me ask you, what about our penalties that we have today? Do you think they are effective, taking into consideration the average fine for a serious violation or nonserious violation? Do you think we should be more strict? Should we have higher fines?

Do you think that would be a deterrent? What do you think we should do, or do you think that is in pretty good shape?

Mr. STEIGER. I would not start trying to change the mechanism. The Department as you know has wisely changed some of what it has classified as de minimus in order to remove some of the irritant that took place in the assessment of a violation for nonserious that was not terribly related to worker health and safety.

The de minimus concept is essential in my judgment to the effective working of the act. The AFL-CIO and the chamber of commerce both played the numbers game. The AFL comes along and raises hell with the Department because they say, look at the size of the penalties. They are not enough. The chamber comes along and says, you are clobbering us, it is too much.

I think they are both wrong. The act was structured in a very, very specific way and in the end you are going to have to assess the extent to which you think the fine concept really does bring about greater safety and health.

I am not sure that the fines ought to be looked upon as the be-all and end-all of achieving a safer workplace. I do see them as being an important ingredient along with first instance sanctions in attempting to apply the act with some equity across the board.

But it involves a far greater emphasis, in my judgment, on the education and training features of the act, and that I think you will see coming more and more. What Dr. Corn did in retraining the compli-

ance officers was an important step. It was one of the things that needed to be done, and is being done.

The Joint Safety-Management Committees that I talked about that have been done under the act are a part of that effort.

I think, third, one of the ways the Department could do a better job is attempting to speed up substantially, if they can find a way to do it, I recognize that it is not easy, the relationship between accidents and standards. One of the criticisms that is made, with some legitimacy, is that there are so many standards that do not really directly relate to safety and health, and that is where you get to the whole concept of modifying the consensus standards and modifying some that really do not belong there.

You have another part of it, which is looking at the workman's compensation records and trying to figure out where the accidents are taking place—this relates mostly to safety, harder in the health field—and then finding the standard. If there is not a standard, get one to take care of their problem.

I think that that kind of response by the Department would be useful in terms of the perception of labor and business.

Mr. GAYDOS. Here you are talking about the standards. I think most of us agree, when those standards were put into being, accepted and adopted, we actually took what was an accepted practice in the field. We got them all from insurance companies, from well-established areas where they were doing these things. That is what our consensus standards are today, most of them, I think.

When you raise the point that the standard per se, are new or different or they should have been controlled differently, I cannot understand it, because that is where we got them from.

They were already in being. We did not make them up. We did not have enough time to make them up.

Mr. STEIGER. Your problem with that is that much of the consensus standard—the AFL-CIO, to be fair, was the only group who opposed the adoption of consensus standards.

Mr. GAYDOS. I never thought that I would hear you say that, that they were fair.

Mr. STEIGER. Not all that strong in their operation, but the only ones that raised any questions about our adopting them. They were in the Daniels bill, they were in the Williams bill and they were in the Steiger bill.

That is my responsibility, it is this committee's responsibility, those who served there at the time, because we did not go far enough in looking at what consensus standards looked like. We accepted, without enough research, the view of the business community that said, put them in, we use them all the time, they are a part of our pattern of the workplace.

They are not.

We find now that nobody understood them and very few people used them. Those who did, used them as guidelines. It is different when you use them as guidelines as compared to using them as a standard with citations and penalties. The guidelines were not always that clear.

The mistake that we made, in my view, was one of allowing consensus standards to be promulgated without going through a hearing process. Second, we did not give the Labor Department enough time at the outset to do its work as well as I think they would have liked to have done it.

They did a remarkable job, in my judgment, if you look with hindsight, in attempting to put an agency in place in a very short time. It was too short, but if you put yourself back as I have had to within the politics of 1970 and 1971—and I think even the AFL-CIO would have admitted it was a problem.

The Williams bill had 30 days in which that agency was supposed to get into business; mine had 120 days, if my memory is correct. Neither was time enough, yet the AFL-CIO criticized me because every day that passed beyond thirty, another worker was being killed, another hand was being lost, another eye was being put out.

So in the context of the time, I think the Department made a right decision to promulgate a substantial package of standards. If they had not done so, labor would have raised unshirted hell and Congress would have raised unshirted hell with them.

So we can criticize them, but I think the criticism more properly belongs on the Hill than it does downtown for our failure to have given enough time and our failure to not have looked carefully enough at consensus standards.

Mr. GAYDOS. Finally, could I have your observation and response to those who suggested that the statistics indicate that 80 percent of the accidents at the workplace are caused by the employees and are unavoidable—no matter what we do, we cannot do too much about it with standards enforcement, what have you.

Do you think that is a fair observation?

Mr. STEIGER. Actually, that is a little lower than the Chamber of Commerce usually gives us. The figure they usually say, I think, is 90 to 95 percent are employees' responsibility.

George Meany, when we raised that issue with him when he testified in 1968 and 1969 said, of course, it was 90 percent the employers' fault and the employee was an innocent bystander.

Both, I suspect, are wrong. Neither can prove the figure.

I think that the only thing you can do is to examine the experience of an awful lot of companies, or even if you went to the old "worst first" program of the Labor Department when they started in 1971 where they had longshoring and woodworking—I do not remember all of them that were in that first category—and you saw a substantial reduction in the number of accidents that took place in those most hazardous industries.

The number of companies that I can go to, take you to, or have you look at in the Sixth District that have enjoyed substantial reductions in the workmen's compensation costs, in the hospital and lost time accident rate, indicates to me that the standards and the effort and the awareness and the education and the consciousness that has been brought about because of the act does make a difference.

It is not, as I said in the statement, it does not do it by itself. The act does not, the standards do not. It does require employee education and training so that you can do a better job in dealing with the human problem. It exists, it is real, but I am not at all prepared to say that either the chamber or the AFL-CIO is right in the use of some statistics that have no basis in fact or saying that it is the employee's or the employer's fault.

I think that there is enough to go around. It involves both.

Mr. GAYDOS. Yesterday we had a witness—and of course, I was not as eloquent as you, but when I reminded the witness that in his State alone, based on those statistics, they were receiving some benefit because their insurance premiums had dropped, he suggested they had dropped because the unemployment problem is with us. He said it was not the result of a better educated employee-employer group in his State. He thought that there were a lot less people working. He made a good argument.

Mr. STEIGER. I did not know that Idaho had that much of an unemployment problem.

Mr. GAYDOS. Mr. Sarasin?

Mr. SARASIN. Obviously, we have a rare opportunity this morning to pick Bill Steiger's brain. We will not be able to complete it; he has a 2-year term.

I would like to get into a couple of other areas, areas that have been touched on. When we talked about noise and the health condition that it generates and talk about the carcinogen problem and toxic substances, as was pointed out earlier, we are talking about an inside-outside situation.

The individual who works in a machine shop and plays in a rock band at night, who is responsible for the damage?

When you look at the situation that exists with the asbestos worker who also smokes and increases his opportunity for asbestosis—my question here is, What are we going to do with this, or what do you suggest we do with it?

Who is going to pay for it? If an individual loses a finger in a machine, that is easy. The worker's compensation system has been designed to handle that, and you know who to blame. When you look at something that is a 20-year process, over a long period of time, perhaps several employers, all in the same kind of business—are we looking at a situation that will completely destroy the worker's compensation system if we try to use it?

Are we going to go to a Federal system to pay for it, some kind of Federal guarantee that if you become ill at the workplace you are entitled to a black lung pension, or something of that nature?

I just wondered what you thought.

Mr. STEIGER. That is a very profound question for which there is not a simple answer. I do not know the answer.

We established the precedent with black lung, in a way that very much concerns me. I voted for it; I remember defending it at the time, and yet I was very much aware of the fact that if we are to pay for that, there are an incredible amount of American workers that suffer from just as debilitating illnesses as that, whether it is silicosis, asbestosis, brown lung in the cotton situation, any one of a number of areas of that kind.

That is just scratching the surface, because you have just an awful lot of things that we are just now finding, because of this awareness of carcinogens and toxic substances and what have you.

So I do not know how you handle it.

At this point, I continue to be unpersuaded about a Federal workmen's compensation law, although you cannot ignore it. That is one alternative that exists.

Another alternative that a number of States have already begun to adopt is to move to amend their own workmen's compensation laws to take cognizance of the health problem. That falls unevenly on a number of States, particularly in the North. With all due respect to our colleague, John Buchanan, I do not find many of the southern legislatures, from Texas to Virginia, moving to amend. I do find it in Pennsylvania or New York or Wisconsin.

So I do not know how to handle that problem, but it is one of the kinds of issues that I know the subcommittee is going to take a look at and should in terms of trying to figure out how best to handle that kind of difficulty.

Obviously what OSHA is designed to do, what the Toxic Substances Act is designed to do, what the Environmental Protection Agency is designed to do, is to minimize the exposure for that kind of hazard so that you will not, 50 years from now, have the same problem that you have got right now.

Mr. SARASIN. Let me shift gears a little bit and ask you why you allowed Wisconsin to get out of the State plan?

Mr. STEIGER. I did not allow Wisconsin to get out. That was a decision made by a combination of factors, the Governor's political decision. It was a way to reduce the budget. He just took the 50 percent out that had been in there and said the hell with it, I am going to let the Government come in and pay 100 percent. I am not going to go with the State plan.

It was the politics of the AFL-CIO National Headquarters that wants to do everything here because they control it. It does not want John Schmitt in the State AFL-CIO to have much of the action.

They oppose the State plan very vigorously. Then you have the Chamber of Commerce, the Wisconsin Manufacturer's Association, who were opposed to it because they did not want to have a Democratic Governor to get it, they did not want the State Industrial Commission to get it, and they also had a lot of multi-State employers involved in the Wisconsin Manufacturer's Association and they have the same view as the AFL-CIO. It is a myopic vision, but they say that it is easier to deal with one place than with 50; let us just make it all simple. So they opposed the State plan.

By the time I got through with all of that, I did not have enough votes in the State legislature.

Mr. SARASIN. I asked the question to be serious, not facetious. The same situation is again being discussed in the State of Connecticut. They discussed it during the last session of the General Assembly. They seriously thought about withdrawing.

New York and New Jersey have already withdrawn.

What can we do, what should we do, to encourage the States to take a piece of this action?

Mr. STEIGER. I am firmly committed to the role of the State under the Occupational Safety and Health Act. There is no way, in my view, that you can have the Federal Government take this responsibility on and do it well. We will blow it 9 times out of 10.

We will have less inspections, we will have less quality, we will have more problems if we go the route of ending the role of the State.

You have a political problem for many States which involves busi-

ness, labor, and politics—namely, the budget—so that if I could suggest anything to you it would be—George Taylor can hit me over the head, I am sure—it could be that you raise the 50 percent to 80. If you want to encourage the States on a valid basis to come in, stay in, and develop a really effective program to complement what the Federal Government does, then I think we are going to have to raise the share in order to achieve that result.

As you know now, you are going to 90 percent, the 7(c) (1) plans for consultation. There are some States that tell you they think it ought to go to 100 percent. I do not agree with that, but I think you are going to have to up the level in order to keep the States in, if that is what you want to do, and clearly, the AFL-CIO is out to make sure that we do not.

When that happens, and if it happens—and I hope it does not—then the workers of this country will be worse than they are today.

Mr. SARASIN. Thank you.

Thank you, Mr. Chairman.

Mr. GAYDOS. Mr. Buchanan?

Mr. BUCHANAN. Thank you, Mr. Chairman.

Mr. Chairman, as I already indicated, like other members of the committee. I have a high respect for the gentleman from Wisconsin.

One problem area for me is that of the numbers game as to who shall be covered. I am aware that a great problem exists in these small entities in the area of safety, yet I recall once when I followed the gentleman's leadership, I brought the wrath of small business on my head.

I wonder if the gentleman would comment a little more on what is an appropriate number?

I get into equity problems that 25, outfits of up to 25, should be excluded. What about the one who has 26?

A lot of the problem exists on farms. Should they be excluded?

Do you think that that is achievable that we could get out of bureaucracy enough reasonableness, enough rationality that we could reform, in terms of the reasonability and rationality of requirements rather than try to rescue small business by some magic number below which such business is not covered?

Mr. STEIGER. If you want to talk about exclusion, then it seems to me that there is no number that makes any sense to me, because the pattern of the workplace is not one when you are talking about safety and health that is governed by numbers. It is governed by what takes place in that workplace environment.

The only rational exclusion concept that I can see that would make sense, if that is where you have to go, would be by category of employment. That is to say that you could exclude barbershops; you could exclude five and dime stores maybe.

I do not know how you would want to make your list, but that is the only way that I could defend exclusion, not by number, but by what takes place in the workplace.

There is another side to this in terms of how you handle the wrath of the small business community or how I handle the wrath of the small business community—yours cannot be as bad as mine.

That is, one, to continue to believe that the most effective step that we could take is consultation. That is the one mechanism that is available to handle that kind of a problem.

Second, it is to suggest to them that so much of the emphasis has been on safety as it relates to the small business community especially, that that does not then deal with what, in the long run, is necessarily going to be the biggest effect this act has, and that is the health side of it.

I think that many in the small business community would, in fact, be understanding of a position taken by a member saying, look, do not always bear down on the safety issue when, in fact, we have so much of what will happen under the act that involves the toxics, the carcinogens, the noise, all of these kinds of things that are far more damaging—much more subtle, but far more damaging in the long run. That there is a need to cover in a small foundry, or in a small machine shop, or in a small plating operation those employees who are exposed to such a myriad of very real health hazards.

Thank you, Mr. Chairman.

Mr. GAYDOS. Congressman Steiger, let me make this observation. Thank you so much for coming. It has been most interesting, and entertaining at times.

I appreciated your efforts, and responses. Thank you very much.

Mr. STEIGER. I look forward to working with you.

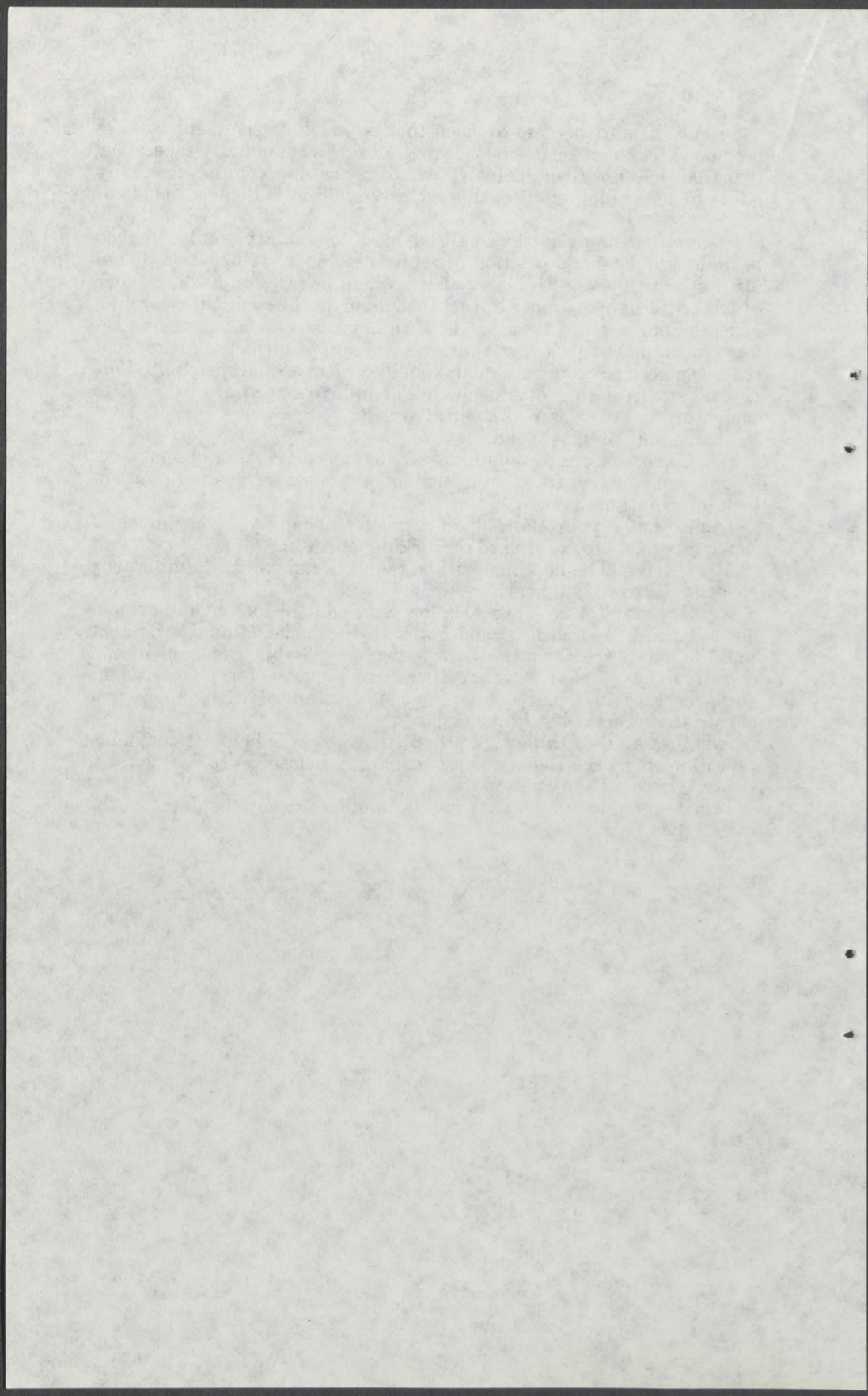
Mr. GAYDOS. The hearings will be recessed and we will temporarily suspend our oversight hearings.

Mr. STEIGER. Do not forget, before you quit, to look at my attachment. I think that each of you got both the jurisdictional statement and the letters that I put in there, between the Labor Department and myself about standards where there are requests for modifications going back to 1971 or requests for a new standard where there is a hazard that is not being responded to.

It is that kind of thing that I hope that you will help me out in attempting to get the Department to organize themselves to deal with it.

Mr. GAYDOS. Thank you again.

[Thereupon, a 10:50 a.m., the subcommittee recessed subject to the call of the Chair.]



OVERSIGHT HEARINGS ON THE OCCUPATIONAL SAFETY AND HEALTH ACT

TUESDAY, MAY 10, 1977

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMPENSATION,
HEALTH AND SAFETY OF THE
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:05 a.m., in room 2257, Rayburn House Office Building, Hon. Joseph M. Gaydos, chairman, presiding.

Members present: Representatives Gaydos, Murphy, and Sarasin.

Staff present: Paul F. Dwyer, majority counsel; Edie Baum, minority labor counsel; James M. Stephens, assistant minority labor counsel; and Marsha Gray, staff assistant.

Mr. GAYDOS. The Subcommittee on Compensation, Health and Safety will be in order.

This morning, we are privileged to have with us one of our colleagues. I know he is going to bring to us an analytical approach to the problems he may see in the administration of the act.

You have some ladies with you, Mr. Skubitz. On behalf of the subcommittee and myself, I am very happy to welcome you and your constituents.

Mr. Sarasin?

Mr. SARASIN. Thank you, Mr. Chairman. I, too, would join in welcoming Mr. Skubitz here. He is a valuable Member of Congress. We have sometimes disagreed on what he would like to do with the Occupational Safety and Health Act. But he does do more to convince the House of the value of his position.

We do welcome you and your guests here this morning.

Mr. GAYDOS. Mr. Skubitz, you may proceed in any manner you deem best.

First of all, would you introduce, for the record, the people with you.

STATEMENT OF HON. JOE SKUBITZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Mr. SKUBITZ. Thank you, Mr. Chairman.

First, I would like to introduce the witnesses. They have come a long way. They are Concerned Farm Wives. They are women that have spent their lives on the farm. After working 16 or 18 hours a day, they

(269)

are finding everything they have invested disappearing down the drain because of the prices that they are getting for their products.

Now, with some of the problems that are coming up with OSHA, they wanted to say a few words. That is why I asked for the time for them to be here.

I would like to introduce to you, first, Mrs. Kathryn Helsel, Mrs. Kay Burkhart, and Mrs. Peggy Yearout.

Mr. GAYDOS. Thank you.

Mr. SKUBITZ. Mr. Chairman, I appreciate the opportunity to appear before you this morning in support of my bill to amend the Occupational Safety and Health Act of 1970.

May I say, I am as interested as any man in protecting the health the safety, the well-being of every man who earns his bread by the sweat of his brow. I worked in a foundry as a boy, in the coal mines as a young man. My father's death came from an injury resulting from a mine explosion. So, health and safety are no stranger to me.

I want to protect the working people of this country. I have walked the half mile in the other fellow's shoes. I know the need for safety, and I understand. I wonder, though, whether some of the college-bred inspectors and some of the urban-born inspectors are truly cognizant of the problems that confront the small family-sized farmers in this country, and the small rural businesses that exist in this country, particularly those that employ 10 or less people.

I voted for the Occupational Safety and Health Act of 1970. It was a good law. But unfortunately, some of those who have been entrusted with the power to enforce it—either through ignorance, stupidity, or lack of commonsense—have brought the whole program under criticism. The thing that has bothered me is—it has bothered me for 30 years on Capitol Hill—that we, in Congress, or those who have preceded me in the Congress, have passed legislation which they felt would meet a problem that existed. But it is in the administration of that legislation where our problems always exist.

Someone says, "Well, we ought to take them up separately." Unfortunately, that doesn't happen. My legislation is aimed at two areas that, I think, have to be protected from the administration of the act.

My bill is an effort to protect those who are too small, or so financially strapped, they cannot fight back. My bill is a relatively simple one. First, it would exempt from OSHA rules and regulations, all small businesses and farming operations which have 10 or fewer employees.

Admittedly, this does not provide, nor does it guarantee, that the farmer or small businessman uses the latest equipment and is provided the maximum of protection. It is based on the premise that the small family-size farmer is just as interested in protecting the health and safety of his family and neighbors as his friendly OSHA inspectors. Believe me, gentlemen, with wheat down around \$2 a bushel, that is necessary today. Sometimes, in this world of ours today, reason has got to apply.

In most instances, the owner knows his workers. He works with them and, therefore, does not ask them to take any risks that he wouldn't take himself.

Second, the bill provides that a man must be employed for 30 days before he is to be counted as an employee. This is necessary to stop our friendly OSHA agent from calling on a farmer in the midst of the harvest season and asking, "How many people are you hiring at this time?" When he is told 12 or 15, he says, "You are covered by the act."

I don't think a temporary employee should be counted. So, I am saying only if they work 30 days a month, they should not be counted as permanent employees.

Third, it provides that any business that employs more than 10, but less than 25, will only be warned and not penalized for the first instance nonserious violations.

Too often, Mr. Chairman, some of the inspectors are going in and finding minor faults and immediately applying a fine. I can think of one instance in a very modern garage of one of my constituents in a town that is 40 miles from my hometown, that was just constructed several years ago, and has the latest equipment. The inspector says, "I am Mr. So and So. I am inspecting today. I want to warn you ahead of time I am going to find something wrong and I am going to fine you." He goes about the shop and he finds a jack out of place. Maybe it should have been under the table. He fines him \$10 for the first offense. I said to my constituent, "Can I use your name?" The answer, "Hell, no."

"Joe, if you do that, he will be back and really start looking for things." What I am trying to say is, it makes it impossible to fight back when you have inspectors out in the field doing the job.

I want to add, Mr. Chairman, that since proposing this amendment, it has occurred to me perhaps the committee might think, in considering my proposal, and that it might provide, in these plants employing more than 10 and less than 25, that no penalty shall be attached for the first instance violations unless they are willful and malicious.

Second, should any injury result, where notice has been given, then a presumption of willful negligence will apply and the burden will be passed on to the employer himself to show that the act wasn't a willful or negligent act.

Mr. Chairman, this bill has the support of the National Federation of Independent Business, the support of the American National Cattlemen's Association, the support of the American Farm Bureau, the support of the National Association of Wheat Growers, and the National Council of Farm Cooperatives.

I can assure you that no one wants to eliminate OSHA but even labor, in small plants, is getting fed up with the ridiculous rules, the threats and fines that are being applied, and so, they are afraid they are going to lose their jobs.

I ask unanimous consent that these letters be placed in the record.

Mr. GAYDOS. Without objection, it is so ordered.

[The letters referred to follow:]

American National Cattlemen's Association

A Non Profit Corporation



WASHINGTON OFFICE

425 13th Street, N.W.
Suite 1020
Washington, D.C. 20004
(202) 347-0228

March 1, 1977

The Honorable Joe Skubitz
U. S. House of Representatives
2211 Rayburn Building
Washington, D. C. 20515

Dear Joe:

Recently your office was in touch with my associate, Ron Michieli, regarding the beef cattle industry's views on your proposed legislation to amend OSHA.

It is my understanding that this measure, as it is now drafted, would serve to eliminate a great portion of America's agricultural and small business community from burdensome Federal regulations. ANCA's policy supports this legislation, just as we supported your bill last year providing for a one-year agricultural exemption for employers of ten or fewer workers.

We appreciate the opportunity to review and offer comments in support of this type of legislation.

Cordially,

C. W. McMillan
Executive Vice President

CWMcM/ljf

cc: John Meetz

NATIONAL



FEDERATION OF INDEPENDENT BUSINESS

490 L'Enfant Plaza East, S.W. / Suite 3206 / Washington, D.C. 20024 / (202) 554-9000

HOME OFFICE: SAN MATEO, CALIFORNIA; LEGISLATIVE OFFICE: WASHINGTON, D.C.

WILSON S. JOHNSON, President

JAMES D. "Mike" McKEVITT
Washington Counsel

March 4, 1977

The Honorable Joe Skubitz
U. S. House of Representatives
Washington, D.C. 20515

Dear Joe:

Thanks for asking NFIB to comment on the new OSHA legislation that you plan to introduce shortly. OSHA remains one of the most pressing problems facing the American small business community today and it is time for Congress to take positive action to alleviate its plight.

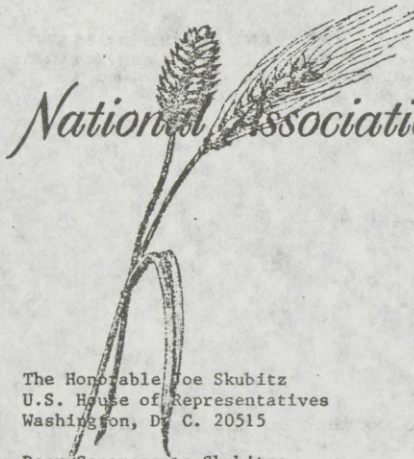
The bill that you intend to introduce which would exempt small firms with ten or fewer employees from OSHA and businesses with 25 or fewer employees from first instance citations and fines, except in the case of serious or willful violations, is in keeping with the traditional position of NFIB and its 490,000 member firms on this issue. Exemption of small firms from OSHA rules and regulations has received overwhelming support from NFIB members in the past and first instance citations without an opportunity to correct violations have always been a sore point with small businessmen across the country.

Your bill along with an effective on-site consultation program and the end of OSHA posting requirements will go along way towards correcting the arbitrary nature of this onerous law.

Sincerely,

James D. "Mike" McKEVITT

JDM/mcr



National Association of Wheat Growers

SUITE 1030
1030 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005
(202) 466-8630

March 7, 1977

The Honorable Joe Skubitz
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Skubitz:

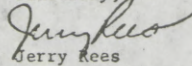
The National Association of Wheat Growers wishes to indicate support for your proposal to amend the Occupations Safety and Health Act of 1970 to exempt farm and business employers with 10 or fewer employees from provisions of the Act. We are also in agreement that an individual should work for 30 consecutive days before he could be counted as an employee, and we enclose other proposals you have authored dealing with civil penalties and non-serious first violations.

As you are well-aware, wheat producers and others engaged in agricultural production have had their operations repeatedly impaired by needless and unworkable regulations promulgated by the Occupational Safety and Health Administration. Our members have consistently found OSHA directives and proposals to be completely out-of-touch with conditions at the family farm level, and many orders have imposed economic burdens which we do not feel can be justified on farming operations of this size.

We have hoped over the year that OSHA administration would improve and that opportunities would be made for direct input from the farm sector which would lead to better understanding and rule-making on the part of OSHA. This hope, however, has proved groundless, and the small degree of relief the farm sector has received was gained only through an avalanche of public opinion and strong Congressional criticism.

We are hopeful that your proposals can be enacted quickly and prior to expiration of the current funding limitation on OSHA activities.

Sincerely,



Gerry Rees
Executive Vice President

jlc

National Council of Farmer Cooperatives

1129 TWENTIETH STREET, N.W. • WASHINGTON, D.C. 20036 • TELEPHONE (202) 659-1525

March 8, 1977

Honorable Joe Skubitz
U.S. House of Representatives
Washington, DC 20515

Re: Proposed OSHA Amendments

Dear Mr. Skubitz:

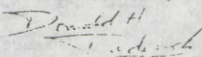
The National Council of Farmer Cooperatives supports your efforts to rationalize the Occupational Safety and Health Act.

We have reviewed the draft legislation furnished us by Mr. Jim Rinker of your staff, and we believe its enactment would significantly improve OSHA. Small farmer cooperatives have found the detailed compliance and reporting requirements extremely burdensome. The exemption for businesses with less than 10 employees which you propose is the answer to the problem of finding needed relief for small cooperatives.

Furthermore, your limitations on the use of civil penalties for technical violations of OSHA regulations by medium-sized and large businesses are meaningful curbs on picayune inspections. Such legislative direction will let everyone know that OSHA's resources are to be aimed at eliminating serious occupational hazards.

We believe Congress should adopt these amendments to the Occupational Safety and Health Act, and you can count on our support in this endeavor.

Sincerely,



Donald A. Frederick
Assistant General Counsel

DAF/gt

American Farm Bureau Federation



WASHINGTON OFFICE
425 13TH STREET, N.W.
WASHINGTON, D. C. 20004
AREA CODE 202 - 438 - 4
CABLE ADDRESS: AMFARM

March 10, 1977

The Honorable Joe Skubitz
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Skubitz:

We appreciate the opportunity to review the legislation you propose to introduce in the House of Representatives to amend the Occupational Safety and Health Act.

As we understand it, this legislation would prohibit OSHA inspections at establishments that have employed ten or fewer employees during the preceding 30 days. It would further prohibit citations for first instance violations of a non-serious nature by any employer with 25 or fewer employees. Further, any place of employment that is subject to inspection but is found to have ten or fewer nonserious violations shall not receive a citation.

As you are aware, Farm Bureau policy calls for the repeal of the Occupational Safety and Health Act. We shall work toward this objective and hope that you will support our efforts.

Until this policy can be achieved, the American Farm Bureau Federation is pleased to support your legislative proposal as a positive and helpful step toward curtailing OSHA's excesses in the enforcement field.

Sincerely,

John C. Datt
John C. Datt
Director
Washington Office

Mr. SKUBITZ. Mr. Chairman, this doesn't apply, really, to OSHA, but it does in the sense that OSHA has the same kind of inspectors in it that we have in the Federal Coal Mine and Safety Act group.

I guess, right at the first of the year, Mr. Hoffman, who is president of district 14 of the United Mine Workers, came in to see me about some of the things that were going on out in the field.

He says, "Joe, some of those damned fool inspectors are doing things that the company can't do and that are ridiculous."

He said, "I want to tell you about them." So, he brought three things to my attention. Unfortunately, in the rush, I forgot to bring them down. But I can tell you offhand one of them had to do with my favorite topic, the establishment of privies.

The second inspection had to do with one of the vehicles, that the crane part was up. The third one had to do with another violation.

So, I took the three violations and I sent them over to the Department of Interior, to the Mining Enforcement Agency. I want to read this letter to you, if I may, Mr. Chairman.

This is in reply to your letter dated March 31, 1977, concerning the three notices of violations issued on the Clements Coleman Mine No. 22. Each of the three notices were violations of the mandatory health and safety standards promulgated under the Secretary's rulemaking. The notices were issued by the inspector and in accordance with the provisions of section 104(b) of the Federal Coal Mine Safety Act of 1969.

I want to call to your attention, Mr. Chairman, that it wasn't the company that sent these three notices in; it was the president of the United Mine Workers that couldn't justify the kind of action and was fed up with it.

If, upon any inspection of a coal mine, an authorized representative of the Secretary finds that there has been a violation of any mandatory health or safety standard but the violation has not created an imminent danger, he has issued the notice to an operator or an agent fixing a reasonable time for the violation.

The background of these three violations is as follows: Sanitary toilet facilities are required to minimize the spread of diseases. The failure to provide and use these facilities may endanger the health of the miner and on the general public in the area of the mines. Federal regulations require that such facilities be convenient to each place that a miner works.

The three or four miners involved were six-tenths of a mile from their personal vehicle and $1\frac{1}{4}$ miles from the nearest toilet.

A sanitary toilet located $1\frac{1}{2}$ miles away is not convenient. Generally, it would take an hour to walk that distance. I think, at the rate they pay the fellows at the mine, it would be much cheaper to put a privy down there if that is going to be necessary. With heavy equipment, it would take a shorter time.

Now, I had my assistant call Clyde yesterday to ask him how close the nearest house was to the work. We found him in West Virginia, not Kansas, attending a meeting. Clyde said that the nearest house was 2 miles away.

I submit, Mr. Chairman, if there was a privy in the pit, that they wouldn't use it. As far as health is concerned, you, Mr. Chairman, and I have both worked in the mines. I can't remember, at any one time, when I had the urge to go that I caught the cage and went up on top. Can you remember any time that you did it? And yet, we were endangering the health of all the fellows around us.

I submit, Mr. Chairman, maybe we ought to declare that cows wear diapers out in the field. I realize it really submits it to criticism that some eager-beaver put this into the regulations.

During World War II, I was here at the time, and one of our college-bred boys, in an effort to save iron, suggested that for horse-shoes, that they ought to rotate them like we do tires on the automobiles. That is one of the regulations that came out.

Another one was a farmer out West who wanted some canvas. They were asked, "Why do you need the canvas?" The answer, "Because we are out on the Plains and we need it to protect the animals during the lambing season." The answer was, "Change the lambing season."

The second citation, Mr. Chairman, is the one that really burned the president of the coal miner organization. "The Hollage Access Road at the mine has no traffic control signals." Get that. The Hollage system has no traffic control system.

The complicated maze of roads around a shop, offices, platforms, welding shops and railroad cars, made it almost impossible to determine the right-of-way of private land.

"Visitors"—I don't notice many visitors that go there—"and service personnel were required to use these roads across the unmarked rail tracks in many locations."

Now, Clyde writes back—this is the president again, and these are my assistant's notes, he took them over the phone—"The violation Mr. Hoffman particularly thinks is ridiculous is the one where they were cited"—that isn't it.

The things they are talking about, and it is in another letter that Mr. Hoffman sent—and I ask unanimous consent to put that letter in the record before these remarks—is they have about 8 or 10 parallel tracks and they are 10 feet apart.

The inspectors want them to put a stop sign in front of each track—100 feet. 10 stop signs. If the truck is long, the hind end is liable to get hit before the front end stops for the other tracks.

Mr. GAYDOS. If you don't mind, you are talking about MESA—the Mine Enforcement and Safety Administration.

Mr. SKUBITZ. The only part, Joe, you and I have lived in the coal area and the regulation is the same as we get in OSHA.

Mr. GAYDOS. I do want to emphasize the committee is of the unanimous opinion we are not going to support any legislation which would cross the two. What you say, Joe, could be quite true but it is for another time and another place.

Mr. SKUBITZ. But I am trying to put up one point: The very same type of inspectors is the kind we have in OSHA, and they are bringing these problems to you and I. That is why I came along with these two things.

The third violation Mr. Hoffman particularly thinks is ridiculous is the one cited for not lowering the blade of a road grader while it was parked overnight. He pointed out that if it were a hydraulic blade—it was a hydraulic blade on the front of a bulldozer—that would be one thing since there would be the possibility of hydraulic fluid leaking. In this case, the blade of the roadgrader operates on a geared mechanism.

Mr. Hoffman states, in his 27 years of work at the mine and with mining equipment, he has yet to see a blade like the one on a road grader fall. It is a violation of the law.

Now, we have the same types of regulations, Mr. Chairman, that are applying to these small businessmen and to farmers. In both instances, the point I would like to leave with the committee is that the farmer works on the same equipment. He is just as interested in the lives and safety of himself, his wife who is out on the tractor, as well as himself, during the harvest season, and his children.

Yet, they want to go out and regulate these things. The workers that come from the adjoining farm help during the harvest time. The small businesses—we have little shops that employ 35 or 45 people in them. Who are these jobs for? Usually, for the farmer in the winter season to come in and try to earn a few bucks.

Sure, the machinery is obsolete. Sure, he can't afford new equipment. If he could, he would like to have it, but he can't and stay in business.

These people that work for him work alongside his relations all realize there has got to be some degree of personal risk. You and I, as legislators, can't legislate all the risks away when sometimes you have fools working on equipment.

I represented the ballbearing workers in Philadelphia at one time. One of my worst problems with the night shift was some of the boys used to put an extra bottle in their lunchbox and come to work. They would go outside and take a few shots and then come back. If one of them got hurt and the company found out, they complained. Do you know, we even forced the company to put in that first, you have a warning; the first time you bring in liquor. The second time, you have a second warning, and the third time, you could fire him when you caught him drunk, but only after you had a hearing, when you could justify why he was drunk. That is how ridiculous we get in working out contracts.

Mr. Chairman, I am sure that in these bigger plants where you have big business—I am for OSHA. If they have the money, they should protect the health and safety of the workers of those plants. But I am asking you to do something about these people that work in small plants where they don't have it, and who are only trying to provide an existence for themselves and help these few people that work around them.

Thank you for permitting me to take this much time. But I feel just a little strongly about this matter.

Mr. GAYDOS. Thank you, my good colleague, for a practical and down-to-earth observation.

I want to tell you that I do value your opinion. I think you are speaking in good conscience. We may have disagreements in some areas but we both agree the act is needed. Now, where do we draw the line. The exclusion is open to debate. Everything you have said has been said before. Because of your deep conviction, you believe you are right. I want you to know that I respect you for that.

Mr. SKUBITZ. I hope I set aside, or at least wiped out, the idea I am set against OSHA. I supported OSHA and I supported every piece of mine legislation that came down the pike. I was the man that got seven Kansans that voted for the mine safety bill when it was on the floor.

Mr. GAYDOS. If I may ask you, Mr. Skubitz, do you want your friends and constituents to testify?

Mr. SKUBITZ. One will testify and the others will join in on the questions.

Kathryn, would you mind?

Mr. GAYDOS. On behalf of the committee, I am happy to welcome you. I want to thank you for participating in your Government and its affairs.

I am sure that what you are going to say will be most meaningful to us and the other committee members that are not here this morning.

**STATEMENT OF KATHRYN HELSEL, CONCERNED FARM WIVES,
SOUTH HAVEN, KANS., ACCOMPANIED BY PEGGY YEAROUT AND
KAY BURKHART**

Mrs. HELSEL. Thank you Mr. Chairman. I would like to say good morning to you and the members of the subcommittee. I know the testimony will be read by the other members of the committee and I would like to say a "hello" to them, too.

Mr. Chairman and members of the committee: I am Kathryn Helsel, a member of the steering committee of the Concerned Farm Wives of South Haven, Kans. The Concerned Farm Wives are a group of women who are involved on a daily basis with the production of wheat and livestock in the southern part of south central Kansas.

We are here in support of H.R. 5365 in hopes that this amendment, as introduced by Congressman Skubitz and his colleagues, will be passed.

We know that the act covers all types of businesses and employers. Since a wheat farm falls within the scope of the act, our testimony will deal with the family farm as a small business. In Kansas alone, there are over 75,000 farms. Over 98 percent of these farms employ no more than 10 people. In just the State of Kansas, one can easily see that this amendment is important to over 73,000 family farms.

Congress cannot legislate laws which will make us more concerned about the health and safety of the people we love the most, our husbands, children and other members of our families who help on these farms. When it is necessary to employ individuals who are not members of our family, it is oftentimes a person who lives on the next farm or in a nearby community.

In either case, the families are usually well acquainted and an extra effort is made in insuring the employee's health and safety of the friends.

In the past, OSHA regulations have been completely out of touch with reality when applied to the family farm. If this Act is not amended to exempt small businesses, a farmer stands to lose a good deal of both time and money in meeting these requirements, neither of which can be easily afford.

The family farmer depends mainly on himself and his family to make his business successful. He realizes that if he is injured, his business will suffer. He doesn't have junior executives, middle management personnel, bluecollar workers and on-the-job trainees.

In effect, the farmer, like many other small businessmen, is managing a "one-man" operation. Since family farming is usually a one-man operation, we believe the value which the owner-operator places on his own health and safety will insure the required extra effort to make his business safe. No agency is needed to enforce self-preservation.

Today's family farm meets many of the OSHA regulations simply because of the requirements placed on equipment manufacturers. For example, tractors with rollover protection, grain bins with ladders and safety ropes, and slow-moving vehicles' emblems on farm implements.

Thus, many of the OSHA regulations are already affecting the family farm. Why burden him with nonapplicable rules and worthless reports just because he hires one individual, who is not a member of the family, to work part-time?

Most people who are farmers by profession are not unacquainted with the hazards of the farm. Most of us grew up on farms and were instructed by our parents and grandparents who often warned of dangers.

Consequently, being careful around a mother pig who has just farrowed becomes second nature. Granted, if people concerned with regulations, who themselves have never been involved with agriculture, examined a farming operation, it might appear to be one of the most hazardous places they have observed.

But I am sure many farmers would have exactly the same reaction to New York City's traffic and subways. A number of farmers could think of a lot of regulations they could write in an effort to improve the health and safety of a city resident.

We realize that agriculture is historically among the three most hazardous industries in this country. But no matter how many rules and regulations are developed, simple carelessness cannot be legislated away.

Therefore, Congressmen, our group asks that you give thoughtful consideration to H.R. 5365, as submitted by Congressman Joe Skubitz.

I do have one comment that isn't written there. In considering this testimony, we gave it a lot of thought because we work in the fields ourselves. When you are out there driving that tractor, lots of things cross your mind about, "What could happen to me if I did fall off."

We have decided this morning the most dangerous piece of equipment we pull is an offset disc because you are looking at four gangs of discs, each about 24 inches in circumference. They are at a wide angle. If you fell off and landed so the disc was going to run over you, you would be cut to pieces. However, when we get to seeing to it the OSHA regulations were applied to the farmer who only does employ 10 or fewer people, we know what would happen.

Our husbands, instead of working—I get fairly emotional about this—instead of working 10 hours a day, we would see them out there working 14 and 15 hours a day, which doesn't help their safety. We would see our kids out there, and I could just see what would happen.

We would see our kids out there, who probably shouldn't be on these tractors because we wouldn't be able to afford the time for the paperwork to make our family farms meet OSHA regulations.

So, in effect, it would have the reverse effect. We would be endangering our health and welfare even greater. Even so, they say—we know we are very careful. We would be using poor judgment just to get around the regulations. So, I wish you would keep that in mind when you start thinking about the little family farm.

Mr. GAYDOS. You have made a tremendous presentation. I think this committee is looking forward to hearing things like you have said.

They are from the heart. Maybe we are impervious to the practicalities of the problems.

I want you to know you are performing a great service in trying to make available to this group, for their analysis and consideration of this problem, your views.

We appreciate hearing your testimony. I am sure it is going to be most helpful. It was a great presentation.

Mr. SKUBITZ. I think it is true. The city guy comes to the farm and thinks it is dangerous. I don't think there is anything as dangerous in the world as driving through the Holland Tunnel.

Every July and August, our mines closed down. My dad would have to go to Belleville, Ill., to get a job to keep the family going. We didn't have welfare and unemployment compensation. Up there, we had around a 5-foot vein. When Dad came back and talked about a 5-foot vein, mother and I would say, "Why don't we move to Belleville?"

My dad said, "Because I don't want to. I get tired."

We said, "What do you mean, you get tired?"

He said, "You have to stand up all day."

The guy that moves down in that mine gets accustomed to those things. We know what to expect. Maybe it looks dangerous to somebody else, but we know how to protect ourselves.

Mr. GAYDOS. There was the mine disaster down in Kentucky. There, you had to lie flat on the car going down to get into the portal. Down in West Virginia, they mine half of their coal lying on their side. The miners are picking coal from the left, lying on their side.

Let me ask you a couple of questions, Joe—this may be for the ladies here, also. I notice in your testimony that you mention the fact that rollover bars for tractors is a required safety protection. Did tractors have rollover bars before OSHA came along?

Mrs. HELSEL. No; they didn't. It is the opinion of our group, if you are working on a tractor, you do stand a chance of turning over and those rollover bars are the last thing you think about. You get off as fast as you can and you hope you jump the right way, because your immediate response, when you start tipping is to get off of it.

Most farm accidents—keep in mind that a tractor is only moving about 10 miles an hour, or less, so, you know, when you have yourself in a bad position, you know that something is going to happen. I don't know of any accident, at least around our area, where the rollover bars were helpful.

Mr. GAYDOS. Let me explain why I asked the question. In all fairness, some of the regulations that may pertain to small farmers—5 or 6 employees is small, and 10 employees is the suggested change to the law—or some areas of farming operations whereby OSHA could apply might not actually infringe upon the family farmer carrying on his business. There may be some areas, even for the three- or four-employee family farm where regulations would not be confiscatory; nor would they harm the farmer—for example, a regulation requiring a rollover bar, which is a very, very cheap type of addition. That is the reason I am asking that question.

Mr. SKUBITZ. I think if it were nothing more than the safety of the farmer, this farmer would have it on, if for nobody else, for his wife and for his kids. The safety belt—the last thing a farmer wants to wear is a safety belt. As it goes over, if you should go over, they have to try to unbuckle that thing.

Under the regulations they are proposing, even if he had a safety belt and a guy was out in the field working and it wasn't attached, when the friendly OSHA man comes around, the farmer has to pay the penalty, not the guy that is operating the tractor, but the farmer.

Joe, if you have ever ridden on a tractor for 10 hours, believe me, you are sitting, kneeling, or standing. You are in every position possible to give the rear part of you a little bit of rest.

Mr. GAYDOS. Maybe we should bypass the farmer, then, and concentrate on Federal regulations for the manufacturer of the tractor.

Mr. SKUBITZ. That comes as standard equipment because the manufacturer has to put that on. A truckload of John Deeres arrived. They are brandnew tractors. They are not huge ones, but every single one of them has rollover bars on them. It is a snazzy thing. It has a little umbrella that shades you from the sun. They don't look like rollover bars, but it is the supporting system for it. It is difficult to buy one without the protection on it.

Mr. GAYDOS. We are all trying to be practical and we are looking for a practical solution in this area. When the President made his visit to Pittsburgh, I had the opportunity to ride in the automobile with him because we were snowed in. He flew in by helicopter.

I rode to the Westinghouse plant, at that time, in the back seat of the limousine with him.

The President said he wanted to make OSHA work. He initially asked me which of the committees I chaired, and when I told him I was the chairman of this subcommittee, his immediate response was, "We are going to make OSHA work. We want to make it work."

He indicated to me he was perturbed about the bad rap that OSHA was receiving through the country. That is why I cannot understand, in that one area, in the spirit of compromise and practical application, why you would be so adverse to the requirement for a tractor to have a rollover bar. Forget about safety belts. I can't understand that overall adversity to a rollover bar when it is a protective device. When your young kids are on that tractor and it has a rollover bar, it could perhaps save their lives.

Mrs. HELSEL. Yes; that is the good thing.

Mr. SKUBITZ. A rollover bar might push you back. That is the trouble.

Mr. GAYDOS. It is not going to be harmful. You must give it the benefit of the doubt. Whether you have jumped off is determined by the circumstances surrounding the tractor turning over. As you well know, you can get your ankle caught in any of the gears and you can't jump.

I am trying to make a point. If we are going to be practical and if we are going to be fair on both sides of this issue, we must acknowledge that there can be some regulations covering farm operations that can be pertinent. That is my feeling and that is what I am throwing out before you. I am hoping to learn from you that there are some reasonable types of regulations—I am using the rollover bars as an example—that should be supported by the small farmer.

I think a farmer is taking a most unrealistic position when he says, "Look, exclude me completely." I would think it would be more reasonable if he would say, "These regulations are unreasonable; I know that manure is slippery if you step on it in a barn." We should then

pay attention to those complaints down here, and take them up with OSHA. Then if we learn that that is the nature of OSHA and there is no other explanation, then, I have to feel sorry for OSHA.

But you can't be so obstinate and unrealistic to say, "Hey, wait. All farmers should be excluded, period." To me, that is being really self-serving.

Mr. SKUBITZ. They are not obstinate. The rollover bar, to them, is dangerous because they want to move off the tractor. The belt is dangerous to them because they want to move off the tractor, hoping to jump in the right direction.

Speaking of the roll bars, my God, a lot of these automobile accidents—if we would put some roll bars on the top of every privately owned automobile, when they turn over, they wouldn't crash the way they do. That would have more sense than putting them on a 10-mile an hour vehicle out in the field.

Mr. GAYDOS. They do have them. They are built into the frame.

Mr. SKUBITZ. I don't have one in mine.

Mr. GAYDOS. It takes a certain amount of strength to keep that lid from coming down and trapping you.

Mr. SKUBITZ. Three weeks ago, somebody was driving down Seven Locks Road. They had an accident and the top was flat.

Mr. GAYDOS. Let me ask you some practical questions, my good friend.

In Kansas, for the first 6 months—I got these statistics, Joe, to use as a basis for some kind of exchange between us—for the first 6 months of 1977, there were 330 inspections in the whole State. How many farmers do we have in Kansas?

Mrs. HELSEL. 75,000.

Mr. GAYDOS [continuing]. Nine of those 330 were establishments with 10 or fewer employees.

Mr. SKUBITZ. A small business.

Mr. GAYDOS. Probably none of them were involved in farming.

Mr. SKUBITZ. I wish you would have given me those so I could have checked all 78 or 79 of them because your figures may be like the ones given to me by the miners.

Mr. GAYDOS. I value your opinion. I am going to give them to you. I am always susceptible—

Mr. SKUBITZ. May I tell my constituents here with me that we get riled sometimes.

Mr. GAYDOS. We have around 1,300 inspectors in OSHA. I think, in the last budget, they had asked for a budget for around 1,500. We have around 1,300 to go over the whole country and to handle 5 million establishments.

That is spread pretty thin. When someone starts complaining about harassment, I have to take a second look at it in trying to be a reasonable individual.

The statistics belie any type of reasonable conclusion that the number of inspections are the culprit and that somebody is going to be harassed.

I assume we have had inspectors and inspectors that think they are next to the Deity, and that think nobody is better or smarter than they are.

If you think they are giving people a rough time, take a look at the inspections. In the first 6 months of fiscal 1977, October through March, nationwide, farms and all types of employing institutions of every nature, description and kind, we had 27,283 inspections.

Mr. SKUBITZ. How many? 27,283 in Kansas?

Mr. GAYDOS. Of that amount, 7,667, or 29 percent, for establishments with 10 or fewer employees. If we have had some harassments going on among farmers, I will be the first to apologize for the administration. I am going to ask that question when we get them in front of us.

When I take a look at those statistics, you can well understand why this committee would have some hesitancy in accepting a lot of the stories. A lot are exaggerated.

Mr. SKUBITZ. Two points—

Mr. GAYDOS. I am here to learn from you, and the committee is, this morning.

Mr. SKUBITZ. If you have that few inspectors, then use those inspectors to their greatest value. Put them into the big plants where you have any number of people that are employed. It might be my first point. But you get down on a little family farm where I have found—I have to point out to you these people are more interested in protecting their kids, husbands, and wives than any inspector coming out. So, use them in your bigger plants where there are industrial wastes and air pollution, where there are dangerous items involved. Use them in that area.

But you know as well as I do, and they will be coming up here very shortly, that we need more inspectors because we have all those plants. We have to look into it. We are going to have a monster on our hands. Let's start cutting out the little fellows, where I can see no real need for them.

Mr. GAYDOS. Let me ask the ladies some questions.

Would you give me some specific instances to put in the permanent record so our colleagues will have them available, relating to instances that you think are illustrative of the abuses by OSHA. If any of you know of any abuses that are not rumor and exaggeration, would you tell me?

Mrs. BURKHART. I don't know of any in my area.

Mr. GAYDOS. Do you know of any? Has any inspector been on your business, your farm?

Mrs. YEAROUT. No.

Mr. GAYDOS. What about you?

Mrs. HELSEL. There is a county elevator $1\frac{1}{2}$ miles away.

Mr. GAYDOS. Is that like a co-op?

Mrs. HELSEL. No; it is a privately owned elevator $1\frac{1}{2}$ miles from most of our fields. It is a small elevator. It is only open about 10 days a year. They have been inspected.

Mr. GAYDOS. How many times?

Mrs. HELSEL. I think once, in the last 2 years.

Mr. GAYDOS. How about since 1971?

Mrs. HELSEL. In the last 2 years.

Mr. GAYDOS. One time. Do you know of any other instances? Have you heard of any in a secondhand capacity?

Mrs. HELSEL. What we get are printed sheets of regulations which we must adhere to. The farmers read the regulations and they understand

that there are some things that should be done. They gripe about them, but if they can meet them, they will go ahead and try to do it. Never has an inspector come to our farm.

Mr. GAYDOS. How about you other ladies. Do you know of any inspections in the immediate area?

Mr. SKUBITZ. May I throw one thing in here by saying you have, what, 1,300 inspectors to cover the whole country. You can't expect them to be running all over. We learned a long time ago the time to get at a snake is to cut his head off at the time you see him. Don't wait until he gets to be a python.

Mr. GAYDOS. Are you calling OSHA a snake?

Mr. SKUBITZ. Not OSHA, but some of the inspections, Joe, we are getting that we are trying to protect these people from. I could give you a couple of examples, if you want.

Mr. GAYDOS. I will come back to you. I want to ask your constituents, who have been so kind to appear here—I want to get everything out of them that I can. You say you have regulations you must adhere to as a farmer or small businessman. Is the nature of these regulations an indication to you that the people who have been drawing up these regulations have never worked on a farm?

Mrs. HELSEL. Yes.

Mr. GAYDOS. Do you think if we had dirt farmers over there helping to draw these regulations up that we might be able to get some practical solutions?

Mrs. YEAROUT. That is what you need, practicality.

Mrs. HELSEL. The guy that has 10 or fewer employees on a part-time basis—45 days is about what it takes to get our crop in, and something else in that is the extra paperwork. We know that the burden of paperwork and reporting is going to come and that is coming back to us.

Mr. GAYDOS. Is the paperwork a burden to you?

Mrs. HELSEL. It very well could be. The kind of reports on an accident, the health and welfare, and sickness that occurs relating to something that happened on the farms, those kinds of things, then it would be requirements for paperwork that are coming in, talking about the people that we employed.

Mr. GAYDOS. Right now, are you deluged with a large amount of paperwork?

Mrs. HELSEL. From the act? No, not from the act.

Mr. GAYDOS. Where does the paperwork come from? I really want to know.

Mr. SKUBITZ. The law provides that 10 farmers—

Mr. GAYDOS. I am talking about the period before the 10-and-under exclusion came into effect. I am sorry. I am talking about the prior period, 1971, 1972, 1973, 1974, 1975, and last year. What about that period? What kind of paperwork did you have to do?

Mrs. YEAROUT. We don't have any employees. It is all family.

Mrs. HELSEL. On those ones, the family corporations who were hiring people that were not in the family, it did require monthly reports if something happened to an individual. If you became ill, then a report had to be sent. If you were in a dairy operation, were you ill because of the kind of spray that was used on the livestock or were you ill because you didn't want to come to the job? Sometimes the employee says, "I had to spray those cattle last night and I didn't feel well

this morning." He is diagnosing his own illness. He was back the next day. It has to be reported he was out 1 day because of perhaps an unrelated incident.

Mr. GAYDOS. You are talking about spraying pesticide. You are raising a point that is conjectural, as to whether or not it made him sick or not.

Let me ask you about the grain elevator. What kind of inspection was it? Did the inspector demand compliance with any unreasonable requirement? Was the operator cited for anything?

Mrs. HELSEL. The way I understand—

Mr. GAYDOS. Even secondhand.

Mrs. HELSEL. It was from a guy. The guy that was the inspector was on his way and stopped by to visit. It was not a formal inspection. It was a visitation, if there is such a thing, just to get acquainted with the area. No citations were written. They walked around. But it was pointed out, you should take a look at this; this is the kind of thing—it was more of a consultation and get-acquainted thing rather than an actual inspection.

It did point out some of the problems that could be cited as violations.

Mr. GAYDOS. Since we are referring to that subject, if I may ask you, was he bitter in relating the story to you or do you think that there was some merit to it, some affirmative result from this type of inspection?

Mrs. YEAROUT. The small elevators are becoming angry because of all of the regulations. Soon, we are going to have to see what we can do about the dust. What we are afraid of, then, they are saying, how are you going to cover the plow so you don't get dust on it. What we are afraid of in this thing is it is escalating.

Mr. GAYDOS. Are you aware of any regulations that you know of—now, I am again referring to a period prior to the exclusion that has occurred in the last 1½ years—any regulation that requires you to put some kind of a dust cover on a plow in the field?

Mrs. YEAROUT. No; but I am afraid it is coming.

Mrs. BURKHART. They are trying to get our elevators dust free. It would take us \$190,000 per duct. Some of our small elevators have three ducts. They can no way come up with \$190,000, times three, for this ducting just to keep the dust out.

Mr. GAYDOS. They take it to a central grain elevator?

Mrs. BURKHART. It involves our time. We have to lock the doors. We have to dump this wheat. We don't have time. We have to get to the elevator, and we have to get back. If they are going to do it to them, then what is going to keep them from coming on our small family farms to try to keep the dust out? Why can't we go out every day and scrape our lots and keep it completely and totally manure free?

Mr. GAYDOS. As I understand, you said you had a great fear they may be requiring you to scrape every day. That is not presently a regulation, but you feel that it would probably come?

Mrs. BURKHART. Yes.

Mr. GAYDOS. Do you know of anything else that would come out as a result of OSHA pertaining to and governing the small farm?

Mrs. YEAROUT. Talking about the one about the cattle, do not go into a herd of cattle because you can stampede them.

We work with cattle and livestock. I work also with horses. If I have a sick calf out there, I have to go into that lot with those cattle. I cannot wait. I know my cattle. I live with them. I am out there every day, and OSHA cannot tell me when it is safe to go out there. I am the one that knows when it is safe to go out in the lot. I know they are not going to stampede, and I have to get that calf out. I have to doctor it now or I lose my calf and I lose my investment.

They were talking about this would be the rules. They said, do not go into the lot, you are going to stampede the cattle. For some stranger coming on my farm, this would be something I should know. I live out there. I know my livestock. We do not take anyone on our farm unless they are escorted by a farmer.

Mr. GAYDOS. I have been informed by counsel that in the list of regulations sent out, that that appeared in the area of "Suggested Information," to the farmer; is that right?

Mrs. YEAROUT. Right.

Mr. GAYDOS. That wasn't a regulation.

Mrs. YEAROUT. It was suggested.

Mr. GAYDOS. You have fears of it becoming one.

We want to find out what your real, sincere fears are, as farmers, from a practical standpoint. This is what we want to find out. I hope you know I am not playing games with you, and I hope I am not boring you with these questions. They are most important for the committee.

Mr. SKUBITZ. I wonder if you would excuse me. I have a clean air bill coming up right about this time. I am on that committee. I am in favor of cleaner air. I don't know of anybody that isn't.

Mr. GAYDOS. Can you stay for 2 minutes longer? Mr. Sarasin may have a question.

Mr. SKUBITZ. I would like to make one or two observations. One, this is a movement that has taken place in the last year or two. Prior to that time, they didn't bother them. There were no complaints. It has just been in the last year, prior to the amendment, that they started moving on the small farm.

Speaking of cattle, let me give you one experience I had the first year I campaigned. I went out to a feeder lot.

Mr. GAYDOS. Joe, cattle don't vote.

Mr. SKUBITZ. But the farmer, one of the main constituents does. He was in the middle of a bunch of bulls out there. He never would come over to the fence. He made me go out in the middle of those bulls. You should have seen the fancy steps.

Mr. GAYDOS. They call it the fast shuffle.

Mr. Sarasin?

Mr. SARASIN. Just let me get into a couple of questions. First, let me thank you for giving me a line that you have used. That came from your testimony on the floor last year describing the ridiculousness of OSHA, that a privy be within so many minutes of an operation—and that was, it depends on the age or the urge of the individual. Now, you have given me another one, the cows wearing the diapers.

Do you feel there is a problem if you get to that 10 or fewer requirement, that you would then be keeping someone from going to the 11th person and getting the same situation—

Mr. SKUBITZ. The reason I put the 10 and the additional point in there is a fellow would not be counted as a permanent employee if he worked 30 days or less, and is to get us by the harvest season, for that period that we need extra workers.

What some of the inspectors do, they say, what is the maximum you have on the farm. The fellow says, during the harvest season, we had 15. We hired four people. He has now come under the regulations.

I would like to see that provision come into the law, 10 or 11, or less, that a person can't be counted as an employee unless they have worked for 30 consecutive days on the farm.

Mr. SARASIN. If you have that requirement, 30 days, would you end up in a situation that on the 29th day, you would be letting people go?

Mr. SKUBITZ. I think our season would be over in 30 days and would give us plenty of time to harvest. What you do is you move from your farm over to the next one to help him.

This young lady appeared before the Agriculture Committee the other day. Because of labor costs out there, we have to help each other, like in the old days. She pointed out very effectively how much wheat was in a loaf of bread when she handed each person a statement with 3 pennies attached to it. The committee, I assume, thought they were being bribed by a concerned farmer's wife, but she pointed out that the 3 cents was the total amount of wheat in that loaf of bread that we are now paying 45 and 50 cents for. Yet, the farmer is being blamed for the high cost of bread.

The cattleman is losing his pants today, yet he is getting blamed for the price you are paying, \$1 to \$2 a pound for meat in the store.

Mr. GAYDOS. You can get bones for \$1 a pound.

Mr. SKUBITZ. That is not the farmer's fault, because they are not even getting the cost of production back at this time.

Mr. SARASIN. What would you do if your bill was applicable only to farmers rather than to industry, in general?

Mr. SKUBITZ. Then, I would make a floor fight for these 10 workers or less.

Mr. SARASIN. For farmers?

Mr. SKUBITZ. I mean for small industry, as well. We have the same problem in the small industry.

I have thrown out another suggestion; that is, for 11 to 25. I think there ought to be a violation notice for the first time. Instead of walking in, you are stuck with it unless we can see a willful and flagrant violation. I think I would go so far as to say, when this inspector noticed some fellow was injured in that plant, and it was because of some notice he gave, then I would throw the book at him because he ought to correct himself on the flagrant violations.

Mr. SARASIN. If you were to change the law to allow onsite consultation for small businesses, certainly, you would include family farms, as well. Would that tend to eliminate some of the problems you have?

Mr. SKUBITZ. In my opinion, I think the answer would be, I think this would be fine. However, the onsite consultation turns out to be an inspection and then a threat because some of these fellows feel their job depends upon the number of violations they find and the

amount of penalties they assess. If they don't get enough to pay their salaries, they will be fired.

It is like a meter maid in Kansas during the last campaign. You can't argue with a meter maid. She is a woman. When you have a 12-minute parking zone around the building, she sneaks around a corner and times you.

In one instance, there was a race to the automobile with the owner and the meter maid. She beat him by a step. She was writing the ticket. He pleaded with her. He was a man of some influence in the community. She kept telling him how sorry she was. Finally, he got sarcastic and said, "Does your promotion, or pay, depend upon the number of arrests you make?" She said, "No, it doesn't. But if I get two more violations, I get a free toaster today."

This is what I am running into these days. That is not an exaggeration.

MR. SARASIN. Quickly—I know that Congressman Skubitz has to go. The difficulty with exempting any group of people, 10 or fewer, in regular industry, or the arrangement you suggest for 11 and 25 in all industry and farms, is that the act depends on voluntary compliance. As the statistics point out, there is no way you are going to get the farmer or industry, or anybody else, to comply, and the only way is the threat of citation if you don't comply with the regulation.

That is the pressure put on the employer to comply with the law. I agree, we have seen too much nitpicking, especially in the early days of OSHA. It didn't make any sense at all. But the act still depends on that kind of pressure for compliance.

But we do know that some of the smaller industries can be the most dangerous. If a saw mill has three or four men operating a saw mill, shouldn't some regulation apply to that?

MR. SKUBITZ. I think those people understand that business, Ron. I visited a family with a little business back home. Seven people were employed in it. This plant has been in the family for three generations.

They make church pulpits. That is all they do. It is a lumber mill. One of the inspectors comes in—it is sort of a barn. He says, "This is very dangerous. You must put down a floor."

The fellow said, "Would a metal floor be all right?"

They put down some 4 by 4 by 8 sheets of metal in order to save his costs.

He then insisted they had to put a safety device over the blade. The owner says, "Where?"

He says, "Right in front where these rollers are. You have to have one."

The owner said, "You can't buy one."

He said, "Make one." After he got finished, he said, "Now I have some news for you. The blades are not here. The blades are in back of the safety device. All those rollers are for is to put your pieces of lumber on to start them rolling through."

He said, "All right, put something in front of those."

This is the kind of thing that irritates business. What it is going to do is bring down small business and wreck a good law that we put into effect.

I hope that big business and big labor unions get a little bit of sense in their minds, that all of us want to protect these people. The bigger

industries, where they can afford it, should be required to do these things and should be required to take care of the air-conditioning, to take care of air pollution. But my God, let's don't try to put the pressure on the little businessmen that are trying to survive.

Mr. GAYDOS. Would the gentleman yield?

Mr. SARASIN. Yes, surely.

Mr. GAYDOS. I thank Mr. Sarasin for yielding.

How do you respond to the fact—and these are cold statistics—that far greater accidents occur in small industrial activities as distinguished from big giant corporations? The big corporations have had safety programs for years. What are you going to do, ignore them?

Mr. SKUBITZ. Under those circumstances, you and I, as legislators, are not going to make big businesses foolproof. There has got to be some reason rather than a bunch of statistics that are put in front of us.

I had the same problem over in the ballbearing plant. It wasn't the machine they operated. It was that nip they took in between that caused the accidents to happen.

Mr. GAYDOS. What if chemical plants were excluded, and there was another case like the Kepone incident with employees falling over like flies because there was no regulation. Would you like to have that type of operation excluded?

Mr. SKUBITZ. No.

Mr. GAYDOS. That is what is going to happen.

Mr. SKUBITZ. If 10 guys operate that kind of plant, show them to me and I will go along with that sort of thing.

Mr. GAYDOS. I can give you statistics.

Mr. SKUBITZ. Every time I hear statistics, the fellow says buy and the profits went up 50 percent. They made a dime last year. Then, this year, they made 20 cents.

Mr. GAYDOS. I appreciate your giving your valuable information and time to us. We appreciate, especially, your bringing with you three lovely ladies. We appreciate your appearance. Their responses have been forthright, and I appreciate that.

Mr. SARASIN. I would also thank Mr. Skubitz and his people who are with him today to help testify. I think the impact of such as this is helpful to the committee. We appreciate it.

Mr. GAYDOS. We have another colleague, Mr. Murphy, from Pennsylvania, who has joined us.

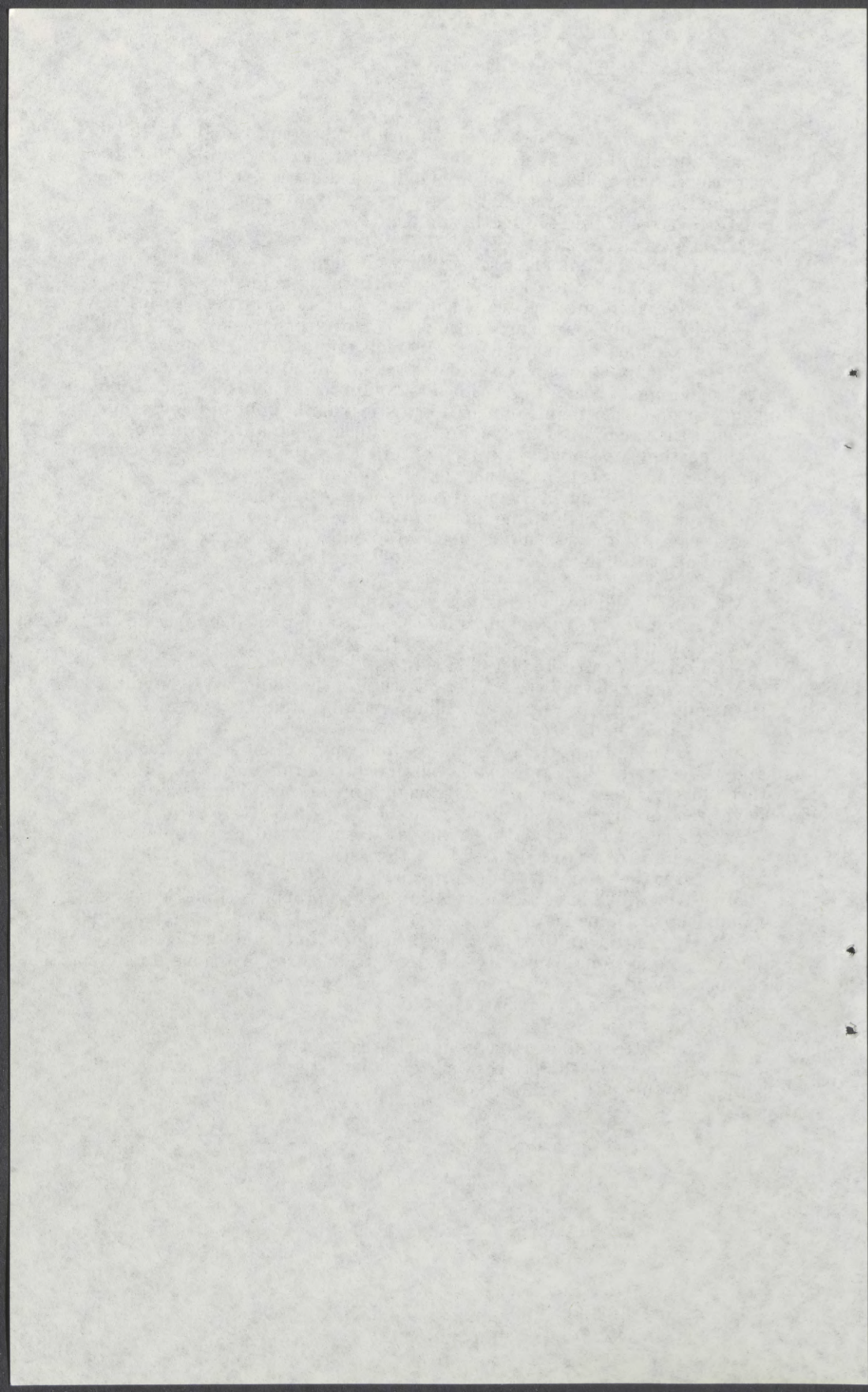
Mr. MURPHY. I am sorry I missed your testimony. I just came in. I have no questions. I usually ask Joe two or three questions during the day, anyway.

Mr. GAYDOS. Thank you, Mr. Murphy.

Thank you, Congressman Skubitz.

The committee stands in recess until the call of the Chair.

[Whereupon, at 10:21, the subcommittee recessed, to reconvene subject to the call of the Chair.]



OVERSIGHT HEARINGS ON THE OCCUPATIONAL SAFETY AND HEALTH ACT

MONDAY, MAY 23, 1977

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMPENSATION,
HEALTH AND SAFETY OF THE
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 9:10 a.m., pursuant to notice, in room 2261, Rayburn House Office Building, Hon. Joseph M. Gaydos (chairman), presiding.

Members present: Representatives Gaydos, Cornell, LeFante, and Sarasin.

Staff present: Paul F. Dwyer, majority counsel; Edie Baum, minority counsel; James M. Stephens, assistant minority counsel; Terre Belt, researcher/writer; and Marsha Gray, staff assistant.

Mr. GAYDOS. The Subcommittee on Compensation, Health and Safety will be in order.

On behalf of the committee, it is my distinct pleasure to welcome the Honorable Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, to the committee for testimony which I know will be meaningful, informative and which I know will be the precedent for expected action from the agency.

We had the pleasure of meeting with Dr. Bingham 2 days ago; I think Thursday morning. The information obtained at that meeting, I think, was pertinent and quiet encouraging.

Doctor, it is my pleasure to see you here. I hope to have you back again as we discuss preliminarily your future activities as head of the agency.

I want you to know that I am going to insert your testimony into the record, so that hopefully, it will be reviewed by our colleagues. I think it is well put together; it is very succinctly stated. Again, I think it is going to be a clear indication of future actions by you individually and the agency generally.

Mr. Sarasin?

Mr. SARASIN. Thank you, Mr. Chairman.

Dr. Bingham, good morning. I also want to join the chairman in welcoming you this morning. We, of course, have had the pleasure of meeting you several times. Each time, I think, it has been a rewarding experience for me. I must say I am most impressed with the attitude that I see occurring now in the agency which you head.

I think we are moving on the right track, trying to get away from some of the nitpicking that used to be the mainstay of the OSHA

operation and into many of the more serious hazards in workplaces, especially in the area of occupational health.

I am delighted to see you this morning and look forward to your statement.

Mr. GAYDOS. Do any other members of the committee wish to express comment?

Mr. CORNELL. No, Mr. Chairman.

Mr. GAYDOS. We have also Mr. Bert Cottine, Special Assistant to Secretary Bingham, and John Hynan, Deputy Associate Solicitor for Occupational Safety and Health. Welcome, gentlemen, along with the good Dr. Bingham.

Are there any other individuals at the table you would like to identify for the record, Doctor?

Dr. BINGHAM. This is Mr. Joe Kirk, the director of our Office of Policy Analysis.

Mr. GAYDOS. You are welcome, Mr. Kirk.

Let the record show the presence of the individuals who are accompanying Dr. Bingham.

Doctor, you may proceed in any way you see fit.

STATEMENT OF HON. EULA BINGHAM, ASSISTANT SECRETARY OF LABOR FOR OCCUPATIONAL SAFETY AND HEALTH, ACCOMPANIED BY BERT COTTINE, SPECIAL ASSISTANT TO SECRETARY BINGHAM; JOHN HYNAN, DEPUTY ASSOCIATE SOLICITOR; AND JOSEPH L. KIRK, DIRECTOR, OFFICE OF POLICY ANALYSIS, OCCUPATIONAL SAFETY AND HEALTH

Dr. BINGHAM. Thank you for the opportunity to appear today. I would like to discuss with you my plans for leading the Occupational Safety and Health Administration, OSHA, in the most effective manner possible for protecting America's work force.

Upon assuming office in March, I quickly realized that this agency was perceived as being overly concerned with trivial workplace regulations at the expense of real threats to worker safety and health.

I am also aware that members of this subcommittee and others who worked so hard to secure enactment of the Occupational Safety and Health Act of 1970 intended that OSHA should concentrate on the workplace problems which truly threaten workers' lives. Thus, I have begun to redirect the priorities of this agency.

While OSHA recently began to focus its resources on occupational health problems, the agency's emphasis in this area must be increased. The extent of workplace health tragedy in America is appalling. The National Institute for Occupational Safety and Health has estimated that there are approximately 100,000 deaths each year from occupational disease. Many of us in the environmental medical community believe this to be an extremely conservative estimate.

Numerous chemicals and substances used in the workplace cause cancer in those exposed; others often result in irreversible disease. The resultant cost to worker health and well-being of his or her family is intolerable. We must take steps to stem the environmental epidemic which is affecting the working men and women of this Nation.

In addition, the issue of occupational disease goes beyond the plant gate; its ramifications may affect the health of every community in the Nation. We are only beginning to learn the harmful effects of exposure to toxic substances in the workplace. Recent studies, for instance, indicate that lead and vinyl chloride affect both male and female reproductive processes.

To date, OSHA has not issued enough health standards. I intend to enhance our capability to address health problems. The emergency temporary standard limiting exposure to benzene, a substance used in numerous industries which can cause leukemia, is the first product of our efforts. This standard included a readily understandable guide for employers to help apply its provisions.

I believe we can go further and examine alternative strategies to the substance-by-substance standards setting method which the Agency has used in the past. One approach is the classification of potential carcinogens. This would allow uniform regulatory action for each class of carcinogens. We are seeking the advice of the National Advisory Committee on Occupational Safety and Health, as well as others from the private sector, in formulating an occupational health standards strategy.

In order to insure worker protection through these standards, OSHA requires a well-trained, highly motivated compliance staff. We particularly seek physicians, epidemiologists, nurses, and other members of the medical profession, as well as additional industrial hygienists.

I intend to use my background and contacts in the environmental medical community to enlist the services of such skilled personnel. Meanwhile, OSHA's present compliance officers are being cross-trained in order that safety specialists will be able to recognize health problems and begin taking corrective actions.

The training curriculum for OSHA compliance officers has also been revised to emphasize sensitivity to the needs and problems of those small business employers who are inspected. Compliance officers are being instructed that where possible they may make general suggestions concerning hazard abatement methods at the close of each workplace inspection. This will enable the employer to immediately begin planning the means by which workplace violations can be corrected.

As we issue more health regulations and improve the training of our inspectors, many of the sources of complaint about trivial regulations should subside; the compliance program will be focused on the critical workplace problems.

Along with an increased emphasis on occupational health, OSHA will carefully examine existing safety standards. These regulations, the majority of which were adopted from existing consensus standards, are sometimes unduly complex, vague or have no direct or immediate relationship to employee protection.

Where necessary, these rules will be revised or eliminated. Presently, about 25 percent of the existing standards are undergoing revision. Numerous town meetings and other public forums have been used to gather information for this effort.

In addition, OSHA will expand the use of de minimis notices for violations of those standards which have no direct or immediate rela-

tionship to safety or health. These notices carry neither a proposed monetary penalty nor a requirement for abating violations.

OSHA currently employs approximately 1,400 Federal compliance officers. Realistically, we cannot expect to inspect annually more than 2 or 3 percent of those work establishments covered by the act. We must concentrate on those industries and workplaces which present the gravest threats to their employees. We intend to focus 95 percent of the inspection resources on those industries with the most serious safety and health problems such as construction, manufacturing, transportation, and petrochemicals. No more than 5 percent will be devoted to areas such as wholesale and retail trade, finance or the service industries. Furthermore, inspections within these sectors will be directed to the highest hazard workplaces.

Thus, for 80 percent of the small business establishments in the less dangerous industries OSHA's inspection rate will decrease from approximately 1 inspection in every 500 work establishments to 1 in every 1,300 establishments per year.

The effectiveness of OSHA's efforts to eliminate workplace hazards depends ultimately upon the willingness and ability of the Nation's employers to comply with this program. I am confident that most employers, when aware of the potential hazards in the work environment, will cooperate with OSHA's efforts to protect their employees.

In many small businesses the employer is often working alongside the employee; the employer is often exposed to the same hazards as the employees. Thus, there should be a mutual concern for conditions in the workplace.

It is OSHA's responsibility to provide assistance in understanding and complying with our regulations. This is particularly important for small business employers who often have neither sufficient technical expertise nor financial resources to obtain private consultation on OSHA's requirements.

To assist these employers, the agency has encouraged the States to provide onsite consultative services. The consultant points out workplace hazards and applicable OSHA standards and suggests means of abatement.

Currently, 36 States or jurisdictions provide this assistance either through their own occupational safety and health programs or through contracts with OSHA. This consultation is available to about 75 percent of the employers covered by the act.

We have recently proposed to increase from 50 to 90 percent the Federal share of the contracts with States who wish to provide onsite consultation. All States, with or without their own safety and health programs, will be eligible to receive increased funding.

Hopefully, by increasing the number of participating States, we can insure the availability of consultation to about 90 percent of the Nation's employers. We may never have 100 percent State participation in this program; therefore, we will be using such private sector consultative sources as universities, community colleges, consulting firms, and extension centers.

One of the most effective tools for eradicating workplace hazards is to increase awareness of both employers and employees to the dangers faced in their specific work environment. OSHA is considering undertaking an expanded educational effort designed to acquaint employers

with the necessity for a hazard-free workplace, the nature of proper work practices and methods for working with OSHA.

We may use the resources of the extension service and community colleges in this effort as well as such techniques as home-study courses designed for employers. Small business organizations could be asked to assist in disseminating educational materials to their members.

In order to gain a firsthand understanding of the problems which small business employers have with this program and ways in which we can assist this sector, I will shortly be appointing a Special Assistant for Small Business. I am seeking an individual with broad knowledge of the small business community who will report directly to me and will communicate with small business organizations and individual employers.

Shortly, a small business task force, with a designated member in each of OSHA's 10 regional offices, will be established to coordinate small business assistance. As a prototype of this effort, OSHA's Chicago Regional Office is now testing a program in which experienced OSHA employees are serving as direct contacts with small business employers seeking assistance in eliminating safety and health hazards.

Through advice over the telephone, appearances before local employer associations, direct mailings, and referrals to existing consultation programs, we hope to improve our relationship with employers in this midwest region.

There are indications that much of the concern expressed by small business employers is based more upon the fear of the unknown than upon actual experience with OSHA. Our goal here is to establish easily available informational sources to dispel any employer concerns about the program.

Another type of assistance is the OSHA "Handbook for Small Businesses." This publication is designed to assist small business employers in meeting OSHA requirements prior to an inspection. It includes a self-inspection checklist and a list of sources of assistance in evaluating workplace safety and health conditions. Over 1 million copies have been printed and are being distributed through OSHA field offices, State labor departments, local safety councils, insurance companies and business associations. The demand for this publication has exceeded our supply and additional copies will be printed.

To aid small business employers who require financial assistance in correcting workplace conditions, OSHA works with the Small Business Administration. SBA provides loans after OSHA field offices determine that the requested use of the funds would adequately correct cited violations. In order to improve this relationship, we are revising the current memorandum of understanding between the two agencies; we are also working with SBA to expedite safety and health local applications.

Several administrative changes have been made in OSHA's compliance program to consider the financial burden on small business employers without sacrificing employee protection. OSHA eliminated monetary penalties for other than serious, willful or repeated violations when those penalties would amount to less than \$50. This eliminates what was considered by many to be a nuisance penalty.

The agency also increased the percentage by which a proposed monetary penalty can be reduced based upon the size of the employer's

business. This enables OSHA to maintain flexibility toward the small business employer when penalties are necessary for workplace violations.

I believe that the cumulative effect of the initiatives which I have described will improve the relationship between OSHA and the business community. By attaining employer support, we can more effectively protect the employees. We are sincere in the desire to provide assistance to employers but I am emphatically opposed to any exemption of small business or small farms from OSHA coverage.

Exemptions by size of employment establishment are simplistic approaches to the problem of improving the administration of the act. The employees of such workplaces are no less deserving of protection than those working for larger firms.

Can we, in good faith, as a matter of national policy, maintain that the lives of some workers are of less value than those of others? I can cite for this subcommittee numerous examples of the most horrible workplace accidents and illnesses suffered by employees of even the smallest business establishments.

The effect of these incidents upon their families and coworkers is devastating. Depending upon the definition used, small business employers can constitute from 68 to 90 percent of the Nation's employers. We must not deprive the employees of this significant segment of our economy of the protection which Congress has decreed they deserve. serve.

Commonsense regulatory decisions and commitment to making this program work are the most responsive solutions to the problems pointed out by OSHA's critics.

This subcommittee has my commitment to administer OSHA in the manner which Congress intended—focusing on workplace dangers which truly threaten workers' health and safety. I believe we can do this fairly and effectively, making proper use of available resources.

I welcome your ideas and assistance in making OSHA a highly professional agency, respected by those concerned with the work environment. I look forward to working with you in protecting America's working men and women.

Mr. GAYDOS. Thank you very much, Doctor. I am most impressed with this long-awaited statement indicating a new approach to the enforcement of OSHA and the philosophy which many of us were most dedicated to when we passed the legislation in the first instance. We have waited a long time to hear something like this.

I think the committee shares my feeling that this is the most thought-provoking statement I have heard on OSHA and its implications.

Congressman Cornell?

Mr. CORNELL. Thank you, Mr. Chairman.

I certainly agree with you. I praise the doctor's objectives and hope they can be attained.

I am a little apprehensive in that, as you recall, the Appropriations Subcommittee 2 years ago provided instructions in their report to OSHA that before the next budget was submitted they were to present to the subcommittee a plan that would concentrate on the more serious threats to the health and well-being of the workers. I understand they

did; at least from the reports I get, my people have not seen the effects of it. I hope that this will be implemented as you say.

That is just an observation.

I gather from your statement that you do not agree with the exemption of farms, for instance, with fewer than 10 employees, from coverage of the law; is that correct?

Dr. BINGHAM. That is correct.

Mr. CORNELL. How about my district, for example, where every little small town has a feedmill where they might have two or three employees—I have received a lot of complaints from them—you do not believe they ought to be exempted?

Dr. BINGHAM. No, sir, I do not. I believe that all workers, whether they are unionized, working in large establishments, or working in small businesses, have just as much right to be protected as those employees who work for large corporate businesses in the country.

I myself come from a farming community. I went to a rural school; I grew up on a farm. I am very sensitive to the needs and the concerns of the small business person and the farmer. However, there are many hazardous situations on farms and in small businesses, and I think employees exposed to these situations have a right to expect the agency to provide them with safety and health protection.

I would also like to point out that whenever there are restrictions placed on OSHA enforcement activity through appropriations bills, they deny this group of workers everything OSHA can offer. This includes educational services and all the services which we could provide through the Department of Agriculture Extension Service, such as talking about the hazards of working with pesticides. These workers are really denied every protection under the law.

Even though I am very sensitive to the independence of small business people, especially farmers—I speak from experience there—I still think that the workers should not be denied safety and health protection.

Mr. CORNELL. I was also happy to hear what you had to say about providing materials and information on safety and such to employers, especially in view of the fact that just recently I had a request from the safety committee that was established by an industrial firm in my district. My staff people called various Government agencies to get material. I thought there was really a paucity of it available for that purpose. I presume they were also looking for some type of posters and things of that nature to encourage safety; at least they were making an effort in this particular plant. I just felt that there was not enough material for that particular purpose.

I might add that you are probably correct in that, as you state, much of the concern expressed by small business employers is based on fear rather than actual experience. I heard quite a bit of this, so what I did was to send out a request to all of the small businessmen who happened to be on a list in my office, and asked them to give specific instances of where they felt there was harassment or unreasonable regulations on the part of OSHA.

To date, the response is very, very small. I don't know whether I have given them adequate time. I am interested in seeing whether they have actually had experience or it is hearsay on their part.

Thank you, Mr. Chairman.

Dr. BINGHAM. I want to make one more comment about educational materials. The thing that has appalled me and depressed me the most about this agency is the fact that only \$1 million has been programed for education. This means that we are supposed to educate all employers and employees with this relatively small amount of money. I have been around an academic institution, and \$1 million does not go very far there. It certainly won't do much to help us inform employers and employees about the hazards of the workplace. I will attempt to convince the Department of Labor to ask for additional funds in this area. This is one of my first priorities.

Mr. CORNELL. Good luck.

Mr. GAYDOS. Doctor, when you get those funds, will you use them for TV ads, like "OSHA is your friend, not your enemy"?

Dr. BINGHAM. That is one possible use of these funds. However, I feel that a much better way to use these funds would be to produce slide presentations which inform workers of the hazards of the workplace. There is a presentation of this type produced by OCAW which tells workers of the dangers of asbestos. I believe we need presentations of this type for all the major chemical hazards found in the workplace.

Mr. GAYDOS. Since I know we are talking about money—I know you never have enough money—what is your budget?

Dr. BINGHAM. I think it is \$134 million this year. One million of that has been programed for education.

Mr. GAYDOS. We have had evidence before us that there were requests for \$200 million last year. Am I wrong?

Dr. BINGHAM. I will have to defer to someone here.

Mr. KIRK. \$134 million for this year is the correct figure.

Dr. BINGHAM. \$127 million on that order. The agency has never been in the \$200 million bracket.

Mr. GAYDOS. To further illustrate the discussion between you and my colleague, Mr. Cornell, we did have a witness before this committee a few days ago, a farmer's wife in conjunction with the appearance of one of our colleagues. During the presentation of the testimony and discussion, the subject matter of rollover bars for tractors and protective shields for harrowing equipment pulled by a tractor came into play. Again, to illustrate what you are talking about, we have a lot of these small farms now exempted under the amendments to the appropriations act of last year and, I understand the exemption will be continued this year. The individual witness, the housewife, testified that she was against the rollover bar, that simple device; yet she went on—and I say that with all due deference to her and an appreciation of her position—in specific detail to describe what would happen to you if you were jerked or bumped off the tractor and fell off your tractor in front of that equipment. The mechanism being pulled by the tractor would cut you to pieces.

So I share your concern when you are talking about the money that will be used for education. Now because of the exemption, that is not going to be available to the employees or to the family members of the small farming operation; they are not going to be educated. Whether they need it or not is beside the point. The fact remains that they will not have available to them educational material pertinent to a situation such as that.

I would venture to say that that is probably just one example of hundreds, if not thousands, along those lines.

I share your concern and the position you take in your statement of unequivocal opposition to any limitation as far as this act is concerned.

I have given just one example of what mischief and inherent danger can result from this type of thinking, this type of exclusion.

Doctor, I am sure you share my feelings along those lines from the way your statement indicates.

Dr. BINGHAM. Yes, sir; I do. I have had neighbors who, if they had rollover bars on the tractors, would not have been fatally injured. A former member of my family was thrown off a piece of equipment and was injured very severely, having his elbow crushed. There are very serious workplace hazards on the farm. I would hope that farmers would not be excluded from coverage under OSHA.

Mr. GAYDOS. Does it logically follow, therefore, after making that admission, that OSHA regulations would not be confiscatory or monetarily unobtainable? Are you saying we can regulate, educate, and be helpful to the small farmer without detriment to his overall position? Does it logically follow?

Dr. BINGHAM. I think it does. One of the things the Agency must do is realize that farming is a special industry. This fact has not been recognized in the past, but I believe the Agency has learned from its mistakes. The people in farming are very independent, and they have special problems just as the small business person has special problems and needs. I think OSHA must have people who are sensitive to the needs of the industry. I don't believe this has always been the case.

Mr. GAYDOS. My good friend, and opponent at times, Mr. Sarasin.

Mr. SARASIN. Not on this issue, Mr. Chairman. I think we certainly will agree many more times than we will ever disagree.

Mr. GAYDOS. Let the record show that the Chair is relieved.

Mr. SARASIN. I think the emphasis the farm wife the other day placed in the testimony was really that she was very much concerned about the family and she felt that that kind of concern was certainly a lot greater than OSHA could ever do. It was important to her and her family to make sure they knew what they were doing when they got on the tractor.

Frankly, I didn't get the impression she objected to the rollover bar; she was a little bit concerned about the safety belt requirement because she felt if the thing started to tip, the first thing she wanted was off and not to roll over with it.

Let us get into some of the more serious areas of the Occupational Safety and Health Act.

Let me ask if anyone is working on the 4(b)(3) report that was due 3 years ago?

Dr. BINGHAM. When I came to the Agency, I found that it probably would take a lifetime for one human being to come up with the overdue reports. Yes, there are people working on the 4(b)(3) report.

Mr. HYNAN. We have prepared a response to your letter which you have sent us asking about the 4(b)(3) report. The report was due 3 years ago in April 1974. The reason that it was not submitted to Congress at that time, is that, although it was submitted on time by the

Labor Department to OMB, OMB did not in turn submit it to Congress because it had circulated to the agencies and there were objections from the different agencies. The objection was to the Labor Department's interpretation of section 4(b)(1) of the act.

Our interpretation of that section—not to get into it in a prolonged way—is that we interpret the section on a hazard-by-hazard approach.

In other words, if the other agency has a standard under which a hazard can be eliminated, OSHA may not apply to that hazard. According to the other agencies at that time, OSHA's was a very narrow reading of 4(b)(1) and they filed objections. OMB had little choice at that time not to submit the report to Congress until the difference between the agencies could be worked out.

However, since that time, but specifically during the last 12-month period, we have had three U.S. Court of Appeals decisions upholding our interpretation. Therefore, with respect to OMB's holding the report up, I want to say that at the time OMB held it they had very little choice because what you had then was an interpretation of 4(b)(1) by a department, not supported by any court decisions. It was understandable at that time that the other agencies might object to it. That has changed, however, and, as I have said, it has changed in the last 12-month period. We have favorable decisions in the Fifth Circuit Court of Appeals in New Orleans supporting our decision, one in the Fourth Circuit and another in Court of Appeals for the District of Columbia.

Dr. Bingham is new; we have a new administration, and as I said, it has been in the last 12-month period that we have had the favorable court decisions. We are now reexamining the whole problem of 4(b)(1), including all the relationships with the other agencies. We are reviewing past litigation and especially the Court of Appeals' decisions, to see what we can do within the administration to resolve this problem or come up with recommendations to resolve it.

Dr. Bingham testified 2 weeks ago before a special subcommittee on the Outer Continental Shelf chaired by Congressman John Murphy. At that time she pointed out that we would be working within the administration on possible ways to remedy this whole problem.

Now to get back to the specifics of the 4(b)(3) report, I would add that the report is a part of our review of section 4(b)(1) to see what can be done. The original 4(b)(3) report, filed with OMB, is a bit stale by now for submission. As I said, there have been court decisions since it was drafted. It must be updated, in any event.

Mr. SARASIN. I assume at some point we can expect the report. My concern is that there did not appear to be any discretion in the language of the statute. It said "the Secretary shall." I assume at some point the Secretary must.

How long do we wait?

Dr. BINGHAM. You are quite right, the statute does say we must submit the report. We will take another look at the report and make every effort to send it to the Congress as soon as possible. It is 3 years late; it is certainly overdue.

Mr. SARASIN. It is overdue; you are right.

Emergency temporary regulations on benzene, Doctor, what is the status of that at this point, and has it not been contested in court?

Dr. BINGHAM. Yes; it has been contested. There are some legal ques-

tions concerning jurisdiction. I think there is currently a stay of the standard which will be in effect until the 6th of June, pending the Department's presenting legal comment.

Do you want to comment on it further?

Mr. HYNAN. Yes; and Mr. Cottine may want to add to what I know on this.

The effective date of the emergency temporary standard was May 21. Prior to that time a union organization had filed with the U.S. Court of Appeals in the District of Columbia, a petition for a review of that standard, but not for a stay.

Subsequent to that, a review petition was filed with the Fifth Circuit Court of Appeals in New Orleans by the American Petroleum Institute, again for review and not for a stay. However, last Friday, the API filed a petition for stay in the fifth circuit. The stay was granted by the fifth circuit.

Let me back up again. Prior to Friday, we had filed with the fifth circuit a motion to transfer the case to the U.S. Court of Appeals in the District of Columbia where we already had a pending suit involving the union petition. Before the fifth circuit granted the motion to transfer the case to the circuit court in Washington, it granted the temporary restraining order (TRO), postponing the effective date of the standard until June 6. The court has also required the Department of Labor to have its brief before the fifth circuit on May 27.

The action of the fifth circuit court came as somewhat of a surprise to the Labor Department since the court granted a TRO when there was a motion to transfer pending in that court. We are now in communication with the court to see what can be done about this. We hope that the transfer motion will be successful.

Mr. SARASIN. What do you think about this kind of standards setting? Is there a better way?

Dr. BINGHAM. You mean other than an emergency temporary standard.

Mr. SARASIN. Yes.

Dr. BINGHAM. There is a better way and that would have been to have a standard already in place. However, with the data that were made available to us, I felt that we had no choice except to take steps to protect workers immediately. Whenever there is a 10 to 1 increased risk of developing leukemia in a workplace where employees are exposed to benzene, I think that is a grave situation and should not be allowed to continue for the 6 to 9 months or whatever it takes to get a final standard out.

The Congress in its wisdom gave us the right to use emergency standards and I think that we are attempting to do so to protect workers. In any case, we will be publishing the proposed final standard for benzene in the Federal Register, hopefully, this week. We are not waiting around. I am committed to moving as rapidly as possible.

People have been working late at the Agency to get a final standard out in the shortest possible time. I think in situations such as benzene, the Congress decreed that we should use an emergency temporary standard and we are following orders.

Mr. SARASIN. What has your experience been with the outside consultation services provided by the States? How effective do you think they are, and are the employers using them?

Dr. BINGHAM. I have some figures here about onsite consultation. In the States where there are OSHA State plans, there were about 50,000 requests for consultation over the past 3 years. Now that is a respectable number. But through contracts in those States where there are no State plans there have been about 15,000 requests over the last year and a half. If you add those up, it becomes a significant number.

There has been some effort in the Department to go to other types of consultation. One experimental program conducted through the American Association of Community and Junior Colleges was considered to be fairly successful.

Additionally, there is a contract through the American Industrial Hygiene Association which subcontracted to a number of universities. I happen to have previously been in a university that had one of these contracts and I must say that I think that this is a useful way to conduct consultation. It removes the consultation two steps from the Federal Government. It puts the situation on a more local level.

Under this program there were lectures and walk-through surveys conducted. There was a questionnaire given out after some of these sessions, and it was interesting to note that some of the small business people said that they appreciated the program would have paid for the service, had it cost them money.

Mr. SARASIN. In that contract arrangement are you talking solely of the situation where a course in occupational safety and health is offered for a 2, 3-day period of lectures?

Dr. BINGHAM. No. Sometimes these lectures are given at night. Sometimes they are given in 1 day.

In addition to these classes, the industrial hygienists in both the AACJC program and the AIHA program made walk-through inspections.

Mr. SARASIN. Are the students involved in this program at all?

Dr. BINGHAM. Sometimes the industrial hygiene master's degree students are involved, or at least they were in our university. However, the program was always under the supervision of a qualified registered industrial hygienist.

Mr. SARASIN. I received a request from a community college, I think in my area, asking whether it might not be possible on a work study arrangement to offer services to the private sector.

I referred it to the Labor Department. Frankly, I don't recall whether I have gotten a response or not.

Dr. BINGHAM. I am sure you haven't.

Mr. GAYDOS. When did you send it? Last year?

Mr. SARASIN. It seemed like an interesting possibility if you had students who were being taught in that area to give them the experience to go out and also provide the services for industry.

Where did the 90-10 split suggestion come from?

Dr. BINGHAM. Maybe I can have somebody else answer how we arrived at that number.

Mr. KIRK. We did a staff study of what level would be most appropriate in terms of balancing the program in terms of attracting States that don't now have consultation and not discouraging State plans at the same time.

As you may recall, there are 20 jurisdictions, 18 States and 2 jurisdictions, that do not now provide federally sponsored onsite consultation.

Six of those State jurisdictions provide their own State programs in consultation. What we tried to do is offer State participation with a substantially increased Federal share.

Based on our analysis of all the State programs we believe that 90-10 is the split that will attract the most States to the program. We do not believe that all States will be attracted at 100 percent nor do we believe all States will be attracted at 90-10, but we think that the most number will be attracted at 90-10.

Mr. SARASIN. I assume that you certainly find great value in the concept of onsite consultation.

Mr. KIRK. The agency feels that consultation services are valuable.

Dr. BINGHAM. I think that the way of approaching consultation through the local community has many advantages in attempting to convince small employers, especially, that there is no collusion between consultative information and enforcement activity. That, of course, is always a concern. I think by and large the small business community does trust its peers more than the Federal Government.

I think it is also fair to say that the States have a good amount of expertise in providing consultative services. States such as New York have been doing this sort of thing for 25 or 30 years and they have developed quite an effective program.

I think this activity at the State level should continue and should be encouraged.

I should also point out that I believe that the Agency was directed to provide more funds for the State consultative services by the Appropriations Committee.

Mr. SARASIN. As I know you are aware, I have legislation in to provide for onsite consultation on the Federal level to be set up within your Agency. I would like to see something accomplished in this area.

If the 90-10 split is the best route to go, I agree with the attitude that there is a great deal more faith in the States operating it or at least there is a better feeling.

If the State runs it you won't have that conflict of the individual coming in to provide the consultative services and also citing them.

Dr. BINGHAM. There is something to be said for separating the Federal Government personnel from onsite consultative service. This is a very sensitive area for small business people. We must encourage them to come in and seek advice, and a program to accomplish this must be developed very carefully.

Mr. SARASIN. When we talk about small business, are you using any specific definition?

Dr. BINGHAM. I haven't really come up with a number. Although there are occasional requests for educational or consultative services from larger businesses, this is not typically the case. It is the smaller business person, with 20 to 25 employees, for example, who requests general walk-around inspections and asks "What problems do I have?"

Mr. SARASIN. When we talk about the possibility of providing consultative services or loans to small business at some point aren't we going to have to define the small business that qualifies?

Mr. KIRK. In terms of loans the Small Business Administration administers the loan program and they do have a set of definitions for what constitutes a small business.

Mr. SARASIN. My point is, are you using that definition in your use of the term "small business" and the kind of services—

Mr. KIRK. Their definition is much broader. It includes firms up to 1,000 employees. It depends on the kind of industry. When we are talking about smaller businesses we generally talk about 25 or fewer employees.

From an occupational health and safety point of view the firms we would like to be talking about are those who don't have health and safety personnel on board to assist company management in carrying out a program.

Those are the kinds of firms we think we can help most in providing information and informing them about hazards.

Mr. SARASIN. You point out the possibility of loans that are presently in the statutes, but would you consider recommending the possibility of a faster writeoff for abatement equipment?

Dr. BINGHAM. I would like to go back and say that I would prefer that we have some flexibility in the use of consultative services by the smaller and larger firms.

I would hate to see the "larger" firm excluded from at least some of the consultative activity, especially educational programs.

Now whether or not I would favor some other mechanism besides loans, I think that we should explore all possibilities so that employers can obtain financial relief from the costs of compliance with OSHA standards.

I think it is an obligation. Although there are many things that I think the Federal Government should not meddle in, I think the Federal Government does have an obligation for helping to provide safe and healthful workplaces.

I have asked in the Department of Labor to explore some alternative methods for tax relief. An issue paper will be developed shortly to provide us with some input as to what some of these methods may be. I don't know whether this will require legislation or not, but I will be glad to share this paper with you when it is developed.

Mr. SARASIN. Obviously this committee has no tax jurisdiction but it would seem that one of the possibilities that you might look at would be to allow the business to write-off whatever safety equipment, what compliance costs are necessary over a shorter period than is presently allowed them.

Mr. COTTINE. I think that is correct. We have to look at it as an investment choice. There are a lot of different investment activities that could be a part of an overall program as an incentive to abating hazards.

I think that is what Mr. Kirk's office is going to be looking at. The tax incentive is one alternative. There are a number of others.

Mr. SARASIN. One of the criticisms of the program is the record-keeping requirement, not only this program but every Federal program. Is something being done in this area to try to relieve the burden?

Mr. HYNAN. Yes, sir, we are currently doing something on this. For a number of years we have had a regulation exempting employers with seven or fewer employees from keeping basic OSHA records, that is the log, the supplementary report, and annual summary. There are two exceptions to that.

In the BLS survey, if a small employer with seven or fewer employees is chosen specifically by letter a year in advance that he is to participate in the following year's survey, that small employer must keep the records for that 1 year of the survey.

The second exception to the regulation is that the small employer, even though exempted from keeping the record, must report fatalities or multiple hospitalization incidents.

Now what are we presently doing? We have a pending proposal to raise that number to 10; that is, to exempt employers with 10 or fewer. There is a variety of reasons why we chose the number of 10 but the essential reason is that for 2 consecutive years the Department's appropriation bills included a provision, in effect, exempting employers with 10 or fewer employees from the recordkeeping provisions of 29 CFR part 1904.

We have adopted that figure of 10 and incorporated it in our proposal. It is now under consideration for possible final publication.

Mr. KIRK. Let me add one other point to that if I may.

While we exempt smaller businesses from these recordkeeping requirements, OSHA's requirements are very similar to most workers compensation carrier requirements, using the same or similar form at employers option.

Our major two or three reports are not substantially different from what employers have to keep for workers compensation.

Mr. SARASIN. I think it is always the problem of what you mean by "substantially different." The difference in the forms can sometimes drive people nuts. They are putting information together for one group and they have to put it together for another group.

That, in itself, is time consuming. You do point out in your statement, Madam Secretary, that you are providing an OSHA handbook for small businesses. I sincerely hope you have much better luck with that handbook than you did with the one for farmers.

Dr. BINGHAM. I hope so, too. I believe it was more sensitively prepared.

Mr. GAYDOS. We will come back to Mr. Sarasin after Mr. LeFante has had an opportunity to ask questions.

Mr. LEFANTE. Thank you, Mr. Chairman.

I think the doctor has covered most of the questions I have.

I would like to ask something for my own clarification. You say in your statement that there are presently 1,400 compliance officers, that it is your intention through a 90-10 program to make consultants available through the States.

What is the difference between a compliance officer and a consultant and in particular I refer to, say, the effect on enforcement? We have regulations and controls as they are written. I have heard from some industries in my district that have had inspections by OSHA agents that they have been treated differently. Yet it is the same industry.

Dr. BINGHAM. Perhaps the criticisms in your district were true. I really cannot say. However, I can tell you that in our State plans we require the States to be at least as effective as the Federal program. We now require cross-training and we also require that consultants learn the same rules and the same program directives used by Federal compliance personnel. We are attempting to achieve uniform inspection policies.

Additionally, we are attempting to fill our field coordinator position. This individual will be responsible for providing a uniform inspection policy. Hopefully his efforts will reduce the criticisms that an arm or leg may be worth more in New York than in California.

I feel very strongly about this. I think that what we have agreed to do and how we handle policy should be consistent nationwide. We will be looking into this.

Now with respect to the comment about consultation and compliance officers, perhaps John will make a statement.

Mr. HYNAN. In our proposed regulations providing for the 90-10 funding, for the first time we included—this goes to the first part of your question—detailed qualifications for consultants.

As far as qualifications go we are raising them to establish a certain level of college education and comparable experience. Our expectation in terms of education and experience is high for both the compliance officer and the consultant.

The new proposed regulations continue the old regulation with respect to the independence that the State must maintain between enforcement officers and consultants. They cannot mix the two staffs or their activities. This separation is very carefully delineated in the proposal.

The reports that the consultants make will not be made available to the compliance officers. There are many new provisions, too many to discuss here today. I will submit a copy to the committee.

Mr. LE FANTE. But they will be uniform?

Mr. HYNAN. Yes. They will be uniform for the States.

Mr. LE FANTE. Right now it does not exist, am I correct?

Mr. HYNAN. As to the detailed qualifications, no, you are right. They do not exist. That is why we have added that the qualifications of the consultants but additionally made them uniform as to all the States.

Mr. CORNELL. Will the gentleman yield?

Mr. LE FANTE. Yes.

Mr. CORNELL. What is the nature of the training that your compliance officers receive? You talk about qualifications. Don't they receive specific training after they are hired?

Mr. HYNAN. Yes, they do.

Mr. KIRK. We have a training institute in Rosemont, Ill., for our compliance officers. They do go through a variety of courses depending on their particular and individual needs. We attempt to personalize the course work for them and in particular in the last year or so we have set up a very detailed 2½- to 3-year program for health compliance officers and industrial hygienists to help them be better able to recognize hazards in the workplace.

Part of this has been an agency response to the difficulty in hiring people with the correct and necessary expertise in the health area where we foresee a large increase in need for qualified people.

So, we have had to respond ourselves in terms of developing appropriate training mechanisms.

Mr. CORNELL. Are they given a specific type of training for a specific industry?

Mr. KIRK. Yes; they are. They are also trained how to recognize particular types of hazards. For example, in the benzene standards case we

give specific training in how to do the sampling, what the requirements are for collecting it, and what they should be looking for when they go onsite enforcing a particular standard.

So we do focus in on the key matters on the standard.

Dr. BINGHAM. I think that Dr. Corn recognized the disparity among the qualifications of compliance officers and did a great deal toward correcting this.

I am very much in favor of the efforts that Dr. Corn made. I believe that the only kind of compliance person we should have is a well-trained one, one who can go in and recognize hazards and when necessary, collect the data that will support the recognition of this hazard. We want well-trained compliance officers so that it makes no difference whether they are making an inspection in New York or in Texas.

This goal will not be easy to attain. In different areas of the country, individuals with a variety of training have been hired. We are trying to bring them all up to the same level.

Mr. CORNELL. Thank you.

Mr. LE FANTE. Doctor, to your knowledge are there any courses available presently from private institutions or colleges that would accredit a student who desired to go into this field?

Dr. BINGHAM. Yes.

Mr. LE FANTE. There are?

Dr. BINGHAM. Yes.

Mr. LEFANTE. Does the Department take advantage of them?

Dr. BINGHAM. Absolutely. As a matter of fact, after this hearing we will be recruiting individuals who will soon receive master's degrees in industrial hygiene. They will come from Harvard and from the Universities of Cincinnati, Pittsburgh, California, and Washington.

Mr. LE FANTE. No Rutgers?

Dr. BINGHAM. Recruiting is what part of my professional life was spent doing, and it may take some unorthodox methods to get more qualified people in OSHA. I am thinking about getting a T-shirt with a sign on it walking up and down college campuses recruiting. Yes; there are many places where these people are trained. The problem is that there are not enough being trained.

Second, we have a great deal of competition from industry when it comes to hiring these people. Perhaps this competitive atmosphere may be an indication that some industries are getting serious about recognizing occupational hazards themselves.

So it is not all bad when an industry competes successfully with you for a person.

Mr. CORNELL. Will the gentleman yield again?

Mr. LEFANTE. I will be happy to.

Mr. CORNELL. When you talk about qualifications are you looking for people who have the learning or are you looking for people who are intelligent?

Dr. BINGHAM. We want both, but we especially want people who have good judgment.

I think that in terms of health inspections they must have the science background; they must understand what the health hazards are. It is not always easy to recognize where hazards may occur in the workplace.

In addition to that, we like to have people who are highly motivated but who have judgment. We are not always successful, but we are training our compliance officers to be more sensitive.

I think it is very important to make compliance officers aware of the background of the individuals that they are dealing with. They must be polite and sensitive to their worries and fears about OSHA inspections because when OSHA compliance officers come into the plant they display the credentials of the Federal Government. I think that carries with it a great responsibility for acting responsibly.

When Secretary of Labor Marshall accompanied an OSHA compliance officer on an actual inspection, he commented favorably on the technical expertise of the compliance officer. The compliance officer, for instance, recognized a hazard in which fumes were being given off during a plating bath operation. The compliance officer made a suggestion so that the plant could correct this. It was his experience with the plant process involved that made this compliance officer understand that there could be a health hazard from the fumes from this plating bath.

So, while we require sophisticated technical expertise in our personnel we are also looking for judgment and intelligence.

You might be interested to know that most of the people who apply for vacancies in masters' degree programs for industrial hygiene are among the top of their undergraduate classes. They frequently are in the 90 percentile in terms of their verbal and quantitative abilities.

Mr. CORNELL. The thing that bothers me is that after 30 years of college teaching I have a quite different conception of a learned person and an intelligent person. I hope that the people you employ are not just learned but are intelligent.

Dr. BINGHAM. I have also had a number of years of experience, and I have come to the same conclusion.

Mr. LEFANTE. I have no further questions other than to say, Mr. Chairman, I want to thank Dr. Bingham personally for a very intelligent statement. I think we are on the right track. There is no doubt in my mind that the job will be done and done properly with Dr. Bingham's attention.

Mr. CORNFELL. Are you acquainted with these crossroad feed mills that I referred to, Doctor?

Dr. BINGHAM. Yes, sir. I have never inspected one but I have been in a couple.

Mr. CORNELL. I have so many complaints about it. That is why I wanted to get back to that. Apparently the inspectors concentrate on two things. One is the dust. From my personal experience I don't know how you are going to eliminate that in a feed mill. It is usually a two-man operation or something of that nature. The joint owners probably operate the thing.

They have also complained about the regulations in regard to the electrical equipment, the motors. They feel that the regulations being forced upon them are just unreasonable. They can't continue in business.

Now, I would like to go back to them and tell them what they can anticipate.

I summarize it this way so far as the policy you have enunciated today, that no industries or workplaces will be exempted from inspection.

tion except as actually provided for by law. However, the inspection rate will decrease in small business establishments that are in less dangerous industry.

About all I can guarantee them is that there is less chance that they will be inspected, is that about it?

Dr. BINGHAM. I think that is probably true. I will be looking into this. This particular problem has been brought to my attention by another person from Wisconsin. The agency is studying the issue, and I will be glad to respond to you personally on what the situation is as soon as I am able.

Mr. CORNELL. I think that other person from Wisconsin probably has his qualms of conscience. He was asked by OSHA what should be inspected. I think he meant primarily grain elevators and operations of that nature.

For a while there was a great concentration rather on these little feed mills. I trust you will investigate that.

Thank you.

Mr. GAYDOS. Thank you, Mr. Cornell.

Mr. Cottine, Mr. Kirk, you are the old administration or the new?

Mr. HYNAN. You put me on the spot. The new.

Mr. COTTINE. I am new.

Mr. GAYDOS. I am serious when I make that inquiry. Were you with the Department before?

Mr. HYNAN. I started with the Department in the early 1960's.

Mr. GAYDOS. How about with OSHA?

Mr. HYNAN. I have been in the Solicitor's Office working on OSHA matters since the act's very beginning. I worked on it, in fact even 3 years prior to its enactment in the legislative division of the Solicitor's Office, working with the committees.

Mr. GAYDOS. I am going to address several of these questions to you, not because of disrespect to the good doctor, but because you have been at OSHA for so long. I think you have been before the committee before? Were you ever a backup witness in the past on the committee appearance?

Mr. HYNAN. Not before this committee.

Mr. GAYDOS. We have heard from the administration before that they had budgetary problems. Having worked within the agency is there substance to that observation in your opinion?

Mr. HYNAN. That OSHA had budgetary problems?

Mr. GAYDOS. Not enough money.

Mr. HYNAN. Yes; I understand your question.

Mr. GAYDOS. You are saying yes.

Mr. HYNAN. No; I have not answered fully yet.

In the early days of OSHA, starting out with a small organization, there was a willingness on the part of Congress to fund it generously, but the organization was only in its early stages of formulation and could not effectively digest or use large amounts of money. So the response of the administration at that time, was that they didn't want that much money because they could not absorb it.

In one sense it is easy to say, "No, we don't have enough money," because in a sense you always need more money. Because OSHA coverage is so broad, covering every employer in the United States and 5 million working establishments, that when you divide a budget amount

by the number of employees, the number of employers, number of establishments, would one ever say there is enough money? It has been, generally, recognized by Appropriation Committees and OMB that the situation is never going to be fully ideal in terms of money.

Mr. GAYDOS. If I made the observation that I would be supporting a doubling of the compliance officers or inspectors from 1,400 to 2,800, would I be unrealistic? Am I puffing smoke or do you think that will ever occur?

Mr. HYNAN. If I answered that, it would just be a personal observation.

Mr. GAYDOS. A personal observation. I want to get a feeling from the old administration.

I think you were exposed to what was going on down there. It might seem humorous to some people but I feel sincere in asking the question. I hope you can respond.

Mr. HYNAN. Yes, sir, Mr. Chairman, I will.

We presently have great difficulty in recruiting qualified industrial hygienists.

Mr. GAYDOS. We are talking about specialists when you mention industrial hygienists; is that right? I am talking about compliance officers generally.

Mr. HYNAN. My answer is if we doubled the whole compliance force, we still would not be able to get those inspectors that we are desperately in need of; I mean the industrial hygienists. They are not there.

The answer to your question, "could we double it?" This could be done but its practical realities prevent us from including in these ranks with industrial hygienists. I don't know whether that will be advisable to double the total force but include an inadequate number of qualified industrial hygienists.

Mr. GAYDOS. You talk about 5 million workplaces. Is that an accurate figure?

Mr. HYNAN. Yes, sir, it is.

Mr. GAYDOS. We are talking about 1,400 people of varied backgrounds that are supposed to enforce this act in its present form.

Mr. HYNAN. That is right.

Mr. GAYDOS. Forget about overdue reports and all that. Forget about that. I am asking you now whether under these circumstances, considering workplace conditions, the number of workers in those workplaces, and the number of compliance personnel presently in place at OSHA, do you think ratio of workplaces to inspectors is reasonable?

Mr. HYNAN. If you doubled the number, by sheer arithmetic I think in a sense it would clearly approach being more adequate. To inspect every workplace, however, you will find you still have a gap in the number of inspections over years-period, even if you doubled it. Even if you tripled the compliance force it would not be how many inspections could ideally be made. But, ideally, to double the force would clearly improve it over what we have today.

Mr. GAYDOS. Am I to deduce from what you are saying that you don't attribute importance to the figure of 1,400 one way or another? You do not attribute too much importance to it?

Mr. HYNAN. I do attribute an importance to it. Increasing the number is always an improvement but I do think it could be argued that a

less than double figure is a sufficient number to create the spreading effect of occupational safety and health.

Mr. GAYDOS. Let me conclude by just making an observation and asking one final question.

Projecting to 1985, how many people do you think we are going to have in that particular field, hygienists, inspectors? Put them all in the same old bag. How many do you think you are going to need by 1985 or 1980?

Mr. HYNAN. I will accept yours; the double figure. That seems a reasonable forecast.

Mr. CORNELL. Would the gentleman yield?

Mr. GAYDOS. Sure.

Mr. CORNELL. What part of the present budget of OSHA—I think you mentioned \$130 million.

Mr. HYNAN. \$134 million.

Mr. CORNELL. What part of that budget goes for salaries for compliance officers?

Mr. KIRK. I don't have the figure at my fingertips. I will be glad to supply it for the record. I can give you an approximate number. In the Federal inspection effort I think 60 percent goes for compliance officers' salaries: \$35 million goes to State programs. That leaves about \$100 million. Sixty percent of that \$100 million goes for compliance officers.

Mr. CORNELL. That would include all those who are out in the field?

Mr. KIRK. Yes. That is a rough figure though and I want to correct it for the record.

Mr. CORNELL. I gather that you feel because of competition for personnel from industries, for example, that that budget is inadequate.

Mr. KIRK. If I may, let me add a few words to what John has had to say about personnel. The figure of 1,400 refers to Federal officers. There are another approximate 1,800 compliance officers that we split 50-50 in terms of cost with the States.

Mr. GAYDOS. How many?

Mr. KIRK. About 1,800 in the States. I don't think that the number of 1,400 is adequate for the responsibilities that the agency faces, especially in the industrial hygienist area.

While the problem is one of attracting suitable personnel there are not that many graduates of colleges or in fact people in the field who have the kind of experience required by OSHA that come out each year. Maybe around 2,000 or so are available in the total pool.

With the financial inducement that the Federal service can offer in this particular area we are really in a very difficult position in terms of recruiting the best of these people to the Federal service.

It is a long and arduous task. It was for the past administration also. I am from the old administration, also. I can say we embarked on a program of trying to recruit people aggressively and have not been particularly successful.

Mr. CORNELL. Has OSHA made grants to educational institutions for training of people?

Mr. KIRK. We are not permitted to do that.

Dr. BINGHAM. Can I answer that?

Mr. GAYDOS. Certainly.

Dr. BINGHAM. Thank you.

The making of grants to educational institutions to provide moneys for formal course work is something that NIOSH, the National Institution for Occupational Safety and Health, has done. As a matter of fact, they have recently been authorized to establish occupational health training centers that will train physicians, nurses, industrial hygienists, and safety specialists. There will be anywhere from 10 to 15 of these centers established this fiscal year.

It seems to me that, and I know you did not ask me to answer it, but we do not have enough industrial hygienists on board. I have visited our field offices and the results of this shortage have been tragic. We need to be inspecting places where there are serious chemical hazards, carcinogens, chemicals that cause irreversible diseases. Yet we are hampered in our efforts by a shortage of qualified personnel.

It takes quite a specialized inspection team to go out there. So, what we are really saying is that out of those 1,400 we only have about 350 who are industrial hygienists trained to recognize chemical hazards. We are desperately understaffed in this area.

If the recruiting and hiring continues at the current level, by September we will have filled all the positions that we are authorized to fill.

Mr. GAYDOS. Doctor, will you be able to fill those slots? A couple of years ago, I am sure the gentleman sitting to your right will understand, we authorized 200 or 300 additional slots and they never were filled.

Dr. BINGHAM. We will have filled everything that has been authorized by September of this year at our current hiring rate. OMB allows us to fill only a certain percentage of our authorized positions, and we will have reached our authorized ceiling by September.

Mr. SARASIN. Are you able, Dr. Bingham, to compete with the hiring in the private sector? Can you offer enough money? What problems do you have out there trying to hire away industrial hygienists compared to business?

Dr. BINGHAM. What happens is the following.

For a person just coming out of school we may be able to offer something that is attractive. These recent graduates are highly motivated, and are eager to get out into the real world, so they come to work for the agency. They put in 2 years, and become quite experienced. Then private industry comes along and offers them a much, much higher salary. Naturally many of our personnel accept these offers.

So, even though we are able to attract individuals just out of school we do have difficulty keeping these individuals.

We also hire a number of individuals who have spent 20 or 25 years working for the private sector. Sometimes these retired individuals will come to work for the agency.

Mr. KIRK. If I can add a point here on a preliminary survey we did last year.

It appears that we can offer within about \$1,500 to \$2,000 of the range of a beginning industrial hygienist. That is, the private sector offers up to \$2,000 more than we are able to offer to a beginning industrial hygienist. Depending on the individual and the market in a particular area we may or may not be competitive.

After the industrial hygienist has 3 to 5 years' experience, the private sector offers from \$5,000 to \$8,000 more a year than we are able to offer.

This creates a substantial problem for us. While it upgrades the industrial hygiene profession overall, in terms of our carrying out our specific responsibilities it puts us at a severe disadvantage.

Mr. COTTINE. There are two aspects to that.

First, we lose the cumulative experience of those industrial hygienists as they go to the private sector. That is a loss in terms of manpower. It is a loss in another sense. During the first few years the Government makes a tremendous investment in training these same industrial hygienists.

With their practical experience, this training makes them competent compliance officers. So we are losing doubly on this if we can't compete with the private sector.

Mr. GAYDOS. Let me make an observation.

I think I am accurate and I wonder if you agree with me. That is, that we didn't have too much of a need as indicated by the curriculums in the various colleges and the hiring practices in Government for these types of people because we didn't have OSHA.

Consequently, nobody was too interested. Now, we have OSHA and now we have a little competition.

Let me ask you a practical question. What can we in Congress do to help you? Do you think we ought to go into some area of grants, specific grants, as we do in other areas? Do you want special legislation? What do you think we ought to do to help you have your fair complement of these specially trained industrial hygienists?

I think there has to be a reasonable limitation as to what the private sector is going to absorb, no question about it.

Second, we are here to help you. We might be a little critical at times in asking a lot of questions which may not appear on the surface to be pertinent or fair but we want to help you.

What suggestion do you have as to what we could do in this area?

Mr. HYNAN. I just want to say that is a very generous offer.

Mr. GAYDOS. I don't know if I can deliver on it but we sure can try.

Mr. HYNAN. In view of that generous offer we will give it a lot of thought and respond to that.

Dr. BINGHAM. One thing that is necessary is to, perhaps provide through the National Institute for Occupational Safety and Health, adequate funding for centers to train industrial hygienists.

The laboratory that is required to train an industrial hygienist is quite sophisticated and does require a large investment.

Universities by and large are in dire financial straits now and are not willing to put out that investment. So, I would say if the Congress were to support the National Institute for Occupational Safety and Health, it would be helpful.

In addition to this, if we could be allowed some increased flexibility in terms of the salaries that we could offer these highly specialized individuals, it would also be very helpful.

Mr. GAYDOS. How about some specialized institutions such as we have under the MESA operation?

Dr. BINGHAM. We do have a training institute at Rosemont. It certainly is not of the same magnitude as what was developed under

MESA. I have taught at the MESA institute at Beckley, W. Va. and it is quite impressive.

I would like to see us be able to have individuals attend such a training institute and literally become immersed in the subject.

We are operating our training institute in Chicago under very adverse circumstances. It may also be worthwhile to place these training institutes not just at one particular spot but in more than one area within the United States so that the compliance officer in training would not be taken away from his job for lengthy periods of time. We have had some problem with that.

Mr. GAYDOS. Doctor, you have scheduling problems. What time do you have to leave here?

Dr. BINGHAM. About 11 o'clock.

Mr. GAYDOS. Now I am going to ask you some questions.

I understand the situation. I apologize if I have directed some questions to some of your associates there when maybe it might have been somewhat improper for me to do so but it was on a particular point concerning earlier times within your organization. I apologize for any disturbance there.

What is your feeling as far as consultative services are concerned? This issue may be raised in the form of an amendment to the existing act. I know we have an IRS consultative service where persons can call up and ask for some advice or help involving a tax problem.

I am getting a misconception of what consultative services are supposed to be and how they are to be constituted.

It seems to me that the impression floating around is that a consultant is called to a place of business, particularly a small business, and when he comes in he is supposed to discover every violation which may exist. Then after he has made his survey, that place is supposed to be secure as far as health and safety hazards are concerned. That is what they are assuming.

Do I have a misconception as to what a consultant is supposed to do? What service does he really render to the person who calls? What kind of immunity does the businessman have? How much time should be devoted to the inspection and what can an honest, conscientious small businessman expect as a result of his inspection?

Ms. BINGHAM. I don't believe that a Department of Labor should ever be placed in a position of providing immunity to an employer simply because the employer complied with a consultant's recommendations.

One of the things that can happen is the following:

You could go in and say, "Well, I think you ought to have a hood placed in here and if you have this hood placed you will probably not have"——

Mr. GAYDOS. Let me interrupt you there, Doctor.

What if the employer does not ask about the hood. My concept again of consulting services is to respond to a question. If the individual owner does not make an inquiry about a hood, is it within your concept of consultative services that the consultant being there walks through, sees a deficient hood, and suggests that the businessman should replace it?

Ms. BINGHAM. This is the point. Even if the consultant fails to recognize a hazard, the employer must still be held responsible for providing safe working conditions.

An example of what I am thinking of is if a consultant conducts a walk-through of a worksite and says, "You don't have a guard on that machine, you need so and so or you are working with lead over here, and you should have a hood." I fear that the employer will say, "Well, I have done these things. I put the guard on the machine or I installed the hood. Therefore, I have abated."

In fact the guard may not have been installed properly or the hood may not work adequately. So, in this case, the employees are still exposed to hazardous situations, even though the employer followed the consultant's recommendations.

It is very difficult to supply consultative services and then guarantee that following the consultant's advice will result in abatement of a hazardous condition.

Now, there is the thought that you have told the employer, "Well, you have a lead problem and you need to investigate and use this type of hood, it has worked in other places."

This situation is similar to calling the IRS for an opinion on the legality of a certain tax deduction. Even if the IRS tells the taxpayer that the deduction is allowable, there is still no guarantee that the deduction will stand up to an audit.

The most important issue is to provide the employer with information regarding the hazards to which his employees are exposed.

Mr. GAYDOS. Doctor, what bothers me about consultative services, is that they are subject to different interpretations; they change.

The consultant becomes almost an inspector. That is the problem. That is not the intended duty of a consultant. He is there to explain, to respond to a particular inquiry. That would be my concept, my impression of what we mean by consultant. The inspection-type of consultation would be so miniscule, as compared statistically with the number of workplaces, versus the number you have that are prepared to render such services, that you would never get it done.

It seems to me if a little business called "A" calls and says, "I would like to have an onsite consultant" and that man comes and makes his presence available to that little small business "A," we have some problems involved. How long does he stay? What if we have a very talkative Mr. "A" and he will keep him there for a whole week? What is the consultant supposed to do? A consultant cannot be that Solomon-wise and know everything about everything. That is impossible.

I think we are getting off on the wrong track on this consultant business. I think it deserves at least a reanalysis and reconsideration as to what you are trying to do in providing the service, what it should consist of, and what protection, if any, results from the consultation—things along those lines.

On top of that look at the type of psychology that may permeate the whole 50 States and territories if this service becomes available everywhere.

You are going to have so many callups for consultants that the consultants are not going to render any useful service by the time they are all done.

Mr. SARASIN. Would you gentleman yield?

Mr. GAYDOS. Yes.

Mr. SARASIN. The thing that concerns me about the statement of the chairman is that you seem to be overlooking the goal of the Occupa-

tional Safety and Health Act which is safety and health in the workplace and through whatever method we utilize, whether it is the enforcement officer who goes out and lays a lot of citations down or the individual who willingly goes out and asks for help in trying to make that workplace safe, I think the goal is the same and we should use every method we can.

Obviously we are not going to be able to inspect every place in the country.

Mr. GAYDOS. Nor are we able to consult with every workplace in the country. I think there should be a distinction drawn as to what to expect from a consultant as distinguished from a compliance officer.

When a businessman asks for a consultant, he might be told they are all busy, but that a compliance officer can do the same thing.

Those are some practical things. Maybe I am all wet, maybe I don't understand what is involved and what we are trying to achieve with the act.

I don't know. That is a matter of opinion of the people involved in the situation.

I would direct your attention to that area. If we can help you again I offer you the services of the committee if you think there is a problem in that area.

Dr. BINGHAM. We will be reviewing what we have done and evaluating the program. We will provide the committee with what I hope will be useful information and recommendations in this area.

I think I have articulated my concerns as we have gone along. Of course the definition of what a good consultant is becomes one of those.

Mr. GAYDOS. Doctor, since we are talking about review, do you have under review some of the standards? I understand 25 percent of the standards are being reviewed.

Can you give the committee some suggested date as to when we may get a report along those lines so Mr. Sarasin won't complain.

I asked if he complained last year about that but he didn't respond.

Mr. SARASIN. I reminded him Chairman Daniels used to do the complaining on that score last year.

Dr. BINGHAM. What I have tried to do since I have been in the agency is to pay more attention to safety standards.

I would like to go through all the national consensus standards, and a large body of them are in the safety area, and drop those that are irrelevant. We are now in the process of revising many of these standards. We expect to have a proposal on these revisions later this summer.

We have had consultants on this subject and I expect a report from them later this month. I want to develop an overall strategy for how we are going to handle safety standards, what we are going to update.

There are also some areas where we desperately need new safety standards. A prime example, suggested by our compliance officers, is a standard to cover employees who must enter confined spaces such as sewers. There have been a number of cases in which an employee entered a sewer by himself and was overcome by fumes and died.

There are other areas where we have had requests for standards. When I receive the consultant's report, I can share it with you and

provide you with information about the implementation of the report's suggestions.

Mr. GAYDOS. Can I be a little selfish and ask you what is the present status as far as the revised standards concerning coke oven emissions. We have had some changes recently. They are published. Do we have any others? The reason why I ask is that it concerns my district. We have the biggest coke producing plant in the world at Clairton. The good doctor is familiar with Clairton and all its problems.

We have had some standards, coke oven emission standards. What is the present status of those proposals?

Mr. HYNAN. The coke oven emission standard is a final standard.

Mr. GAYDOS. For that whole suggested group? Were any appeals taken?

Mr. HYNAN. Yes; there was a petition for review in the third circuit and request for a stay and the stay was denied by the third circuit.

Mr. GAYDOS. Then what happened? Has there been appeal from that?

Mr. HYNAN. No; there has been no appeal from the denial of the stay. The case will be heard on its merits in the future. Thus far, petitioners have filed briefs, and the Secretary's brief is due to be filed soon.

Mr. GAYDOS. I would be appreciative if you could make that available to counsel, Mr. Dwyer and the minority if they request. Dr. Bingham, I want to make this observation.

For this member—and I hope for the entire committee—you are not here to do penance for anybody else, anybody who preceded you. I know you are going to make an excellent record and will actively put into being the philosophy that was inherent in this legislation from its very inception.

Your competence speaks for itself. Your background indicates nothing but success. I do want you to know in a most sincere manner you don't have to answer for anybody that preceded you. I feel very strongly along those lines.

Mr. CORNELL. Might I state, Mr. Chairman to Dr. Bingham and her associates, although you might not be responsible for those who preceded you, you have a massive public relations job to do and I wish you well.

Dr. BINGHAM. Thank you.

Mr. SARASIN. Before we leave the impression on the motion of the chairman it is 2 to 1, I want to be sure to share the chairman's view that we look forward to a great working relationship. You have to run, Dr. Bingham.

I wonder if we might address a couple of questions to you by mail. I would like to get into the question of economic impact reports and the advisory committee and so forth.

We obviously don't have time this morning.

Dr. BINGHAM. I will be glad to respond.

Mr. GAYDOS. There being no further questions, Doctor, I presume that you will respond to future calls from the committee.

I think we are going to have you up here again. We will try to be very considerate in calling you but we would like to have a response from you.

Dr. BINGHAM. I look forward to working with you. I sense that you are all allies in our efforts to provide a safe and healthful workplaces. Thank you.

Mr. GAYDOS. Thank you and I thank your associates for appearing and for a most enlightening period in the committee's review of progress made under the act.

The committee will stand in recess subject to the call of the Chair.

[Whereupon, at 11 a.m., the hearing recessed, subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

U.S. DEPARTMENT OF LABOR,
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,
Washington, D.C., September 2, 1977.

Mr. PAUL F. DWYER,
Counsel, Committee on Education and Labor, Subcommittee on Compensation, Health and Safety, U.S. House of Representatives, Washington, D.C.

DEAR MR. DWYER: The following materials are submitted for the record.

STATE CONSULTANT QUALIFICATIONS

The Occupational Safety and Health Administration (OSHA) published a final rule for On-Site Consultation Agreements in the Federal Register on August 16, 1977. As well as increasing the Federal share of funding for consultation services from 50 percent to 90 percent, the final regulation provides that each State adopt a plan to upgrade the qualifications required of consultants. Section 1908.7(b) of the final rule, which follows, outlines these requirements for State consultants:

(b) *Qualifications.*—(1) All consultants utilized under agreements pursuant to this Part shall be employees of the State, qualified under State requirements for employment in occupational safety and health. They must demonstrate adequate education and experience to satisfy the RA, before assignment to work under an agreement, and annually thereafter, that they meet the requirements set out in § 1908.6(b) (2) and that they have the ability to perform satisfactorily pursuant to the agreement. All consultants shall be selected in accordance with the provisions of Executive Order 11246 of September 24, 1965, as amended, entitled "Equal Employment Opportunity."

(2) Minimum requirements shall include:

(i) Consultants shall demonstrate the following: the ability to identify hazards; the ability to assess employee exposure and risk; knowledge of OSHA standards; knowledge of abatement techniques and practices; knowledge of workplace safety and health program requirements; and the ability to effectively communicate, both orally and in writing.

(ii) Consultants shall meet any additional degree and/or experience requirements as may be established by the Assistant Secretary.

(3) A specific plan to upgrade the qualifications for all State consultants shall be developed by each participating State according to guidelines established by the Assistant Secretary.

(i) The plan shall include a timetable with final implementation dates for specific actions which the State shall take in order to upgrade the education and experience of State consultants, including revision of job descriptions, establishment of additional qualifications and training and increases in State salary levels.

(ii) The plan must be submitted to the RA within 120 days of the effective date of an agreement under this Part and shall be revised annually to reflect the State's progress toward specific goals.

(iii) The implementation dates in initial plans shall be no later than August 1, 1980.

COMPLIANCE OFFICERS' SALARIES

Congressman Robert J. Cornell asked what portion of OSHA's budget is used for compliance officers' salaries. The following figures are that part of our total budget used for Federal inspection activities:

Fiscal year 1977:

Total budget-----	\$130, 000, 000
Budget for Federal inspections (including compliance officers and administrative support personnel)-----	57, 616, 000
Estimated total budget (conference level)-----	136, 640, 000
Estimated budget for Federal inspections (including compli- ance officers and administrative support personnel) (confer- ence level)-----	60, 651, 000

I hope the foregoing information is useful to you and members of the Subcommittee. On behalf of Dr. Bingham, I want to thank you for your continued support and that of Chairman Gaydos during the appropriations process. We look forward to working closely with you in the future. If we can be of any further assistance, please contact me.

Sincerely,

KAREN L. MANN,

Office of Legislative and Interagency Affairs.

Enclosure.

GARY A. MYERS
29TH DISTRICT, PENNSYLVANIA

COMMITTEES:
PUBLIC WORKS AND
TRANSPORTATION
SCIENCE AND TECHNOLOGY

Congress of the United States
House of Representatives
1977 MAR 2 10 11 AM
Washington, D.C. 20515
WASHINGTON OFFICE

2 March 1977

WASHINGTON OFFICE:
1711 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20518
(202) 225-2565

DISTRICT OFFICES:
408 BEAVER VALLEY MALL
MONACA, PENNSYLVANIA 15061
(412) 728-3500

104 U.S. POST OFFICE BUILDING
BUTLER, PENNSYLVANIA 16001
(412) 282-8400

FEDERAL BUILDING
NEW CASTLE, PENNSYLVANIA 16101
(412) 658-7727

The Honorable Joseph M Gaydos, Chairman
Subcommittee on Compensation, Health and Safety
Room 616, House Office Building Annex
Washington, D. C. 20515

Dear Chairman Gaydos:

I understand the Compensation, Health and Safety Subcommittee is now engaged in oversight hearings on the Occupational Safety and Health Act. During the February recess, I conducted an OSHA seminar in my district which more than 200 representatives of business and labor attended. I would like to briefly pass along to the Subcommittee some of the problem areas that were highlighted at that seminar.

Perhaps the greatest concern expressed -- by both businessmen and OSHA representatives -- concerned the current provision for anonymous complaints and non-employee complaints of safety hazards. Given the strong protection against discrimination that employees who make complaints are given under the law, many employers felt strongly that the anonymous complaint procedure led to a great number of complaints based on personal grudges, business competition, or other non-safety related reasons. OSHA personnel also expressed concern that checking into anonymous complaints -- which in a large percentage of cases proved to be frivolous complaints -- dissipated the enforcement effort and in fact detracted from the overall workplace safety program.

On a second subject, concerns were expressed at the meeting that the small business compliance loan program was working ineffectively, if at all. While I realize that this program may not directly be within the jurisdiction of the Subcommittee, I did want to bring this concern to your attention. While complaints at the seminar did not focus in on any particular problem area, I was left with the very strong impression that employers and OSHA personnel placed little confidence in this program as a tool to aid small business compliance with the law.

A third point raised by many attendees concerned advance notice of inspections. While it is my understanding that unannounced inspections are one of the cornerstones of the law, I did want to bring this point of view to your attention. Many businessmen who attended this seminar expressed their feeling that, if advance notice of the visit -- although not necessarily of the items to be inspected -- were given, much of the recrimination and antipathy towards the OSHA law in the business community would be eliminated. What these businessmen were saying is that even

The Honorable Joseph M. Gaydos
2 March 1977

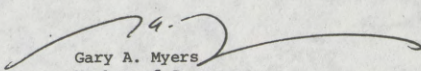
Page 2

one day's or a few hour's notice, while not enough to have them superficially eliminate hazards to avoid citations, would be enough for them to schedule their business for the day in such a manner that the daily schedule would not be completely disrupted. OSHA personnel explained at the seminar that a change in this procedure was highly unlikely, but I did want to bring this point of view to your attention.

Finally, considerable enthusiasm was expressed at the meeting for the establishment of an on-site consultation service, either a federal service or a state operated service. As you know, I have cosponsored Mr. Sarasin's legislation to create an on-site consultation service and I heartily endorse this concept.

Thank you for the opportunity to present these views to the subcommittee and for your consideration of these suggestions.

Sincerely,



Gary A. Myers
Member of Congress

GAM:jkx

TESTIMONY OF
CONGRESSMAN GILLIS LONG
ON H.R. 5589

Submitted to the Subcommittee on
Compensation, Health and Safety
Committee on Education and Labor
Hon. Joseph M. Gaydos, Chairman
June 1, 1977

Thank you, Mr. Chairman, for the opportunity to testify on behalf of legislation I have introduced which will exempt from OSHA regulation farms and small businesses employing 10 or fewer workers. I introduced H.R. 5589 on March 24, 1977, because, in my view, OSHA has gone far beyond congressional intent and is using its resources to harass entrepreneurs at the expense of coming to grips with the larger safety and health issues that still face the American working person.

Since the introduction of my bill, Secretary of Labor F. Ray Marshall and Assistant Secretary of Labor for Occupational Safety and Health Dr. Eula Bingham announced that, indeed, "OSHA did have too many petty regulations" and it "had neglected long-term health problems in order to enforce petty standards not directly affecting safety or health." The position of Secretary Marshall and Assistant Secretary Bingham, announced May 19, is extremely important. I would like to have their statements inserted into the record at this point:

[STATEMENTS OF MARSHALL AND BINGHAM]

OPENING STATEMENT

Secretary of Labor Ray Marshall
OSHA Press Conference
May 19, 1977

Since its birth in 1970, OSHA has been everyone's favorite whipping boy.

The business community has claimed that OSHA was far too restrictive, bogging them down in a series of nit-picking, petty regulations. Labor has been concerned that OSHA hasn't done enough about health problems, the kind of long-term dangers that threaten the physical well-being of many American workers.

When I became Secretary of Labor, I began an extensive study of OSHA. In order to get some first hand understanding of the program, I spent a day working as an OSHA inspector in a factory outside of Philadelphia. Working closely with Assistant Secretary Eula Bingham, I examined many of the most common criticisms of OSHA. And, I came to the sad conclusion that both business and labor were right. OSHA did have far too many petty regulations. OSHA had neglected long-term health problems in order to enforce some petty standards not directly affecting safety or health.

Today marks an important turning point in the history of OSHA. In announcing our commonsense priorities for OSHA, we are also signaling that this beleaguered agency has entered a new era.

Eula Bingham has been Assistant Secretary for OSHA for just seven weeks. In that short time, OSHA has seen more far-reaching changes than at any time in its history. We have acted vigorously to eliminate the health hazards caused by benzene. We are recruiting a staff who can deal with health hazards, as well as safety problems. And, today, we are announcing our commonsense priorities for OSHA.

It is obvious why OSHA needs to have priorities. OSHA has an enforcement staff of just 1,400 and the responsibility for regulating more than 5 million workplaces. I've calculated that even if these inspectors work over-time, they can visit no more than 2 percent of the workplaces in America. That's why we have to focus our efforts where the hazards are the most likely.

In announcing these new priorities today, we are trying to do two important things. One is to get the monkey of unnecessary and complex government regulations off the backs of small business. And, the other is to focus our limited resources on the most serious health and safety problems faced by American workers.

In short, what we are trying to do is to save lives, protect workers' health and prevent injuries, not print regulations.

Let me outline a few of the major components of this new enforcement strategy:

-- We are going to stop trying to regulate every detail of life in every office, store and factory. There will be no more petty regulations like those dealing with coat-hooks in bathrooms.

-- We are going to simplify our regulations so that everyone can understand them. No longer will small businesses have to hire lawyers to interpret OSHA regulations. We're going to stop the absurd practice of printing 15 pages of regulations, in small type, on the safety of ladders.

-- Instead of regulating by fiat, we're going to stress preventative consultations with small business.

-- And, last, but most important, we're going to focus our efforts on the real health and safety problems which American workers face. We're going to stop fishing for minnows and start going after the whales.

Now, I'll turn to Dr. Bingham to give you the details of this new OSHA program.

STATEMENT BY DR. EULA BINGHAM, ASSISTANT SECRETARY OF LABOR FOR OCCUPATIONAL
SAFETY AND HEALTH

As Secretary Marshall has explained, we are today announcing a program which we hope will institute a common sense approach to the task of providing a safe and healthy workplace for every American.

To begin with, we are launching an all-out effort to combat occupational illnesses and disease.

To accomplish this, we are going to refocus our inspection efforts on the most serious health and safety hazards.

Since some industries - such as construction, manufacturing, transportation, petrochemical - are much more dangerous than others, it makes sense to focus our limited inspection resources in those high-risk industries.

Beginning this year, 95 percent of our inspection efforts will be devoted to the most serious health and safety hazards. The other 5 percent will go to the lower risk sectors of the economy - wholesale and retail trade, finance institutions and service industries. And even within these sectors our attention will be focused on the most hazardous workplaces - auto repair, building materials and dry cleaners - for examples.

This action will significantly relieve the burden on businesses in the non-hazardous sectors of our economy.

-more-

We are also going to significantly expand the use of "de minimis" notices for violations that have nothing to do with worker health and safety.

In regards small business, I think its time we got serious about a program of cooperation. Our task is to make life safer for employees, not to make life harder for employers. I feel certain that most business people want to protect their workers. In most small businesses employers and employees work together, often side by side. They breath the same chemicals, they work around the same machines--they're exposed to the same hazards.

In order to implement a real program of cooperation I am going to appoint a special assistant for small business.

We are also beginning distribution of a special small business handbook with simple check lists and self-help guides designed to assist small business in voluntarily complying with the law.

We are also planning to greatly expand our consultation program to assure that small business people have access to professional help. We are also going to list the possibility of using extension services, universities and private organizations to provide consultation services.

In line with this, we are also planning a major expansion of our education program. *I* believe its unconscienable that this agency spends only 7/10 of 1 percent of our budget on education. Thats going to change.

I believe the keystone of a successful health and safety program is knowledgable workers and employers who can find and solve their own health and safety probelms.

On another front, we are going to get rid of unnecessary rules and simplify our regulations.

One of the greatest sources of criticism of OSHA in the past has been the more than 5,000 consensus safety standards. These include many highly techincal, overly

specific and outdated regulations that have burdened employers without really protecting workers. We are now combing through these standards. We shall eliminate unnecessary regulations and we shall revise and simplify necessary standards that are needlessly detailed, complicated or unclear. And as this process gets underway, we shall immediately end penalties for violations of standards that have nothing to do with worker health or safety by expanding and clarifying the use of "de minimis" notices.

This program is, I believe, a significant step in the right direction. It will not be accomplished overnight. It's going to take time. But we are committed to taking the basic common sense actions that will assure that this agency can get back on the track and fulfill its mission of protecting the health and safety of America's working people.

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These two statements embody the kind of commonsense approach to OSHA regulation that Congress had in mind when it created the agency. It is particularly heartening to note in Secretary Marshall's statement:

"...we are trying to do two important things. One is to get the monkey of unnecessary and complex government regulation off the back of small business. And, the other is to focus our limited resources on the most serious health and safety problems faced by the American workers."

There is little question that small businessmen and farmers throughout the country rejoiced when they heard these statements. I went on record supporting this landmark announcement. However, I believe it is incumbent upon Congress to enact legislation that spells out in clear language those areas which OSHA must leave alone.

In addition to exempting businesses and farming operations with 10 or fewer employees from OSHA regulation, H.R. 5589 provides the following:

--No civil penalty could be assessed after an investigation or inspection if the employer was issued 10 or fewer first instance non-serious citations.

--An individual would have to work for a period of 30 consecutive days before he could be counted as an "employee" under the Occupational Safety and Health Act.

--An employer who was not guilty of a willful or serious violation and who employed 25 or fewer employees would receive only a warning for any first instance violation.

It is my belief that this legislation, if enacted, would institutionalize the kind of commonsense approach to regulation that we all seek.

Thank you for the opportunity to testify, Mr. Chairman.

TESTIMONY OF THE HONORABLE BILL CHAPPELL
before the
Subcommittee on Compensation, Health and Safety
of the
Committee on Education and Labor
U.S. HOUSE OF REPRESENTATIVES

H.R. 224

Mr. Chairman, Members of the Subcommittee: I appreciate the opportunity to appear before you to discuss the Occupational Safety and Health Act and my proposed amendment, H.R. 224.

When the Occupational Safety and Health Act was passed by Congress in 1970 it had as its primary goal the protection of the safety and health of American workers.

While it is of the utmost importance that the objective of assuring safe and healthful working conditions for all workers be vigorously pursued, it has become evident that the implementation of this program to protect the safety of workers has gone far beyond its original Congressional intent. This Act, instead, has become a source of harrassment, red tape and crippling financial burdens.

The legislation I have introduced, H.R. 224, would greatly assist in inducing a healthier working relationship between businesses and the Occupational Safety and Health Administration, while protecting the health and safety of workers.

H.R. 224 accomplishes several tasks.

First, this bill would require OSHA inspectors to lend assistance to businessmen found in violation of its provisions rather than merely dictating that changes be made. Section 7 of the bill would direct the Secretary of Labor to provide on-site consultation to employers without

the authority to issue citations for violations found on an employer initiated visits. The Secretary's right to seek injunctions for hazardous conditions representing "imminent dangers" would be preserved. The Secretary, is required in this amendment, to suggest methods of correcting any hazards disclosed to the employer.

Because the inspector does not issue a citation during a consultative visit to a work site, the right to do so on a subsequent visit would not be precluded. In fact, such a failure to issue a citation coupled with the employers request for consultation would be of great value on appeal based on a "good faith" argument as provided under Section 17 (j) of the Act.

Secondly, the bill requires the use of cost-benefit ratios to avoid setting standards that are of minimal value in achieving worker safety or health but which impose crippling financial burdens.

Section 2 (a) sets out the requirements of the cost-benefit ratio. In providing for a cost-benefit ratio, employers would have additional information, which would be necessary to make a sound judgement as to whether or not they should contest in court, standards which in effect do not materially affect the workers safety or health, but which are extremely expensive to the employer.

This section of the bill would require the Secretary of Labor to determine exactly which industries are affected by proposed rules (in order to ascertain cost). This would assist the Secretary in any attempts to promulgate standards on a vertical industry basis as opposed to the "across the board" coverage usually found in standards.

Third, H.R. 224, allows exemptions from standards when it is demonstrated that the regulation does not apply to a particular workplace because the particular hazard does not, in fact, exist. Section 9 (b) would enable the employer to demonstrate that the standard need not apply to his workplace and thus, harm that has previously resulted from implementing broad horizontal standards could be alleviated. This provision would permit employers to use safety measures other than those contemplated by the standard set out by the Secretary of Labor.

Finally, procedures for contesting a citation are adjusted and the Review Commission's role in reviewing penalties and levying fines is clarified.

Section 5 accomplishes this as well as makes other, important changes.

Section 5 (a) would change the period of time in which an employer must decide upon whether or not to contest a citation. Presently, this time period is 15 working days. Under 5 (a) it would be 30 working days. This is an important change because the 15 day period is considered to be too short vis-a-vis other laws dealing with due process. In addition, a longer period of time would give employers needed time to give careful consideration to the merits of filing an appeal.

Section 5 (b) would make it clear to the Review Commission that it does not have the authority to raise the penalty imposed by an inspector. In approximately 10% of the cases that have gone before the Commission, the word "modifying" has been interpreted to mean that the Commission could raise penalty amounts.

It is my view, that subjecting an employer to a higher fine, by a

decision of the Review Commission is not only contrary to the intent of Congress, but, it is as well, contrary to the purpose of appeals.

Finally, in Section 5, an employer would be guaranteed the right to withdraw from a proceeding in which the employer has voluntarily appealed orders and citations of the Secretary.

Employers should not be penalized because they choose to utilize their constitutional rights to a hearing nor should anyone be subjected to government red-tape for no apparent reason.

There are a couple of minor amendments to the Act included in H.R. 224, such as Section 6. This section, would, in essence repeal Section 17 (c), which would remove the Department of Labor's authority to penalize employers for violations considered to be non-serious upon a first inspection. Many of the complaints registered by businesses are a result of these relatively minor penalties, which have become no more than a nuisance.

Mr. Chairman, it was not my intention in introducing H.R. 224, to cripple the Occupational Safety and Health Act. I recognize the need to protect the health and safety of our workers. But, it is also our obligation to protect the rights of employers.

I believe the changes embodied in H.R. 224 will accomplish both goals and I urge the Subcommittee to fully consider this bill, as well as the implications and possibilities for further discontent and mistrust if these important changes are not made in the Act.

Mr. Chairman, Members of the Subcommittee, again, please accept my appreciation for the invitation to discuss this legislation with you.

STATEMENT OF CONGRESSMAN JOHN PAUL HAMMERSCHMIDT, TO THE SUB-COMMITTEE ON COMPENSATION, HEALTH AND SAFETY, HOUSE EDUCATION AND LABOR COMMITTEE, ON THE NEED TO IMPROVE THE ADMINISTRATION OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

MR. CHAIRMAN AND MEMBERS OF THIS DISTINGUISHED COMMITTEE:

I am certain that a great many of my colleagues including myself have looked forward for some time to the opportunity to state our concerns over the federal program which has virtually become a curse on the lips of American small business: OSHA.

Since the enactment of legislation creating the Occupational Safety and Health Administration, we have watched this program expand, multiply and proliferate to the point where it resembles the creature in a science fiction movie who is created by a well-intentioned scientist but who has grown to such proportions that it becomes almost impossible to control. Indeed, Mr. Chairman, the Congress has created a "Frankenstein's monster" which must be brought under control. OSHA has engendered regulations so voluminous and complex and edicts so arbitrary and inequitable that it is a matter of urgency that we in the 95th Congress act decisively to eliminate these inequities and mollify the harsh and burdensome regulatory posture of this agency. OSHA has clearly gone far beyond the intent of Congress and has surpassed the boundaries of reason in these respects.

I certainly espoused the original purpose of the Occupational Safety and Health Act which was "to assure safe and healthful working conditions for working men and women". It is the nature of these regulations and their enforcement that are of such concern to me and, I know, to this committee.

From my own experience, I do not believe that small businessmen seek to avoid compliance with OSHA regulations, Mr. Chairman. On the contrary,

they want to comply but are often simply unable to do so in many cases because of the impossible and arbitrary demands of OSHA standards and inspection compliance requirements. This is why small business has long sought onsite consultation, embodied in legislation I have sponsored and which passed the House in the 94th Congress. However, onsite consultation represents but one area in which we can and should properly act in realizing equity and a greater degree of understanding in the development and administration of regulations by the agency.

I cannot imagine a more responsible and necessary change in this work-safety program than providing such consultation. Extensive hearings have been held on OSHA since enactment, with much testimony being received on the need for a consultation program at the site of inspection. Ask any businessman and he will tell you how much he would welcome such assistance, through education and consultation, to better enable him to comprehend and comply with this most frustrating of federal regulatory programs. Enactment of onsite assistance will not weaken the program nor should it be interpreted as a vehicle for noncompliance. It will, in fact, strengthen the program by making it more understandable to the nation's small businessman, who must grapple with its complexity in the everyday conduct of his business.

The nation's largest voice of independent business, the National Federation of Independent Business, which is some 500,000 members strong, has always endorsed this concept and has documented the problems of independent businesses in complying with OSHA standards.

STATEMENT OF CONGRESSMAN SAM B. HALL, JR.
BEFORE THE SUBCOMMITTEE ON COMPENSATION, HEALTH AND SAFETY OF
THE COMMITTEE ON EDUCATION AND LABOR

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I WILL PREFACE MY REMARKS WITH A STRAIGHT-FORWARD APPRAISAL OF THE OCCUPATIONAL SAFETY AND HEALTH ACT FROM THE STANDPOINT OF THE VAST MAJORITY OF MY CONSTITUENTS.

IT IS NO EXAGGERATION WHEN I SAY THAT MOST OF MY CORRESPONDENTS FAVOR THE COMPLETE REPEAL OF THIS LEGISLATION AND EVERY ONE OF MY CONSTITUENTS -- EVEN THOSE WHO ARE INDIRECTLY AFFECTED -- HAVE VERY HARSH THINGS TO SAY ABOUT THE INTRUSIVE BUREAUCRACY THAT HAS PROLIFERATED LIKE WEEDS IN A GARDEN TO SUCH AN EXTENT THAT IT IS DIFFICULT TO DISCOVER ANY BENEFICIAL FRUITS OF OUR LEGISLATIVE LABORS. IT IS WITH THE THOUGHT THAT ANY BILL PASSED BY THE CONGRESS SHOULD BE MADE WORKABLE, IF POSSIBLE, THAT I HAVE INTRODUCED H. R. 1496 TO RELIEVE EMPLOYERS OF THE FINANCIAL BURDEN OF LITIGATION COSTS WHEN OSHA HAS BROUGHT SUIT WITHOUT SUBSTANTIAL CAUSE AS DETERMINED BY THE COURTS.

I HAVE ALSO CO-SPONSORED H. R. 5364, INTRODUCED BY MY DISTINGUISHED COLLEAGUE, THE HONORABLE JOE SKUBITZ, WHICH WOULD RELIEVE SMALLER EMPLOYERS FROM THE STRICTURES OF THIS LEGISLATION.

THE AMERICAN SMALL BUSINESSMAN NEEDS EVERY POSSIBLE ASSISTANCE, AND RELIEF FROM EVERY POSSIBLE NUISANCE, IF HE IS TO SURVIVE IN TODAY'S MARKETS.

I URGE FAVORABLE ACTION BY THIS SUBCOMMITTEE ON BOTH OF THE ABOVE MENTIONED BILLS.

THANK YOU VERY MUCH FOR YOUR KIND ATTENTION.

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF THE HISTORY OF ARTS
AND ARCHITECTURE
CHICAGO, ILLINOIS

IN THE HISTORY OF ARTS
AND ARCHITECTURE
CHICAGO, ILLINOIS

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