

UNITED STATES DEPARTMENT OF JUSTICE  
UNITED STATES DEPARTMENT OF AGRICULTURE

PUBLIC WORKSHOPS EXPLORING COMPETITION IN  
AGRICULTURE

Poultry Workshop

May 21, 2010

9:12 a.m.

Alabama A&M University  
Knight Reception Center  
Normal, Alabama

A P P E A R A N C E S

**WELCOME/INTRODUCTORY COMMENTS:**

The Honorable Eric Holder, Attorney General, U. S. Department of Justice.

The Honorable Tom Vilsack, Secretary of the Agriculture, U. S. Department of Agriculture.

**ROUNDTABLE DISCUSSION AND PRESENTATION OF ISSUES:**

The Honorable Eric Holder, Attorney General, U. S. Department of Justice.

The Honorable Tom Vilsack, Secretary of Agriculture, U. S. Department of Agriculture.

The Honorable Christine Varney, Assistant Attorney General for Antitrust, U. S. Department of Justice.

The Honorable Artur Davis, Congressman, U. S. House of Representatives.

The Honorable Ron Sparks, Commissioner of Agriculture, State of Alabama.

**ROUNDTABLE DISCUSSION ON POULTRY PRODUCER CONCERNS:**

The Honorable Tom Vilsack, Secretary of Agriculture, U. S. Department of Agriculture.

Gary Alexander, Producer, Westminster, South Carolina.

Kay Doby, Former Producer, Cameron, North Carolina.

1 Robert Lumzy, Former Producer,  
Columbia, Mississippi.

2 Carole Morison, Former Producer,  
3 Maryland.

4 Sandra Genell Pridgen, Producer, North  
Carolina.

5 Garry Staples, Producer, Steele,  
6 Alabama.

7 Shane Wooten, Producer, Henagar,  
Alabama.

8 **PUBLIC TESTIMONY.**

9 John Ferrell, Deputy Under Secretary  
10 for Marketing and Regulatory Programs,  
U. S. Department of Agriculture.

11 William Stallings, Assistant Section  
12 Chief, Transportation, Energy and  
Agriculture Section, U. S. Department of  
13 Justice.

14 **ROUNDTABLE DISCUSSION ON TRENDS IN POULTRY  
15 PRODUCTION:**

16 Norman Familant, Chief Economic  
Litigation Section, U. S. Department of  
Justice.

17 Benny Bishop, Peco Foods, Tuscaloosa,  
18 Alabama.

19 Max Carnes, Producer, Baldwin,  
Georgia.

20 Michael R. Dicks, Watkins Chair,  
21 International Trade and Development,  
Oklahoma State University.

22 John Ingram, Forest, Mississippi.

23 Cindy Johnson, Attorney, Cohutta,

1 Georgia.

2 Robert Taylor, Professor, Agricultural  
3 Economics and Public Policy, College of  
4 Agriculture, Auburn University.

4 Mike Weaver, Producer and President of  
5 Contract Poultry Growers Association of the  
6 Virginias, Fort Seybert, West, Virginia.

6 **ADDITIONAL PUBLIC TESTIMONY.**

7 John Ferrell, Deputy Under Secretary  
8 for Marketing and Regulatory Programs,  
9 U. S. Department of Agriculture.

9 William Stallings, Assistant Section  
10 Chief, Transportation, Energy and  
11 Agriculture Section, U. S. Department of  
12 Justice.

11 DUDLEY BUTLER, U. S. Department of  
12 Agriculture.

13 **CLOSING REMARKS:**

14 John Ferrell, Deputy Under Secretary  
15 for Marketing and Regulatory Programs, U.  
16 S. Department of Justice.

16 William Stallings, Assistant Section  
17 Chief, Transportation, Energy and  
18 Agriculture Section, U. S. Department of  
19 Justice.

18 DUDLEY BUTLER, U. S. Department of  
19 Agriculture.

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P R O C E E D I N G S

May 21, 2010 9:12 a.m.

SECRETARY VILSACK: Well, good morning. I'm Tom Vilsack, Secretary of Agriculture. And I'm certainly pleased to be here at Alabama A&M University and appreciate all of the folks that are here today.

I want to welcome everyone to this joint competition workshop between the Department of Agriculture and the Department of Justice. It's an historic opportunity for us to listen and to learn.

Congressman, good to see you.

I want to thank the folks at Alabama A&M University for allowing us to use this facility and everyone who has provided assistance to us.

I also want to recognize several members of the United Food and Commercial Workers, as well as those from the retail, wholesale and department store unions that are joining us today.

1           This is, as I said, the second in  
2           the series of competition workshops we are  
3           holding this year to allow us to better  
4           understand the issues of most concern and  
5           deserve closer attention and to explore the  
6           appropriate role, if any, for antitrust or  
7           regulatory enforcement in the agricultural  
8           area.

9           In March we held a workshop on  
10          general farmer issues in Ankeny, Iowa.

11          Today we're focusing on  
12          competition and contracting practices in  
13          the broiler industry, as well as the  
14          relationship between producers and  
15          companies.

16          On June 25th we will hold a  
17          workshop on dairy in Madison, Wisconsin.  
18          We will evaluate the competition on  
19          livestock markets on August 27th in Fort  
20          Collins, Colorado. And we'll discuss  
21          margins on December 8th in Washington, D.C.

22          President Obama has provided  
23          clear direction that his government should



1 be open and transparent. And that's what  
2 he hope these workshops are designed to do.  
3 We seriously want public dialogue on these  
4 very complex issues.

5 As I travel as Secretary of  
6 Agriculture across the country I hear a  
7 very consistent theme: Farmers and  
8 ranchers and producers are worried about  
9 whether there's a future for themselves and  
10 their children in agriculture. And we know  
11 having a viable market largely determines  
12 if such a future will exist.

13 Farmers have the right to know if  
14 their markets are fair, competitive and  
15 transparent, especially if they're going to  
16 make a significant investment to allow them  
17 to get in or to stay in agriculture.

18 At the same time, consumers  
19 across the country have the right to know  
20 if the food products they're buying are  
21 safe and are fairly priced at the grocery  
22 store.

23 At the Iowa workshop we discussed

1       whether there was enough innovation and  
2       competition in the seed industry. We also  
3       looked at the spot market in hogs, which  
4       has become very thin and volatile and  
5       making it more difficult to actively price  
6       hogs.

7               Today we evaluate the poultry  
8       industry, and, specifically, the broiler  
9       portion of the industry.

10              As those in the audience probably  
11       well know in the 1950's and '60's the  
12       poultry industry underwent one of the  
13       largest transformations of any sector in  
14       agriculture through consolidation and  
15       vertical integration.

16              Poultry production is vertically  
17       integrated. The company owns the birds,  
18       the feed, medications, veterinary services,  
19       whereas the growers take on the capital  
20       cost of building the facilities, helping to  
21       pay the fuel costs and caring for the birds  
22       to market weight.

23              Most production is supplied

1 through poultry growing arrangements  
2 between the company and growers. In 1963  
3 the top four firms controlled 14% of  
4 chickens slaughtered. Today it's roughly  
5 57%. And now it's not uncommon for a  
6 grower to have to do business with only one  
7 company in their area. Also been  
8 increasing controversies between poultry  
9 growers and processors, specifically  
10 relating to the length of contracts and  
11 contract terms.

12 The concentration numbers fail to  
13 answer the basic question, which we want to  
14 hear from you today: What is needed to  
15 have a viable, fair and competitive  
16 marketplace?

17 The issues surrounding the  
18 competitiveness in agriculture have been  
19 debated for decades. And there's no doubt  
20 that they are difficult and complex, which  
21 is why this workshop is important and, we  
22 believe, long overdue.

23 We continue to seek answers and

1 solutions. The Administration is very  
2 aware of the concerns that producers have  
3 about market concentration. And we've  
4 already taken a number of steps.

5 The USDA and the Department of  
6 Justice have established the Agricultural  
7 Competition Joint Task Force to explore  
8 opportunities to harness each other's  
9 expertise and will be developing a new  
10 memorandum of understanding that will  
11 outline our relationship. These workshops  
12 will help inform us as we work on this now.

13 The president's budget in the ag  
14 area has increased GIPSA's funding level to  
15 improve enforcement over unfair and  
16 deceptive practices in the marketplace.  
17 The Department is using these resources to  
18 hire attorneys to handle complex  
19 competition investigations as well as other  
20 violations.

21 The current budget the President  
22 has proposed to Congress for 2011 also  
23 requests additional funds to hire legal

1 specialists and field investigators to help  
2 conduct more than 500 inspections to ensure  
3 that the market is fair and above board.

4 We published a final rule in  
5 December of 2009 to improve fairness in  
6 contracting in the poultry industry.  
7 Specifically this final rule ensures that  
8 growers are provided a 90-day notice before  
9 a company can terminate their contracts.

10 It also ensures that growers who  
11 were building new poultry houses get to see  
12 a -- a true written contract on the date  
13 the poultry company provides the poultry  
14 house specifications, not months later,  
15 which could put the grower in a  
16 take-it-or-leave it situation.

17 The final rule also spells out  
18 that the growers have the right to discuss  
19 their contracts with their families, their  
20 lender, their state or federal agencies,  
21 their lawyer or other growers that contract  
22 with the same company.

23 We are also in the final

1 clearance for a proposed rule which we  
2 intend to issue sometime in mid June to  
3 carryout the requirements of the 2008 Farm  
4 Bill that addresses issues of fairness in  
5 contracting in the livestock and the  
6 poultry marketplace.

7 Again, I want to thank you-all  
8 for attending today. And I want to thank  
9 the panelists in advance, before my  
10 introductions of them, for their  
11 willingness to participate in this  
12 workshop. And look forward to hearing what  
13 they have to say on this very important  
14 issues in agriculture.

15 It's now my distinct pleasure to  
16 introduce the Attorney General of the  
17 United States, Eric Holder. During his  
18 impressive career General Holder has served  
19 in the private practice, as a U. S.  
20 Attorney for the District of Columbia, as  
21 an Associate Judge of the Superior of the  
22 District of Columbia and as a Deputy  
23 Attorney General.

1           He has worked to investigate and  
2           prosecute official corruption on the local,  
3           state and federal level. And he's fully  
4           invested in strong enforcement of our  
5           nation's antitrust laws to advance the  
6           interest of justice on behalf of the  
7           American people.

8           On a personal note, I want to  
9           indicate the personal attention the  
10          Attorney General has paid to these  
11          particular workshops. There are many  
12          places that the Attorney General could be  
13          today, but he has dedicated himself to  
14          coming to these workshops as an indication  
15          of his concern and interest.

16          So please welcome -- join me in  
17          welcoming Attorney General Holder.

18          ATTORNEY GENERAL HOLDER: Thank  
19          you. Well, good morning.

20          Thank you, Secretary Vilsack.  
21          It's always good to join with you. And  
22          it's good to be here and it's also good to  
23          be out of Washington, D. C.

1           Seated to my left is the  
2           Assistant Attorney General for the  
3           Antitrust Division in the United States  
4           Department of Justice, a woman who has  
5           revitalized the Antitrust Division and who  
6           -- from whom you'll be hearing later,  
7           Christine Varney.

8           You might hear in me a slight New  
9           York accent, but it's always great to be in  
10          the beautiful state of Alabama. I consider  
11          you all my second home. My wife was born  
12          and raised about five hours south of here  
13          in Mobile, Alabama, but this is my first  
14          visit to -- to Normal.

15          So I want to thank the city and  
16          our host, Alabama A&M, for welcoming us  
17          today and for hosting what I think is a  
18          very important workshop.

19          The discussion that we have  
20          gathered to begin reflects, I think, a  
21          historic collaboration, as Secretary  
22          Vilsack said, between the Departments of  
23          Justice and Agriculture and leaders from



1 across our nation's agricultural industry.

2 Secretary Vilsack, Assistant  
3 Attorney General Varney and I are committed  
4 to improving our understanding of how  
5 particular agricultural markets function.  
6 That is why we are here. And that's why  
7 we've decided to hold a series of five  
8 workshops across the country to hear from  
9 people, to examine the challenges facing  
10 America's farmers, growers and producers.

11 Now, two months ago we kicked off  
12 this workshop series in Secretary Vilsack's  
13 home State of Iowa, I wonder how that  
14 happened, where we focused on the seed  
15 industry. That meeting, I think, was a  
16 great success.

17 We received very valuable  
18 feedback from those who attended and from  
19 those who provided written comments.

20 Now, I fully expect that this  
21 workshop will be just as useful. Not only  
22 do we appreciate your input, quite frankly,  
23 we need your input, we need to hear from

1       you. And today our goal is to develop a --  
2       a clearer picture of what competitive  
3       issues participants in the poultry market  
4       are facing, but we need your perspective.  
5       Your insights can help us fulfill our  
6       responsibilities to take appropriate action  
7       to enforce the Packers and Stockyard Act.  
8       It will also enable us to be more effective  
9       advocates for competition, which is  
10      Christine's job.

11               Now, as we begin this important  
12      conversation it is fitting that we've  
13      gathered here at Alabama A&M. This  
14      university has a very long and a very  
15      distinguished tradition of training  
16      agricultural leaders. And today is on the  
17      cutting edge of industry and industry  
18      advancements.

19               In fact, as we speak, university  
20      biotechnologists are making strides in the  
21      development of an allergy free peanut.  
22      Now, this is something very important to  
23      me. I've got two children who are allergic

1 to peanuts. And if you can pull this off,  
2 I will be able to get peanut butter  
3 sandwiches to everybody in my family.

4 But in learning about this, I  
5 couldn't help but think about George  
6 Washington Carver, who spent his career  
7 working on innovations with peanuts at  
8 Tuskegee University. Doctor Carver once  
9 said, and I quote, "New developments are  
10 the products of a creative mind".

11 Well that is certainly true, but  
12 I believe that new developments, and more  
13 importantly, progress, are also the product  
14 of collaboration.

15 Now, in coming together today our  
16 hope is that we can move forward in meeting  
17 our goals to ensure competition, to ensure  
18 opportunity and fairness in our  
19 agricultural markets. Secretary Vilsack,  
20 Assistant Attorney General Varney and I  
21 understand that.

22 As farmers, producers and  
23 industry leaders we understand that you

1 face a variety of challenges. We know that  
2 some of you have concerns about production  
3 contracts. Others are worried about  
4 consolidation in our poultry markets.  
5 Whether you're here to talk about antitrust  
6 issues or to raise questions about fair  
7 contracting and business practices, we  
8 really look forward to hearing from each of  
9 you.

10 Now, with your engagement, I  
11 believe that we can move closer to  
12 answering the question that's at the heart  
13 of these workshops. The question of  
14 whether competition in today's agricultural  
15 industry is as free and is as fair as it  
16 should be.

17 And as we work to answer this and  
18 understand why a growing number of American  
19 producers and farmers find it increasingly  
20 difficult to survive by doing what they  
21 have been doing for decades, I want to  
22 ensure each of you that the Obama  
23 Administration is committed to protecting

1 competition in a very vigorous manner.

2 This is a top priority for today's  
3 Department of Justice.

4 But I recognize that the vigorous  
5 enforcement of our antitrust laws, while  
6 critical, cannot fully address the concerns  
7 of many agricultural industry leaders and  
8 stakeholders. That's why we're partnering  
9 with the United States Department of  
10 Agriculture to benefit from its deep  
11 expertise in your industry and, hopefully,  
12 to share our expertise on the broader  
13 regulatory issues that are potentially at  
14 play. And that's why our agencies launched  
15 the Agriculture Competition Joint Task  
16 Force that Secretary Vilsack mentioned.

17 That's also why we're engaging  
18 directly with all of you, to listen, to  
19 learn and to determine the best way to  
20 ensure fairness and to encourage success.

21 Now, as we evaluate and develop  
22 policy we want to hear from you. And I  
23 think that's something that all of us would

1 really stress, we want to hear from you.  
2 In fact, when we announced these workshops  
3 last year, we also issued a call for your  
4 comments and recommendations. And, so far,  
5 the response has really been tremendous.  
6 To date we have received over 15,000  
7 comments. And I'm grateful that so many of  
8 you have contributed to this extraordinary  
9 example of government public engagement at  
10 its best.

11 Not only must we keep up this  
12 work, we have to expand this work. And  
13 together, I believe, that we can address  
14 these 21st Century challenges that the  
15 agricultural industry now faces. Now, I'm  
16 certain that we can honor and preserve your  
17 industry's essential role in our economy as  
18 well as our culture, our livelihood and our  
19 global standing. Your participation here  
20 gives me great hope about what we can  
21 accomplish together in the days and -- and  
22 months ahead. Secretary Vilsack and I look  
23 forward to hearing from you and to working

1 with all of you.

2 So thank you so much for  
3 welcoming us here today. And, as I said,  
4 we look forward to hearing from all of you.

5 SECRETARY VILSACK: General,  
6 thank you very much.

7 Let me explain what we're going  
8 to do this morning. We are initially going  
9 to have an opportunity to hear from  
10 Christine Varney that the Attorney General  
11 briefly introduced.

12 Congressman Artur Davis is here  
13 with us, as well as Commissioner Sparks.  
14 We're going to have an opportunity to ask a  
15 few questions of this panel.

16 We will break for a short period  
17 of time and reconvene a larger panel of  
18 producers and growers and have the same  
19 kind of question and answer format in the  
20 morning session.

21 Then I think we turn it over to  
22 -- to General Varney for the afternoon  
23 session, which will give folks additional

1 panel discussions and opportunities for Q  
2 and A.

3 We do want this to be as  
4 interactive as we possibly can have. And  
5 we do want to hear from as many people as  
6 we can.

7 Let me first and foremost  
8 introduce very briefly the three members of  
9 the first panel. And then I will turn to  
10 the Attorney General with a question and to  
11 each of the individual panelists for a  
12 question so that they can make a statement  
13 in response.

14 As the General indicated,  
15 Christine Varney was confirmed as an  
16 Assistant Attorney General for the  
17 Antitrust Division in April of 2009.

18 She has held leadership positions  
19 in both public and private sector. From  
20 1998 to 2009 she was a partner in Hogan and  
21 Hartson, a very significant and prestigious  
22 firm in Washington, D. C., where she served  
23 in a dual capacity as a member of the



1 firm's antitrust practice group and the  
2 head of the Internet practice group.

3 From '94 to '97, 1994 to 1997,  
4 she served as a Federal Trade Commissioner  
5 at the Federal Trade Commission. She was  
6 the leading official on a wide variety of  
7 Internet and competition issues. Prior to  
8 her service there she served as an  
9 Assistant to the President and Secretary to  
10 the Cabinet during the Clinton  
11 Administration.

12 She is joined by Congressman  
13 Artur Davis, no stranger to the folks here.  
14 The Congressman was reelected in 2008 to  
15 serve his fourth term in the U. S. House of  
16 Representatives. And he represents the  
17 Seventh Congressional District here in  
18 Alabama and serves as a member of the Ways  
19 and Means Committee. He is a member of the  
20 Congressional Black Caucus and resides in  
21 Birmingham, Alabama.

22 He was also appointed to the  
23 senior whip team for the Democratic

1 Congress of the Hundredth and Ninth  
2 Congress. And is the co-chair of the  
3 Sentrus House, New Democrat Coalition, as  
4 well as the Southern Regional co-chair of  
5 the Democratic Congressional Campaign  
6 Committee.

7           Congressman Davis and I became  
8 first acquainted as a result of  
9 relationship on the Democratic Leadership  
10 Council.

11           Joining the Congressman is the  
12 Honorable Ron Sparks who serves as your  
13 Commissioner of Agriculture and Industries.  
14 First elected in 2002 easily won reelection  
15 to a second term in 2006.

16           In 1999 Commissioner Sparks was  
17 appointed Assistant Commissioner of  
18 Agricultural and Industry. He has  
19 completed terms as President of the  
20 Southern Association of State Departments  
21 of Agriculture. And most recently served  
22 as the President of the National  
23 Association of State Departments of

1       Agriculture. Commissioner Sparks continues  
2       to serve with that commission on the  
3       executive committee. And that is an  
4       opportunity that we look forward to each  
5       month to visit from the USDA with the state  
6       ag commissioners and secretaries to make  
7       sure that we have a seamless communication  
8       system.

9                So these are the three panelists.

10               And I think, General, if I could  
11       start with you and -- and give you a chance  
12       to sort of expand a little bit more. I  
13       clearly want to thank you for attending  
14       this workshop and certainly appreciate the  
15       collaboration your Department is providing  
16       with our Department, it's truly historic.

17               As you know, and as the folks in  
18       this room probably know, poultry  
19       enforcement under the Packers and  
20       Stockyards Act is divided between our two  
21       agencies. This makes, I think,  
22       communication and coordination very  
23       critical.

1           In years past growers have been  
2 frustrated with what they feel is a lack of  
3 coordination and a sense that no one will  
4 help them.

5           Do you have a sense about what we  
6 can do to improve the communication and  
7 coordination with respect to this important  
8 issue?

9           ATTORNEY GENERAL HOLDER: Well, I  
10 certainly -- one thing -- one of the things  
11 we have to do is exactly what we are doing  
12 now, which is to give people an opportunity  
13 to interact with those people like  
14 ourselves who have the responsibility for  
15 running the departments that are -- have,  
16 as their responsibility, enforcement of --  
17 of that act.

18           I think we also have to come up  
19 with ways in which we interact with each  
20 other in ways, frankly, better than we have  
21 in the past. I don't think the Department  
22 of Justice, again, quite frankly, has been  
23 nearly as active as it needed to be.

1           We have tried to reach out to our  
2 counterparts at the Department of  
3 Agriculture and to establish what, I think,  
4 is in some ways a historic relationship  
5 with an understanding of the expertise that  
6 we can bring to these questions and with a  
7 respect for the deep expertise and  
8 experiences the Department of Agriculture  
9 has in this regard.

10           It seems to me that without all  
11 of the relevant agencies of the executive  
12 branch actually functioning, working --  
13 working together, speaking with one  
14 another, we're not going to be in a  
15 position to give you all the kind of  
16 service, frankly, the kind of government  
17 that you deserve, the kind of effective  
18 action that I think this government is  
19 capable of providing.

20           And, so, that is why we are here,  
21 but it is also why when we leave and when  
22 we are back in Washington the communication  
23 between our departments will -- will

1 continue.

2 SECRETARY VILSACK: General,  
3 thanks very much.

4 And for the purposes of the group  
5 here today, I want to make one introduction  
6 of a USDA official, primarily because if  
7 there are difficult questions relating to  
8 the Packers and Stockyards Act.

9 I want Dudley Butler -- Dudley,  
10 do you want to stand up, who is in charge  
11 of that area to be able to answer them. So  
12 that's the man you want to go to.

13 MR. BUTLER: Thank you.

14 SECRETARY VILSACK: I don't think  
15 I just did you a favor, Dudley.

16 I want to now turn to Congressman  
17 Davis.

18 Congressman, just from your vast  
19 awareness and knowledge as you travel  
20 around in your congressional district in  
21 the state, your thoughts about competition  
22 in the poultry industry and what, perhaps,  
23 needs to happen in order to make sure that

1 everyone is being treated fairly.

2 CONGRESSMAN DAVIS: Thank you,  
3 Mr. Secretary.

4 And let me begin by just greeting  
5 you and the Attorney General. Mr.  
6 Secretary, you may recall several years ago  
7 after our DLC partnership you came to the  
8 state of Alabama and you had a chance to  
9 talk to some Democrats in Jefferson County.  
10 And it was good to see you then.

11 And, Mr. Attorney General, it's  
12 always good welcome you come back to your  
13 kind of, sort of adopted state.

14 Some of you may remember the  
15 Attorney General honored the State of  
16 Alabama in 2009, only few weeks after his  
17 being sworn in as the first  
18 African-American Attorney General of the  
19 United States he came to Selma, Alabama.  
20 And he honored history and he honored the  
21 whole state by standing in the pulpit of  
22 Brown's Chapel on Jubilee Sunday.

23 And, Mr. Attorney General,

1 people continue to remember that visit, not  
2 quite as much as they remember Barack Obama  
3 coming, but you're a close second. And it  
4 meant a lot that you came that day and I  
5 thank you for that again.

6 Let me -- before I answer your  
7 question, I want to pay tribute to both of  
8 these individuals who are seated to my  
9 immediate left because of something the  
10 U. S. Congress is about to do, but it would  
11 not have happened without the leadership of  
12 Secretary Vilsack and Attorney General  
13 Holder.

14 Some of you in this room have a  
15 vital interest in a fair and just  
16 resolution of the Pigford Case that has  
17 consumed some many people and so many  
18 families for close to 20 years now.

19 Several years ago working with  
20 Democrats and Republicans in Congress we  
21 managed to reopen the Pigford litigation  
22 and we included those provisions in the  
23 bipartisan 2008 Farm Bill.



1           Well, earlier this year Secretary  
2 Vilsack and Attorney General Holder made an  
3 announcement that this long running, long  
4 festering stain of the agriculture system  
5 of the United States was ready to be  
6 settled.

7           And I'm happy to sit here and  
8 report to you that in Congress' final days  
9 before the Memorial Day recess the House of  
10 Representatives is poised to pass  
11 legislation that will include a 1.4 billion  
12 dollar settlement for Pigford litigants  
13 that would not have happened without the  
14 vision of this Attorney General, this  
15 Agriculture Secretary and this President.  
16 So please give them a hand for that  
17 accomplishment.

18           Let me go to directly to the  
19 Secretary's question.

20           Mr. Secretary, the best way I can  
21 answer that question is to share with you a  
22 brief anecdote that I recall from my  
23 travels around this state several years

1 ago.

2 I was attending a farmer's  
3 conference. And, candidly I did not  
4 profess myself to be an expert on poultry  
5 farming, I was there to learn and to  
6 listen. I said my piece. And then at the  
7 end I -- I took questions, did more  
8 listening than talking.

9 As I was about to leave, and I  
10 did what we politicians are always  
11 reluctant to do and says, is there any one  
12 person who hasn't had a chance to speak who  
13 wants to get in?

14 There's a gentleman from North  
15 Alabama who made his way to the microphone.  
16 He said, Mr. Davis, I'm a poultry farmer.  
17 Been a poultry farmer for 33 years.

18 My son is 22. He is graduating  
19 Auburn University. A very fine school in  
20 East Alabama, Mr. Secretary. And he said  
21 my son came to me a few weeks ago and said,  
22 "You know, dad, you've been a poultry for  
23 32 years. I have decided that I want to

1 follow in your footsteps and I want to be a  
2 poultry farmer".

3 The gentleman looked out at the  
4 audience and said, Mr. Davis, the first  
5 thing I did was I said to my son, "Well,  
6 I'm going to put together a list of  
7 contacts that you may want to talk to", you  
8 know, as dads and sons kind of always work  
9 together. So I'll put together a list of  
10 contacts I want you to talk to.

11 And then he said something that  
12 stunned everybody in the room, he said, "I  
13 had no intention of calling a single one of  
14 those contacts on behalf of my son".

15 Everyone got quiet. And he said  
16 I waited, I let several weeks go by and my  
17 son came back and said, "Dad, have you  
18 heard from any of those guys, you know,  
19 that you said I needed to talk to about  
20 getting into the poultry business"?

21 And this gentleman said to us  
22 that day that he kept giving his son the  
23 runaround.

1                   And everyone is sitting there  
2 wondering why would a father give his son  
3 the runaround when his son was trying to go  
4 into the family business.

5                   The gentleman looked out at all  
6 of us that day, about a hundred and fifty  
7 people and said, "Mr. Davis, I have done  
8 this for 32 years. I do not have the  
9 confidence that my son can make it in the  
10 poultry business. I know he's smart. I  
11 know he has everything he needs in terms of  
12 work ethic. I know he has the character,  
13 my wife and I taught him that, but I do not  
14 have confidence he can make it in the  
15 family business".

16                   And I remember everyone in that  
17 room was sitting there wondering have we  
18 gotten to a state in farming and  
19 agriculture in the state of Alabama where  
20 when a son wants to walk in his father's  
21 footsteps the son doesn't feel empowered to  
22 take his son along that path.

23                   We have a lot of poultry farmers

1       who are here today. I suspect, General  
2       Holder, Secretary Vilsack if we had a  
3       chance to inventory some of them -- I don't  
4       know if that gentleman is here, he may not  
5       be, but I suspect there are stories like  
6       his in this room.

7                   And I didn't have a chance to  
8       quiz him or to cross examine him about why  
9       he didn't have confidence that his son  
10      could make it. Maybe it's high energy  
11      costs. Maybe it's the difficulty of  
12      sustaining a small business because running  
13      a farm is running a small business as all  
14      of you appreciate. Maybe it's the lack of  
15      competition. Maybe it's predatory pricing.  
16      Maybe it's predatory relationships between  
17      producers and management.

18                   I didn't cross examine him on  
19      those things that day, but that man in that  
20      room communicated a pain in his voice.

21                   And all of us who care about the  
22      future of this state and the future of this  
23      region have to understand that we cannot

1 walk away from our farms. The reality is  
2 that in this state farms have lost 76% of  
3 their value over the last decade. That  
4 means Alabama is hurting because we're not  
5 fully maximizing what our farms can do.

6 So I'm glad to see the Attorney  
7 General and the Secretary of Agriculture  
8 fully engaged in this very unique  
9 partnership because I want men like the  
10 individual who stood up at that meeting to  
11 be able to say, I welcome my son into the  
12 poultry profession. I welcome my son into  
13 the family business. I'm confident he can  
14 make it. I'm confident he can thrive.

15 There's something fundamentally  
16 wrong when a father has to say to a son, do  
17 not walk the path that I walked.

18 The final comments I'll make, Mr.  
19 Secretary. We have the outstanding new  
20 president of this school, Doctor Hugine,  
21 who is here today, who's seated on the  
22 first row. We have a pretty good crowd of  
23 folk.

1           Everyone in this room ought to  
2 appreciate, it is not an accident or  
3 coincidence that we're at Alabama A&M. As  
4 Jay-Z likes to say they could be in  
5 anyplace in the world right now. Some of  
6 y'all got that.

7           They could be in a number of  
8 places in Alabama. They could be at  
9 Auburn. They could be at AUM. They could  
10 have gone to Selma. They could have found  
11 an excuse to do this in Birmingham because  
12 the flights get into Birmingham more easily  
13 sometimes.

14           But they're here, Doctor Hugine,  
15 at this school, which has meant so much to  
16 Northeast Alabama. For anyone who doubts  
17 that Alabama A&M is 100% on its way, that  
18 Alabama A&M is one of the proudest  
19 institutes in this region, turn around and  
20 look behind you and see what Alabama A&M  
21 can do. Doctor Hugine, it's a tribute to  
22 your leadership that we're today.

23           Thank you so much, ladies and

1 gentlemen.

2 SECRETARY VILSACK: And,  
3 actually, Congressman, we were planning a  
4 competition hearing on football at one of  
5 those other universities, for the rest of  
6 the country that will come later.

7 Commissioner, I want to turn to  
8 you. You obviously have your ear to the  
9 ground with Alabama agriculture and  
10 agriculture generally.

11 And I'm just curious, and I think  
12 the General is curious, in knowing your  
13 thoughts about what we can do to make  
14 sure that this playing field is level for  
15 the growers and producers and how can we  
16 potentially strengthen their position so  
17 that this playing field is as level as it  
18 can be so that a father has a chance to say  
19 to his son you can participate in this  
20 business.

21 COMMISSIONER SPARKS: Absolutely.

22 And, Mr. Secretary, you're on  
23 your own when you start mentioning football



1 in Alabama, okay.

2 The first thing I want to do is  
3 certainly thank Alabama A&M. It is great  
4 to be back in North Alabama.

5 Mr. Secretary, I'm one of the  
6 fortunate commissioners in this country  
7 where I have three land grant universities  
8 with Alabama A&M, Tuskegee and Auburn. And  
9 I am very proud of all three of them. And  
10 they do yeoman's work for agriculture in  
11 this state. And I just want to -- I'm very  
12 proud of them and I appreciate them.

13 And I want to thank you  
14 personally for taking your time to come to  
15 Alabama, along with General Holder. This  
16 means a lot to -- to us in Alabama. And  
17 thank you Assistant Secretary Varney --  
18 General. This means so much for you come  
19 to Alabama and talk in my opinion, to some  
20 of the best farmers you'll ever meet.

21 I've had the privilege of working  
22 with industry and agriculture in this state  
23 now for 11 years. And I can tell you it

1 has been a great ride to be able to work  
2 with these gentleman.

3 But, you know, there's a key word  
4 when we start talking about contracts, we  
5 start talking about farmers, we start  
6 talking about agriculture, and that key  
7 word is profitability. Profitability --  
8 it's hard to keep anybody in business if  
9 they don't see a way to make a living. And  
10 that's the struggle that farmers have today  
11 is to try to figure out how they're going  
12 to make a living and how they're going to  
13 make ends meet.

14 And General Holder when you  
15 started quoting Doctor George Washington  
16 Carver it makes me feel good because in  
17 many of these individuals that's ever heard  
18 me speak I talk about Doctor George  
19 Washington Carver also. And Doctor George  
20 Washington Carver once said a man with no  
21 vision is a man with no hope.

22 And that's why all of these  
23 people are here today because they do have

1 vision and do they have hope and they want  
2 to support their families and they want to  
3 support agriculture.

4 The poultry industry is extremely  
5 important to Alabama. It's over a two  
6 billion dollar industry. The way I view  
7 the poultry industry, is a partnership. It  
8 is a partnership of farmers, a partnership  
9 of companies.

10 And what I have learned as  
11 Commissioner of Agriculture for the past  
12 seven years is that sometimes in a lot of  
13 partnerships communication breaks down.  
14 And when communication breaks down that's  
15 where the hardship and the difficulties  
16 come because many of these farmers that  
17 invest in the poultry industry invest their  
18 lives, they invest their home, they invest  
19 their land, they invest their future, they  
20 invest their kids' future, they invest  
21 there kids' education.

22 And when there's a lack of  
23 communication of not understanding each

1 other, and the troubles that they're going  
2 through, then it creates adversity.

3 And that's what I would hope that  
4 we can get out of this meeting today, is  
5 that farmers understand companies and  
6 companies understand farmers and we find a  
7 way to move this industry forward in a very  
8 positive way because the poultry industry  
9 is a great industry, but they are going  
10 through some very difficult times when it  
11 comes to the investment of their home, the  
12 price that builds, utility costs, labor  
13 costs, but, on the other hand, companies  
14 are going through those similar issues.

15 So I would hope that through all  
16 -- all of this today that we find some  
17 common ground. That companies communicate  
18 better with our farmers and that farmers  
19 communicate better with our companies and  
20 that we find a way to move this business  
21 forward because without each other there is  
22 no poultry industry.

23 We've got to have each other to

1       make this industry work. And we've got to  
2       understand what each other are going  
3       through. The technology. And I think we  
4       need to find a way to reward good farmers  
5       that use the technology that these great  
6       land grant universities afford them. So  
7       that's -- that's where I would hope.

8               There is a great risk for farmers  
9       and there's a great risk for companies.  
10       And we've just got to find a common ground  
11       and the communication that allows us to  
12       move on.

13               SECRETARY VILSACK: Commissioner,  
14       thank you very much.

15               I think it's important for us to  
16       reflect, not just on the industry's  
17       significance to farmers, but also on the  
18       industry's significance to consumers. Very  
19       few people in America appreciate what  
20       American agriculture and the food industry  
21       provides to them.

22               Every single one of us has  
23       probably 10 to 15% more disposal income in

1       our pockets from our hard earned paychecks  
2       by virtue of the fact that we have the  
3       least expensive food as a percentage of  
4       income of any developed nation in the  
5       world.

6               So Americans have this  
7       extraordinary opportunity to maybe buy a  
8       nicer house or a car or go on a vacation in  
9       large part because those food dollars are  
10      stretched so far in this country. And, so,  
11      it is important for us to continue to  
12      support farmers.

13             And, General, and -- and  
14      Assistant Attorney General Varney you might  
15      find it interesting to know that -- that  
16      these farmers out here, if you took a look  
17      at their total farm income, family farm  
18      income across the country, only 9% of it  
19      last year came from farming operations,  
20      which means that 91% had to come from some  
21      other place, which means that these people,  
22      in many cases, are working more than the  
23      farming job they have, they're working off

1 the farm or their spouse is working off the  
2 farm or they're both working off the farm.

3 So, Commissioner, your comments  
4 are -- are certainly important. And you  
5 brought up the issue of communication. And  
6 I think, as the General indicated, that the  
7 departments have to do a better job of  
8 communicating. And, certainly, the USDA  
9 has the responsibility to -- to -- to be a  
10 better communicator, both with farmers, as  
11 well as the Department of Justice.

12 And I'd like to ask the Assistant  
13 Attorney General who is really spearheading  
14 this effort. Maybe you could -- maybe you  
15 can tell us a little bit more about the  
16 enforcement matters the Antitrust Division  
17 handles and -- and how poultry enforcement  
18 is actually handled in the department in  
19 the sense of your role in all of this.

20 ASSISTANT ATTORNEY GENERAL

21 VARNEY: Thank you, Secretary. And thank  
22 you President for having us here at this  
23 wonderful university. It's delightful to

1 be here.

2 Let me start by saying that when  
3 we raised the idea of doing these hearings  
4 to better understand what the issues were,  
5 and the intersection between agriculture  
6 and USDA policy and the Department of  
7 Justice policy, both Secretary Vilsack and  
8 General Holder immediately said, yes, when  
9 are they, we're going.

10 So from the highest level of the  
11 Obama Administration this has been  
12 something that we care deeply about.

13 And you might recall at our last  
14 hearing in Iowa, which was the one where we  
15 kicked this off, it was at a table just  
16 like this where we were hearing in the seed  
17 and grain industry that the different  
18 avenues that the USDA and the Department of  
19 Justice were pursuing. And at the table we  
20 said, "Well, why don't we create a joint  
21 task force". That's where this task force  
22 that you've been hearing about today came  
23 from was the meeting in Iowa.



1           And I expect today, by listening  
2           to you, we'll come up with some additional  
3           activities that we need to be doing that  
4           could address some of the problems that --  
5           that you're experiencing.

6           Let me just give you a brief  
7           overview. At the Department of Justice, in  
8           the Antitrust Division, we essentially have  
9           three broad areas of law enforcement that  
10          we undertake.

11          In the Sherman Act enforcement,  
12          the Section 1, we generally prosecute  
13          criminal cartels, price fixing among  
14          companies.

15          If any of you saw the movie, *The*  
16          *Informant*, that was an Antitrust Division  
17          criminal prosecution.

18          Under Section 2 of the Sherman  
19          Act we prosecute large companies that have  
20          a market share in any particular industry  
21          and are abusing that market share in any  
22          way that's predatory or exclusionary.

23          And then under Section 7 of the

1 Clayton Act we examine mergers. And any  
2 merger that may lead to a substantial  
3 lessening of competition we are required to  
4 block.

5 At the Department of Agriculture  
6 they administer, as the Secretary  
7 introduced, the Packers and Stockyard Act.

8 And the intersection between a  
9 regulated an industry such as poultry under  
10 that act, and the enforcement of the  
11 competition laws under the Antitrust  
12 Division is very complex, exceedingly  
13 difficult.

14 And what we have found, at least  
15 in the time that we've been here, is that  
16 the more we work together the more we  
17 understand the industry in its totality.

18 As you've heard from both the  
19 Secretary and the General we understand the  
20 poultry industry is very, very vertically  
21 integrated. That presents a unique set of  
22 challenges when we're looking at  
23 competition.

1           At the same time, the retail side  
2 of the industry has become very, vertically  
3 integrated, or very consolidated.

4           In 1992, for example, the top  
5 four supermarkets had 17% of grocery sales.  
6 Today the top four stores have over 40% of  
7 all sales.

8           So you've got consolidation on  
9 the retail side and you've got vertical  
10 integration on the production side. And  
11 than can lead to a lot of imbalances in the  
12 system.

13           In a regulated industry where you  
14 look to correct those imbalances is a  
15 combination of using the tools that  
16 antitrust division has in concert with the  
17 tools that the USDA has through enforcement  
18 of the Packers and Stockyard Act.

19           So, Secretary, what we're doing  
20 is working very closely with your staff to  
21 help us -- them educate us on where they  
22 need the antitrust enforcement.

23           We talked about the rule that

1       you've been working on. We've been giving  
2       you, at the staff level, a lot input into  
3       that rule to ensure that when it likely  
4       undergoes any judicial review, when it  
5       becomes final, it's sustainable from our  
6       perspective.

7                As a matter of fact, when the  
8       USDA rules are challenged, it is actually  
9       the Department of Justice that represents  
10      the USDA.

11              So I think over the years there's  
12      been varying degrees of collaboration  
13      between the two agencies. I think all of  
14      our staff have informed me that there has  
15      never been the degree the collaboration  
16      that there has -- that there is now.

17              So from the highest levels all  
18      the way through the staff on the ground,  
19      the staff here on the ground, you can be  
20      sure that whatever is happening at USDA  
21      they're involving us. Whatever we're  
22      hearing about, they're the experts, we're  
23      going back to them.

1           Our mission with the USDA is to  
2           protect the consumer welfare of the  
3           citizens of the United States, whether they  
4           be producers or whether they be growers to  
5           ensure -- through ensuring that our markets  
6           are open and fair and competitive. And  
7           that's what we're doing.

8           SECRETARY VILSACK: Thank you.

9           We've got a few minutes left.  
10          And what I'd like to do is to give the  
11          Commissioner and the Congressman an  
12          additional question.

13          And then give the General any  
14          closing comments for this particular  
15          section they'd like to share.

16          Commissioner, let me go back to  
17          you and simply ask you this question: If  
18          we reconvened, say in ten years from now,  
19          what would you hope we would be able to say  
20          about the poultry industry that would be a  
21          little bit different than it is today or  
22          how you would see it different?

23          COMMISSIONER SPARKS: Well, that

1 we keep -- what I would hope is that we  
2 keep our markets open.

3 That we compete in a global  
4 world.

5 That we -- that the integrators  
6 and the farmers have a better line of  
7 communication of understanding each other's  
8 responsibilities and investments.

9 And I would hope that ten years  
10 from now, rather than it being a two  
11 billion dollar industry in Alabama, it's a  
12 ten billion dollar industry, but I just  
13 think there's a lot of opportunities here.

14 Working with our universities.  
15 Using the technology that's available to  
16 allow these -- and reward those  
17 technologies and allow these growers to  
18 compete in the marketplace under -- under  
19 the restraints that they -- that they have  
20 to live under.

21 So I would hope that, and I  
22 believe this, is that if we -- if we have  
23 that line of communication and break down

1 those barriers that growers understand the  
2 companies and companies understand the  
3 growers, and that we have that line of  
4 communication.

5 I think that's where the  
6 disconnect is, Mr. Secretary, is that  
7 sometimes, even -- even though we're  
8 partner shipping, they don't understand  
9 each other's responsibilities.

10 And I think the more we  
11 understand that; then the -- then the  
12 poultry industry moves forward and we all  
13 benefit from it.

14 SECRETARY VILSACK: Congressman,  
15 your thoughts.

16 CONGRESSMAN DAVIS: One important  
17 thing, Mr. Secretary, that I think that you  
18 and this Justice Department recognize is an  
19 anti-competitive environment is an  
20 inefficient environment. And that's worth  
21 spending a few seconds asserting to a group  
22 folks who don't think about these issues  
23 every day.

1           Sometimes there's a mindset --  
2           thunder -- sometimes there's a mindset of  
3           the American economy that if we just get  
4           out of the way, if government is  
5           laissez-faire, if the Justice Department  
6           sits on the sidelines that things will  
7           naturally happen.

8           And we are comfortable in that  
9           belief, many of us, because we like our  
10          free market system, we like our capitalist  
11          system and we venerate that as both a value  
12          and an economic model.

13          But the reality, as Presidents  
14          from Teddy Roosevelt to Barack Obama have  
15          understood, sometimes we've got to be  
16          watchful, sometimes we have to be vigilant.  
17          Sometimes we have to make sure that in the  
18          name of an open market we don't crowd out  
19          competition. And in the name of efficiency  
20          we don't do something that's enormously  
21          inefficient.

22          And, Mr. Secretary, you put your  
23          finger on it earlier, the American consumer



1 is a very privileged person. The American  
2 consumer lives in one of the few highly  
3 vibrant societies in the world where most  
4 of us have routine access to most consumer  
5 items. And most of us have a reasonable  
6 opportunity to climb to the next economic  
7 lever, even in the midst from the aftermath  
8 of the incredibly deep recession we've had,  
9 that's one of the geniuses of the American  
10 economy.

11 If we get this mix the  
12 Commissioner talks about right in the next  
13 ten years, if we get it right in the next  
14 two decades, we'll preserve the consumer's  
15 capacity to have access to the market. We  
16 will preserve the industry's capacity to be  
17 productive and efficient in the right kind  
18 of way. And, finally, we will preserve the  
19 men and women who are laboring on farms day  
20 in and day out, we will preserve your  
21 capacity to keep doing what you do because  
22 that's what I want to end with.

23 The number of men and women in

1       this state and this region who had walked  
2       away from farming in the last 40 years is  
3       aching. So many people who grew up on  
4       farming are walking away from it and it's  
5       draining vitality from whole parts of this  
6       state.

7                   We've got to connect those  
8       individuals. We've got to give them the  
9       promise that they deserve. And if we do  
10      it, it won't simply be good for farmers and  
11      agri-business, it will help lift up the  
12      economy of the entire state and the entire  
13      region.

14                   SECRETARY VILSACK: Thank you  
15      very much.

16                   You know to the Congressman's  
17      point, we've lost over a million farmers in  
18      that 40-year period around the country.  
19      And not only have we lost farmers, but  
20      we've lost a lot of population in our rural  
21      communities.

22                   And, General, you might be  
23      interested to know that one-sixth of

1 America's population, about 16, 17% of  
2 Americans live in rural America, but 45% of  
3 those who serve us in uniform come from  
4 those small towns and from rural America.

5 And as we see a squeeze on the  
6 folks in rural America and the economy that  
7 suffers in rural America, and there are  
8 fewer and fewer young people being able to  
9 stay in rural America, you have to begin to  
10 wonder are they're going to be enough folks  
11 to care of all of our military needs and  
12 our law enforcement needs, where are these  
13 folks -- where are these folks going to  
14 come from?

15 So, Congressman, you're -- you've  
16 got a good point there.

17 General, your closing comments  
18 before we close this first session.

19 ATTORNEY GENERAL HOLDER: Yeah.  
20 I mean, think that, you know, although we  
21 are focusing on agriculture generally, the  
22 poultry industry specifically here today,  
23 we're really talking about something that I

1 think in a lot of ways is more basic than  
2 that. And it -- I think that goes to the  
3 last two sets of comments we've heard.

4 The American culture, who we are  
5 as Americans, is really -- you know, if you  
6 look historically is really based on our  
7 agricultural industry, the agricultural  
8 component of what America is about.

9 The values that we hold as  
10 Americans, I think, were developed on  
11 farms. I'm a city guy. I'm proud to be --  
12 I'm proud to be from New York, don't hold  
13 that against me. But I'm also a person who  
14 knows a little about the history of -- of  
15 this nation.

16 And I think it's important for us  
17 to make sure that we hold on to the values  
18 that were developed in our rural areas that  
19 continue to sustain this nation and  
20 differentiate this nation from, you know,  
21 many other nations around the world. It's  
22 what makes, you know, this nation great.

23 What we want to do is come up

1 with a way in which we, in government, can  
2 help to make sure that there are  
3 efficiencies, that there is fairness there.  
4 And that our economic -- economic system  
5 that we have is consistent with the values  
6 that we always espouse.

7 We're not looking for government  
8 to direct things, but government can play a  
9 role as a referee at times.

10 The Obama Administration is not  
11 looking, one way or the other way, as much  
12 as just to try to make sure that fairness  
13 is the thing that permeates the  
14 agricultural sector.

15 And in doing so, I think we will  
16 do the greatest service, which is to  
17 perhaps reverse the trends that we have  
18 heard about people leaving farms, people  
19 not being able to pass on to their sons and  
20 daughters the ability to do the great  
21 things that they have done and the things  
22 that have shaped this country, the things  
23 that have made this nation great.

1           Our economy and our well-being is  
2     at stake, which is somewhat, I think, you  
3     know, the sole of this nation is also  
4     something that we are fighting to preserve.  
5     And that's something that you-all, I think,  
6     are key parts of.

7           And, so, what we want to do, as I  
8     said at the beginning, is really to listen  
9     to you, to figure out ways in which we can  
10    be of service to you.

11           And in doing so make sure that we  
12    preserve the great nation that we've always  
13    had and that we want to continue to have.

14           SECRETARY VILSACK:   General,  
15    thank you.

16           We are going to a break for --  
17    for about 15, 20 minutes or so and try to  
18    reconvene here for the next roundtable,  
19    which will be the poultry growers.  We'll  
20    talk to growers and former producers about  
21    their expectations.

22           That will then be followed by a  
23    lunch break.  And then we will reconvene

1 after lunch for an opportunity for the  
2 public generally to provide testimony.

3 That will be followed by another  
4 roundtable discussion of individuals, both  
5 in terms of the government, as well as  
6 academic and -- and the producer and  
7 industry viewpoint.

8 And then additional opportunities  
9 for public testimony and closing remarks.

10 So we will break for about 15 or  
11 20 minutes.

12 (Whereupon, the taking of the  
13 proceedings were recessed from  
14 approximately 10:03 a.m. to  
15 approximately 10:41 a.m., after  
16 which the following proceedings  
17 were had and done:)

18 SECRETARY VILSACK: If I can call  
19 everyone's attention to the -- to the next  
20 panel.

21 Let me, first of all, introduce  
22 the panel. And I can't see the name  
23 plates. So I'm not sure -- alright.

1           Garry, I'm going to start with  
2           you. I'm just going to go right down the  
3           line introducing folks. And then we'll get  
4           -- get to some questions and answers.

5           These introductions will be  
6           short. And if I mispronounce the name, I  
7           sincerely apologize.

8           Garry Staples is the president,  
9           owner and manager of the White Acres Farm,  
10          an eight-house poultry operation along with  
11          60 head of registered cattle.

12          He's served as a board member of  
13          the National Poultry Growers Association as  
14          well as vice president of the Alabama  
15          Contract Poultry Growers Association. He's  
16          on the Board of Directors of the St. Clair  
17          County Soil and Water Conversation. He's  
18          served as an officer of the St. Cloud --  
19          St. Clair County Cattlemen's Association  
20          and the Alabama Cattlemen's Association.

21          He's presently a Major in the  
22          Army Reserves. And we thank you for your  
23          service. He's served as the past company



1 commander of the Signal Company, 20th  
2 Special Forces. He was a team leader of  
3 the Operational Detachment 821 1st  
4 Battalion, 20th Century -- 20th Special  
5 Forces.

6 Carole Morison is next. And she  
7 is a farmer from Maryland. She and her  
8 family raised chickens under contract for  
9 23 years on their family farm. She helped  
10 organize the Delmarva Poultry Justice  
11 Alliance and served as Executive Director  
12 for eight years. Currently she's a private  
13 agricultural consultant specializing in  
14 local food systems.

15 Gary Alexander is owner and  
16 operator of Alexander Farms, Inc., a  
17 poultry production and property development  
18 business in Westminster, South Carolina.  
19 He markets 3.2 million broilers a year  
20 through his 18 broiler house farm and  
21 develops residential properties as well.

22 He serves on the Board of  
23 Directors of Agsouth Farm Credit, ACA and

1 AgFirst Farm Credit Bank, which he serves  
2 on the audit committee. Additionally, he  
3 serves on the Board of Directors of the CS  
4 Poultry Federation and the Outdoor Dream  
5 Foundation, an organization providing  
6 outdoor adventures for children with  
7 life-threatening illnesses.

8 Kay Doby, who is to my immediate  
9 left, has made Cameron, North Carolina here  
10 home for -- I won't say how many years.

11 MS. DOBY: 55.

12 SECRETARY VILSACK: Okay. 55  
13 years. Just was trying to be a gentleman  
14 here.

15 She lives on a 3rd generation  
16 farm and continues raise meat, goats and a  
17 small flock of chickens. She's taught  
18 kindergarten for 15 years. She and her  
19 husband built two broiler houses and raised  
20 poultry until October of 2008 when their  
21 contract was terminated.

22 Robert Lumzy, did I say that  
23 right, sir?

1 MR. LUMZY: Yes.

2 SECRETARY VILSACK: Mr. Lumzy is  
3 currently a heavy equipment operator. In  
4 April of 1999 he purchased Lumzy Poultry  
5 Farms where he raised chickens for a living  
6 and provided jobs for those in the  
7 community who were unemployed.

8 In 2006 Robert lost his contract  
9 and it's his desire to regain his contract  
10 and once again become a business owner.

11 Sandra Pridgen is a seventh  
12 generation family farmer from Snow Hill,  
13 North Carolina. She transitioned the farm  
14 from tobacco and contract poultry  
15 production to a sustainable grass-based fed  
16 marketing meats directly to consumers  
17 through farmer's markets, fine clubs and  
18 restaurants.

19 Rainbow Meadow Farms currently  
20 markets, poultry, eggs, beef, pork, lamb  
21 and rabbit locally in North Carolina.

22 And she spent five years -- the  
23 last five years conducting on farm research

1 for pasture based livestock systems and  
2 poultry genetics appropriate for those  
3 systems.

4 And our last panelist on the end  
5 is Shane Wooten.

6 Did I pronounce that right?

7 MR. WOOTEN: Yes.

8 SECRETARY VILSACK: Shane was  
9 raised on a poultry and cattle farm in  
10 De Kalb County, Alabama.

11 In 1997 he purchased a farm next  
12 to his father's farm and began constructing  
13 12 broiler houses where he continues to  
14 raise poultry. In 2006 he also become an  
15 insurance agent for the A-L-F-A Insurance,  
16 specializing in poultry farm insurance.

17 Assistant Attorney General Varney  
18 and I thank all members of the panel for  
19 their participation.

20 And what I'd like to do is start  
21 off with a question that we'll direct to  
22 all of the panel is here today and ask you  
23 to comment on it. And, just, we'll start

1       there with you and just kind of work right  
2       down the line.

3               And, basically, the question is  
4       this: The poultry industry over the last  
5       40 years has become consolidated and -- and  
6       to a certain extent vertically integrated.  
7       And the number of countries -- companies  
8       for growers to do business varies from each  
9       region of the country.

10              In your experience, how does that  
11       impact and affect the fairness of  
12       contracts? And what options should we  
13       consider in taking a look at those  
14       circumstances where there may be only one  
15       or two companies able to do business? What  
16       needs to be done to make sure that farmers  
17       and growers get a fair shake?

18              MR. STAPLES: Mr. Secretary, I  
19       appreciate y'all coming today.

20              But talking about the integrators  
21       being in one area. In my county alone,  
22       we've got two, but they're up -- they do  
23       not cross lines at this time anyway.

1           I wish I had an answer for you to  
2 tell you how to fix that problem, but if we  
3 could just get fair and -- and competitive  
4 markets with these people, to where we  
5 could, as a grower, be able to go to  
6 another integrator and say, look, I -- I  
7 can do this for you and get them to help us  
8 with that situation.

9           As it stands right now with the  
10 contracts that we're offered now it's  
11 either a take it or leave it situation. So  
12 it really puts us in a bind as growers.

13           MS. MORISON: I'd like to thank  
14 you for being here today as well and for  
15 giving us this opportunity.

16           As far as the consolidation of  
17 the -- of the industry there used to be  
18 seven poultry companies where I'm from.  
19 We're down to four now. Two are very small  
20 poultry companies, two are major poultry  
21 companies. And every year we see things  
22 downsizing more and more where, you know,  
23 smaller ones are -- are bought up.

1 I don't see much difference in  
2 contracts between companies. It might be a  
3 few different words that are used, but  
4 basically they're the same. So, you know,  
5 the contracts aren't really affected by  
6 that as to whether you're big or small.  
7 Contracts are basically the same.

8 SECRETARY VILSACK: Gary, your  
9 thoughts.

10 MR. ALEXANDER: Thank you for the  
11 opportunity to be here.

12 In our particular area we are  
13 afforded three integrators. And when you  
14 look at those contracts each one of them  
15 are just minor sentences apart of each  
16 other, they're very equal.

17 And in research and preparation  
18 for this meeting I looked into an area of  
19 14 states served by the AgFirst Farm Credit  
20 Bank. And those contracts throughout that  
21 14 states are with -- again, within pennies  
22 of each other.

23 In two or three cases we saw

1 contracts where the grower only had a  
2 choice of one integrator were in, some  
3 cases, better than the ones where you have  
4 multiple choices. So the contract portion  
5 of this business is just like any market  
6 driven decision. It's based upon  
7 competition and availability of services.

8 MS. DOBY: In our area we have  
9 more than one company, but it seems to be a  
10 written rule that if you go grow for one  
11 company, you really don't have the  
12 opportunity to even cross those lines to go  
13 to another company. And with -- like what  
14 they're saying, the contracts are pretty  
15 much the same, but it's -- it's not a  
16 common practice. If you start with one  
17 company, you -- you usually stay with them.

18 SECRETARY VILSACK: Robert.

19 MR. LUMZY: Thank you for  
20 allowing me this opportunity. But as  
21 everyone else has said, in our community  
22 there are several companies, but once you  
23 start with one, that's the only one that



1 will allow you a contract. They won't  
2 cross the lines to come to your farm.

3 MS. PRIDGEN: I -- I would say  
4 that I basically agree with Kay of what she  
5 said. What -- what we've found is that the  
6 companies, there's is a slight variation in  
7 maybe the type of heating system that they  
8 have, that company there uses for their  
9 heater or their feed line system.

10 And, so, if you end up trying to  
11 go to another integrator; then that  
12 integrator is going to say, Well, you know,  
13 you're going to have to make all these  
14 changes to the specific, you know,  
15 Cumberland Heating System or a particular,  
16 you know, feed system that we use. So they  
17 use that as an excuse not to take you on.

18 And, also, the other thing is if  
19 they do end up taking you on, their  
20 preference is always for getting -- if  
21 they're in expansion mode, their preference  
22 is always for getting new houses.

23 And as soon as -- what we've

1 found in our experiences, as soon as they  
2 can get new houses, they're going to dump  
3 those people that -- that -- that they have  
4 brought on from another company.

5 MR. WOOTEN: Thank you, Mr.  
6 Secretary.

7 In my area we've been very  
8 fortunate. At one time we actually had  
9 five integrators that served the area where  
10 I lived. It's kind of a sweet spot there.  
11 So competition has been pretty good in that  
12 area.

13 You mentioned vertical  
14 integration. And our aspects and thoughts  
15 that on. Vertical integration, I think,  
16 has been key to the poultry industry for  
17 the last 40 years and has provided a stable  
18 income for the poultry farmer in a stable  
19 market. But as far as competition, I think  
20 we have a pretty good competition in our  
21 area compared to some others.

22 SECRETARY VILSACK: During the  
23 course of our first panel Commissioner

1 Staples mentioned concerns that he had  
2 about -- about a lack of communication or  
3 miscommunication or an inability to  
4 communicate between companies and  
5 producers.

6 I'd be curious to know from your  
7 own personal experience or from experiences  
8 of people that you know and trust, do you  
9 share the Commissioner's concerns? And if  
10 so, what suggestions would you make for us  
11 as to how we might be able to help improve  
12 communication?

13 And I'm just going to start this  
14 way and come down the other way.

15 MR. WOOTEN: Well, communication  
16 is -- between the grower and -- and  
17 integrator is -- is one thing that I've  
18 prepared a statement on. And if you don't  
19 mind, I'll go ahead and start with that.

20 SECRETARY VILSACK: Sure. Feel  
21 free.

22 MR. WOOTEN: A couple of the  
23 issues that is facing the contract growers

1       that I would like to discuss is, number  
2       one, rapid rise in expenses over the past  
3       few years. And, number two, the breakdown  
4       in communication between contract growers  
5       and integrators.

6                 Just a quick example of expense  
7       increase. When my brother and I completed  
8       our construction of our houses in 1999  
9       expenses have dramatically increased, but  
10      although there are many different input  
11      expenses that go into a poultry farm,  
12      propane cost is -- is one of the largest.  
13      In 1999 our propane cost was about  
14      approximately \$42,000 a year. In 2009 that  
15      propane -- that same propane cost had  
16      increased to approximately \$92,000 a year.  
17      That was a hundred and twenty percent  
18      increase. So that was a bottom line cut  
19      off of our profitability. Those increases  
20      have dramatically affected profitability  
21      for the contract grower.

22                 And, in fact, the integrated  
23      system that has provided such a good,

1       stable income for so long, we actually lost  
2       money in 2008 on our farm for the first  
3       time.

4               This discrepancy between income  
5       and increased expenses is -- including  
6       myself and a lot of the other growers as  
7       you had mentioned in the earlier panel, we  
8       have had to go outside the farm to provide  
9       for our families.

10              I think in the same time frame  
11       comparison, I think the contract pay -- for  
12       me, contract pay has increased  
13       approximately 17% from 4.7 cents a pound to  
14       5.5 cents per pound, which is nowhere close  
15       to offset the rising costs.

16              But integrators also have not  
17       been immune to these rapid rises in cost  
18       and input expenses, but, unlike the  
19       contract grower, the integrators do have  
20       the ability to reduce production and drive  
21       the chicken prices up which helps their  
22       profitability. The contractor does not  
23       have that opportunity.

1           In fact, I read in the *Poultry*  
2 *Times* magazine this week that integrators  
3 are actually in the -- are poised to  
4 increase production because of some of the  
5 contracts or some of the production  
6 cutbacks that they have made, the article  
7 stated that poultry prices were at a level  
8 to where good profits could be made.

9           Unfortunately, integrators do not  
10 the realize that the need that continues to  
11 -- continues to drive those prices up in  
12 order to be able to increase contract pay.  
13 I think it's the inability of the  
14 integrators to understand the financial  
15 strain that is placed on contract growers  
16 at this time.

17           I believe that is key. The key  
18 reason for that is a communication  
19 breakdown inside the companies and also  
20 from grower to integrator. That  
21 communication breakdown -- as we all know  
22 communication is very important in every  
23 business.

1           I was raised on a poultry farm.  
2           And one of the biggest changes that has  
3           occurred, that -- that I feel has affected  
4           communication over the last 20 years is  
5           that 20 years ago almost every employee in  
6           our area, almost every employee of the  
7           integrator in the grow out side from the  
8           service technician all the way up to  
9           complex manager were actually contract  
10          growers themselves.

11           So that close relationship  
12          between the company and the contract  
13          growers was -- gave a better representation  
14          of the contract growers in any company  
15          decisions that were made.

16           In comparison, over the last few  
17          years, a number -- that number has steadily  
18          declined. And some integrators have  
19          actually banned their employees from having  
20          -- from being contract growers. In effect  
21          that -- in effect the contract grower has  
22          lost their representation inside the  
23          companies or inside the integrators. That

1 has, in turn, led -- led to uninformed  
2 decisions by the companies themselves that  
3 has affected the contract grower adversely.

4 This communications breakdown  
5 inside of these companies themselves has  
6 become more evident in the past few years  
7 as profit margins for the companies have  
8 tightened and they've also tightened for  
9 the growers.

10 So the constant pressure that  
11 these tightening of margins has placed on  
12 employees to keep cost at a minimum has  
13 caused some employees to be reluctant to  
14 bring up issues that may have concerned the  
15 contract grower because it would be an  
16 extra, additional cost to that company.

17 So I do not believe that is a  
18 result of the company's employees'  
19 negligence, I just simply believe that this  
20 is just a result of the high input expenses  
21 and the low profit margins over the last  
22 few years and just the general corporate  
23 structure and how communications travels up



1 the structure.

2 SECRETARY VILSACK: Thank you.

3 Sandra -- and feel free -- I know  
4 that folks have prepared, in some cases,  
5 written statements. If you'd like to read  
6 them, that's fine, or summarize them,  
7 that's fine, in response to this particular  
8 question or if you just simply want to  
9 furnish them. We are making a record, a  
10 transcript of this, and it will be  
11 incorporated into the record.

12 Question about communication and  
13 your views on this.

14 MS. PRIDGEN: As you know, we are  
15 independent poultry producers now. But  
16 what I'd like to say is that when we were  
17 contract producers some of the things that  
18 we noticed as a lack of communication was  
19 what they term as new grower's contract.  
20 Where you initially start out with an  
21 initial contract. And then in a few years  
22 they bring in a new grower's contract and  
23 you have to sign it before you can receive

1       your next flock. And there's been no  
2       negotiation and no communication between  
3       the grower or a group growers for that  
4       company and negotiation of that contract  
5       with the integrator. So you either sign it  
6       or you don't receive your next flock.

7                 And when you have that kind of  
8       debt load over you, of course you're going  
9       to choose to sign the contract. You feel  
10      that there's no other option when you owe,  
11      you know, a half a million dollars or a  
12      million dollars.

13                Also, there's -- there's a lack  
14      of communication in that what is said in  
15      the contract and what is verbally  
16      communicated or verbally implied is  
17      oftentimes two different things, you know.

18                My dad was -- after -- after the  
19      first company shut down our complex, my dad  
20      was taken on by another company called Case  
21      Farms. And with that -- in order to be  
22      taken on he took on a \$80,000 debt to make  
23      equipment renovations on -- on 16-year-old

1 poultry houses so that he could grow for  
2 that company.

3 And the company, as soon as they  
4 could get brand new houses built with  
5 tobacco allotment, buyout money that  
6 farmers were getting, they dropped those  
7 former Perdue farmers and were -- and they  
8 were left debt.

9 My dad, was one of them, was left  
10 with, you know, an \$80,000 debt. He grew  
11 12 flock for them and they dumped him.

12 MR. LUMZY: Thank you, sir.

13 I'm sitting here listening to no  
14 communication. Our problem is that when we  
15 have a problem with the company you have a  
16 service person comes out and they tell you  
17 what the company says. They tell you, with  
18 me now back in -- when I lost my farm.

19 They came out and we worked  
20 together and got my farm straight. And I  
21 asked a question, I said, "Will it cause me  
22 to lose my contract"? And they said --  
23 when I -- with the deficiency that I had

1 would not cause me to terminate my contract  
2 that afternoon. At six o'clock -- at 6:00  
3 p.m. I got a phone call from Sanderson  
4 Farms saying my contract was terminated.  
5 And I'm going -- I didn't get a chance to  
6 talk to them. I didn't get a chance to  
7 tell them what happened. So I probably  
8 knew, not the right amount of  
9 communication.

10 MS. DOBY: Well, this is kind of  
11 in response to Robert said. That's one of  
12 the ugly realities of the growers talking  
13 about communication.

14 Communication. Growers that are  
15 here today are in jeopardy because of  
16 intimidation by company personnel. And  
17 they're taking a big risk. Everybody --  
18 every grower here is taking a big risk.  
19 And -- and if you ask them, they'll tell  
20 you.

21 Communication. I had a grower  
22 tell me two weeks ago he was talking to the  
23 service person that -- and he was

1       questioning involved the chicks that that  
2       he had just got. And the service person,  
3       the answer he got was, "You know, you  
4       should just be glad you've got a job".

5               Well, the grower got the message  
6       real quick because in North Carolina, right  
7       there in his neighborhood, there are a  
8       hundred and sixty poultry houses sitting  
9       empty and growers have no way to pay those  
10      payments.

11             MR. ALEXANDER: I've got some  
12      prepared comments, but I think you can --

13             SECRETARY VILSACK: We can't hear  
14      you. Do you want to speak into the  
15      microphone.

16             MR. ALEXANDER: I've got a  
17      prepared comment. But I think you can  
18      reflect upon the communication, as the  
19      earlier gentleman stated, that this is a  
20      partnership. And it's a partnership  
21      between, oftentimes an individual and a  
22      corporation, but the thing that drives it  
23      is the communication.

1           And from my prepared comments I  
2 think it will address my feelings.

3           Integrators provided a minimum  
4 risk and total market dynamic protection  
5 for many individuals engaging in poultry  
6 production.

7           Nowhere can anyone go into  
8 business totally insulated from market risk  
9 and consumer preference changes. Without  
10 integrators growers could -- could not  
11 afford to be in the chicken business  
12 because of the cash flow demands and market  
13 swings at there on farm level.

14           Growers realize that the  
15 integrators have a lot of risk, capital,  
16 fixed assets, operational cash and et  
17 cetera, but the real success of an  
18 integrator depends upon their ability to  
19 get growers to participate with them to  
20 achieve a common goal.

21           In most cases a vertically  
22 integrated operation has total assets at  
23 risk, much less than the collective dollars

1 at risk by all growers as a single group.

2 Poultry grow-out is a great  
3 opportunity for young and beginning farmers  
4 through USDA with several levels of  
5 guarantees, low equity levels, integrator  
6 assisted cash flow, opportunities that  
7 normal businesses do not have access to.

8 The young farmer with access to  
9 land can complete a poultry house, and be  
10 in a positive cash flow position in as  
11 little as 16 weeks.

12 A poultry house well maintained  
13 has a life of over 30 years. Most  
14 contracts will pay the grower for his time,  
15 provide manure sales, pay off debt in a 12  
16 to 15 years. If a grower has all farm  
17 income, there's great tax benefits  
18 available during this amortization period.  
19 A well-managed poultry operation can be a  
20 cash cow for 20 years.

21 Oftentimes upgrades are  
22 necessary. This allows the grower to make  
23 a minimum, additional investment, again, to

1       enjoy a favorable tax benefit, the tax  
2       consideration and complete utilization of  
3       depreciation. Current grow out contracts  
4       in our area with the integrators who serve  
5       us provide about a 20% return on  
6       investment.

7               Historically, prior to the latest  
8       economic challenge in poultry production,  
9       as a percentage of assets held by a bank,  
10      only 2% of the poultry loans have wound up  
11      in non-accrual.

12              Chicken houses come with a lot of  
13      USDA assistance. You hear a lot about row  
14      crop disaster, but we have disaster  
15      programs in chicken houses. We have energy  
16      upgrade grants. We have grants for manure  
17      holding facilities and dead bird  
18      composters. Poultry growers make a  
19      commitment to treat the chicken house like  
20      a small manufacturing facility are  
21      successful, not like something that can be  
22      done at the end of the day.

23              The grower must understand the



1 grow out rules, lighting programs, feed  
2 schedules are a result of large volumes of  
3 data being analyzed to best fit the grow  
4 out cycle. Each grower is to provide daily  
5 the very best grow out conditions for a  
6 particular breed to perform.

7 The quality of a grower, in most  
8 cases, is reflected by his performance, but  
9 every grower is subject to get weak birds  
10 or just a bad performance over a given  
11 period of time.

12 The competitive contract formula  
13 is the hard -- is the best way to reward  
14 the hardest workers with the greatest  
15 amount of return. These contracts selling  
16 like birds, with like diets, with like  
17 weather conditions for a fixed period are  
18 very equitable.

19 Fixed contracts with an off farm  
20 owner would not be healthy, nor contribute  
21 to the ultimate product competitiveness in  
22 the marketplace. Growers must be held  
23 accountable for performance through

1 competition.

2 Integrator requirements for  
3 upgrades of current housing standards is  
4 sometimes, not always has to be. A house  
5 built in a current cycle has a state of art  
6 equipment and facilities. These new  
7 facilities will out perform the technology  
8 and equipment of aging facilities.

9 In our area growers are often  
10 allowed to upgrade to stay at the current  
11 pay level or they're offered a contract at  
12 a lesser level continuing to do business as  
13 usual. Again, another example of risk  
14 equals rewards.

15 Historically the -- sometimes  
16 what we see in our areas is that the  
17 terminated growers refuses to see that he  
18 needs to be more efficient. And that  
19 reflects in the communication we were  
20 talking about. Reward is a function of  
21 risk and effort.

22 When you look at a big picture  
23 the grower starts out with the few less

1 birds or extended out times is a small  
2 price to pay for the total success of the  
3 long-term operation.

4 I appreciate the fact that I've  
5 never had to write a check to make an  
6 integrator whole base upon market  
7 conditions. The current oversight provided  
8 by GIPSA serves the industry well. There's  
9 no need for more government intervention in  
10 the poultry industry. A brief look at the  
11 packers and stockers complaints show a  
12 minimum amount of intervention necessary to  
13 maintain fair and equitable standards.

14 If you look at GIPSA's website --  
15 SECRETARY VILSACK: Folks, let's  
16 -- let's -- let's make sure that everyone  
17 gets a chance to have their say in a  
18 respectful way. So, continue.

19 MR. ALEXANDER: The limited  
20 antitrust immunity provided by  
21 Capper-Volstead and other favorable  
22 statutes enable growers and integrators to  
23 join together collectively in the process

1 to market their products because the buyer  
2 power in the agricultural marketplace is  
3 strong -- or stronger than it was in 1922  
4 when Capper Volsted was enacted. The Act's  
5 protection continues to be critically  
6 important to today's environment.

7 I strongly believe any action to  
8 eliminate or dilute the Capper-Volsted or  
9 similar federal statutes would harm the  
10 success and efficiencies of our rural  
11 communities.

12 MS. MORISON: Would you like for  
13 me just to answer your question or --

14 SECRETARY VILSACK: Yes.

15 MS. MORISON: Can you repeat the  
16 question?

17 SECRETARY VILSACK: Sure. It has  
18 to do with communication and whether or not  
19 -- the Commissioner suggested that there --  
20 there was a need for better communication.

21 And if you want to incorporate  
22 whatever statement you'd like, feel free to  
23 do that. I'm going to give you an

1 opportunity to have that.

2 MS. MORISON: I think that -- I  
3 think first off the communication idea,  
4 there probably is a great lack of  
5 communication. I'd say it's a one-sided  
6 communication. The grower listens and the  
7 company tells you what to do. That's been  
8 my experience.

9 And, you know, it's -- for -- for  
10 instance, you know, we've had mention of  
11 demanded upgrades to poultry houses, you  
12 know. The company will come out say, "You  
13 have to do this, this and this or you get  
14 no more chickens in whatever contract  
15 you're in". That's no way to communicate  
16 with anybody, number one. It's going to  
17 make the person mad.

18 Secondly, specifically, after 23  
19 years of raising chickens, our contract was  
20 terminated because we refused to do  
21 demanded upgrades.

22 And, you know, a few weeks before  
23 -- prior to receiving the termination

1 letter for our contract, we were given an  
2 outstanding producer award by the very  
3 company that was terminating our contract.  
4 So I don't think that communication works.  
5 I mean, there was no communication there.  
6 We were putting out a good product. It was  
7 just said, "You do it or get no chickens".

8 I -- I really think  
9 communications have been tried and have  
10 failed. I've been at this for a while.  
11 I've seen a lot of efforts to make  
12 communications work. And I can honestly  
13 say I have not seen anything change since  
14 the earlier 1990 within the industry trying  
15 to use communications between growers and  
16 poultry companies.

17 Secondly, I'd -- I'd -- I'd like  
18 to add in, you know, the ranking system,  
19 which should be maybe a form of  
20 communication, but, you know, the ranking  
21 system is -- is how growers are paid.

22 And the inputs to the farm versus  
23 the output of pounds of meat moved off the

1 farm kind of sums up really easily to  
2 explain how this ranking system works;  
3 however, all of the inputs are direct  
4 poultry company product that are placed on  
5 the grower's farm on a good faith basis.

6 The grower must trust a company  
7 to deliver them quality inputs for their  
8 farm to be competitive, to raise a  
9 marketable product, and for them to have  
10 the best potential of farm income.

11 The ranking system in no way  
12 reflects a grower's performance. It's a  
13 reflection of the quality of company inputs  
14 in producing the output of pounds of meat.  
15 Company control over the inputs besides  
16 flock performance and farm income. This  
17 control can lead to hampering or enhancing  
18 the farm's access to fair and free trade.

19 Someone earlier, you know,  
20 mentioned about company employees having  
21 poultry farms, you know.

22 It's been said many, many times  
23 by growers that, you know, the company

1 employees who are running poultry farms get  
2 the best inputs put on their farm. Since  
3 they're the ones that are influencing and  
4 controlling where these inputs go, they  
5 decide who gets what.

6 So, you know, some companies have  
7 banned employees from having contracts on  
8 their farms. Other companies have it.  
9 Obviously, if some companies have banned  
10 this practice, then there must be some good  
11 reason for it.

12 I think the bottom line is that,  
13 you know, unless every farm placed in a  
14 week's ranking receives the exact same and  
15 identical inputs, the ranking system is  
16 unfair. We can go all the way back to  
17 chick quality that's delivered to farms,  
18 breeds that perform differently.

19 Growers aren't consulted on, you  
20 know, the breeds or genetics or, you know,  
21 which one performs better. And, well, now,  
22 I don't want them, I'd rather have this  
23 batch over here, we have to take what the



1        company brings us. And then we're suppose  
2        to, you know, perform our contractual duty  
3        of raising the best flock possible.

4                There's a lot of deciding factors  
5        before the chicks are ever delivered to the  
6        farm, you know, the genetics, the health,  
7        the age and care of the breeder flock.  
8        That decides how well the chicks perform.  
9        It has nothing do with the grower, it's a  
10       company input. They're the ones that  
11       control this.

12                Transportation of eggs, you know,  
13        from breeder farms to company hatcheries  
14        varies, as well as the operations at the  
15        company owned hatcheries before they're --  
16        you know, the chicks are hatched out to  
17        come to the farm.

18                Feed is another issue. It's the  
19        most costly input for raising a flock of  
20        chickens. And is the foremost influence on  
21        a grower's ranking.

22                Feed is formulated, mixed, loaded  
23        and weighed by the company and then

1 delivered to the farm. Feed must be  
2 accepted by the grower on the company's say  
3 so. And there's no guarantee that the feed  
4 is of the highest quality or quantity.  
5 Personally, you know, we've had several  
6 issues of -- of feed quality and quantity  
7 coming to the farm.

8           Number one, feed quality, I mean  
9 we've had feed so bad delivered to the farm  
10 that it actually froze in the feed bin. We  
11 had to have someone come in and take the  
12 feed bin apart, chop the frozen feed out,  
13 repair the equipment, put new feed back in.  
14 And that had nothing to do with our -- our  
15 performance, that was determined by the  
16 company. So, again, there was no  
17 communication there. "Well, you know, what  
18 we really delivered you some really bad  
19 feed. So let's see if we can't fix this  
20 and work it out". And, you know, really,  
21 you shouldn't be penalized for something  
22 that was our mistake. Instead the  
23 communication that comes across is, "We

1 didn't do anything wrong, it's on you, and  
2 that's the way it goes".

3           You know, quantities of feed  
4 being delivered to the farm. There's no  
5 way to verify how much feed actually comes.  
6 It's -- again, as I said, weighed on  
7 company scales. We get a -- a weight  
8 ticket and we have to accept it because the  
9 company says so. Personally, we were going  
10 to put scales on our farm to verify weights  
11 of feed that were being delivered by the  
12 company.

13           First we were informed by the  
14 company that if we were to put scales on  
15 the farm that there was no law that said  
16 they had to go across their scales because  
17 they owned the check-ins. Then we were  
18 told point blank, "Well, if you do it we're  
19 going to terminate your contract".

20           Now, I see nothing wrong with a  
21 grower wanting to put a set of scales on  
22 their farm. It helps them be a better  
23 manager to control what is coming on to the

1 farm and what is going off of the farm, you  
2 know. Why would a company have a problem  
3 with you putting scales on the farm.

4 Again, this was -- you know,  
5 there was no communication about this,  
6 there was no discussion. "It's if you do,  
7 your contract is terminated".

8 Personally, I -- I can't count  
9 the many, many times that I have heard in  
10 one shape or form of another that our  
11 contract was going to be terminated if we  
12 did such and such. That's no way to  
13 communicate with people who are your  
14 business partner.

15 And I think probably the last,  
16 you know, thing that -- that I'd like to  
17 address here is -- is the confusions and  
18 the frustrations, you know, of how a grower  
19 can find help under the Packers and  
20 Stockyards Act; and I know it doesn't --  
21 maybe it does have to do with  
22 communication, but just in a different form  
23 between growers and government agencies.

1           And, you know, it's -- it's  
2       common knowledge that, you know, GIPSA only  
3       has certain authorities. They can only  
4       investigate complaints. If there's any  
5       violations found, you know, it has to be  
6       referred to the Department of Justice.

7           And, you know, it's  
8       understandable to me, although frustrating,  
9       that the Department of Justice has, you  
10      know, a lot more important issues to  
11      address than the issues of one contract  
12      poultry farmer. I mean, you know, we do  
13      have bad guys out there in the country and  
14      around the world.

15           So, you know, that right there  
16      that is understood, but then it needs to be  
17      understood, too, that once a grower does  
18      file a complaint with GIPSA, they're left  
19      wide open for retaliation by the company  
20      they contract with. And it's the single  
21      most important fact that keeps growers from  
22      filing complaints.

23           Companies are also aware of the

1 inability of enforcement of the Act. And  
2 GIPSA investigations, I mean, I've -- I've  
3 heard comments from company personnel that  
4 it's nothing more than a hassle in their  
5 daily operations because they know that  
6 there will be no enforcement of the Act  
7 because GIPSA does not have that authority.

8 So, I think, probably, what needs  
9 to be done there, either USDA needs to have  
10 the same authority and powers over poultry  
11 as they do over other livestock, or a clear  
12 and concise method needs to be developed in  
13 which communications are opened and which  
14 easily flow between USDA, GIPSA and the  
15 Department of Justice in order that growers  
16 do have an open avenue for making  
17 complaints. And, you know, for knowing  
18 that this information went to all the  
19 proper places it should have gone and help  
20 can be given. Thank you.

21 SECRETARY VILSACK: Garry.

22 MR. STAPLES: Secretary Vilsack,  
23 I'd like to comment on the communication

1        thing, first, and then read a statement --  
2        regardless of what some of the press  
3        releases say was prepared by me and not by  
4        somebody else. It may not be as good as it  
5        could have been by somebody else.

6                But as far as the  
7        communication-wise, when I first started we  
8        had a yearly meeting with my integrator.  
9        Went on for about two years. But since  
10       that time I've -- even with that integrator  
11       and a new one, the only communication I  
12       have is with my service tech, unless I ask  
13       to speak to someone. And if I get the  
14       opportunity to do that, it's one-on-one, me  
15       and whoever I ask and my service tech. So  
16       the communication problem is a problem, I  
17       really feel it is.

18                What y'all can do for us, I don't  
19       really -- I don't really know, but it is a  
20       problem.

21                And if you don't mind, I'll --  
22       I'll read my statement.

23                I'm here today to speak to you

1 about my experiences as a poultry grower as  
2 well as those of other poultry growers.

3 I'm not here just for myself.

4 I've been in the business for  
5 nine years. At that time I had a 7-year  
6 contract. Four years ago I changed  
7 integrators and I was given a 3-year  
8 contract. Last year I signed a new  
9 contract, flock-to-flock. What that means  
10 is every 60 days that's the only time I'm  
11 actually under contract to grow chickens.  
12 At the end of that 60 days, I can be  
13 terminated.

14 I've personally borrowed a  
15 million and a half dollars. And everything  
16 I've got is mortgaged so I can be a poultry  
17 grower. I've got eight poultry houses, two  
18 dwelling houses, a hundred and eighty acres  
19 of land and all the life insurance policies  
20 I've got.

21 As a poultry grower with  
22 everything I've been mortgaged, I had no  
23 choice but to sign that flock-to-flock



1 contract. Like many of them of said,  
2 either I sign it or I ain't got no  
3 chickens.

4 Without any chickens, I can't pay  
5 any bills. I can't pay my mortgage because  
6 chicken houses are designed for one thing,  
7 grow chickens.

8 I personally feel like I have a  
9 good relationship with my integrator. I  
10 work for hard them to raise a good, quality  
11 chicken, but I wonder how I can feel really  
12 secure knowing that every eight to nine  
13 weeks I may not have a relationship at all  
14 with them.

15 Poultry -- poultry's been has  
16 grown under the contracts for over 50  
17 years. The company owns the chickens.  
18 They control the quality of the chickens.  
19 They control the feed and they control the  
20 feed weighing system. They control the pay  
21 system. And they -- and they can cancel my  
22 contract at any time.

23 They also can require expensive

1 upgrades. These upgrades usually cost a  
2 substantial amount of money, which means  
3 I've got to take out another loan. And  
4 when I do that I'm not necessarily  
5 reimbursed for it by the company in any  
6 way.

7           There's three growers in my  
8 county that were given a letter -- a letter  
9 on a Thursday that told them they had to  
10 make upgrades. The following Monday they  
11 got another letter. It said, "You're no  
12 longer an employee", or "you're no longer a  
13 grower with this company".

14           When this could not be done, the  
15 company terminated contracts. And since  
16 there's not another company in our area at  
17 that time, they were left without chickens  
18 and a mortgage that they could not pay.

19           New houses built in our area of  
20 Alabama are given -- at this time some of  
21 the areas given near 10-year contracts with  
22 a pay system that, according to the  
23 contract, will not let make less than zero

1 six point zero six cents per pound  
2 regardless of their performance.

3 My newest two houses are two year  
4 old and equipped the same as these new  
5 houses. My contract is flock-to-flock, not  
6 ten years. My bottom pay is point zero  
7 four three oh. I've also known growers in  
8 our county that their bottom pay is a point  
9 zero three two five.

10 With a flock -- flock-to-flock  
11 contract the contract can be changed at any  
12 time. With the cost of power, water and  
13 gas going higher every year you would think  
14 the company would help compensate for more  
15 energy costs. My gas alone has gone from  
16 70 cents to a dollar and twenty-eight in  
17 the past six years, just the gas. Last  
18 year I signed a new contract. And instead  
19 of helping with my energy allowance, they  
20 took away point zero zero three oh cents  
21 per pound over a year's grow out. On my  
22 farm alone, just my farm, that's a \$4500  
23 savings to the company and a loss to my

1 farm.

2 And although I came here on my  
3 own today, it's not without a lot of worry  
4 when I leave that I'll have some  
5 retaliation. I spent 20 years in the  
6 military. And I feel strong about the  
7 United States that we should be able to. I  
8 appreciate y'all -- y'all for coming and I  
9 hope y'all will help us.

10 Thank you.

11 SECRETARY VILSACK: I'm curious  
12 to -- to talk to several of you in terms of  
13 your experience with the ranking system,  
14 which Carole mentioned.

15 And let me start with you, Gary  
16 Alexander. Are you operating under the  
17 same system and --

18 MR. ALEXANDER: We operate under  
19 the same system. We're fortunate enough  
20 our integrator separates and breeds of  
21 birds, and separates the time of grow out.  
22 And these breed of birds comes with a  
23 different diet and we settle like kind to

1       like kind each week.

2                   SECRETARY VILSACK:   So you're not  
3       experiencing what Sandra was talking about?

4                   MR. ALEXANDER:   It results in a  
5       ranking system, but that ranking is based  
6       upon your performance with a given set of  
7       conditions.   And everybody you're ranked  
8       with has equal conditions.

9                   SECRETARY VILSACK:   Is that the  
10      experience that --

11                   UNIDENTIFIED SPEAKER:   Who do you  
12      grow for?

13                   MR. ALEXANDER:   I -- I grow  
14      Fieldale Farms.   It's a small family  
15      operation in Northeast Georgia.

16                   UNIDENTIFIED SPEAKER:   There's  
17      the difference, there's the difference.

18                   SECRETARY VILSACK:   Garry.

19                   MR. STAPLES:   In my instance, I  
20      grow what we call or what the industry  
21      calls a big bird.   And I may be a little  
22      bit different from some of the other  
23      growers up here.   I know they -- most of

1       them in my county grow for another company  
2       and they settle with 15 to 20 to sometimes  
3       30 growers.

4                 In my instance, I settle with --  
5       I think the most I've ever settled with is  
6       five. So this ranking system doesn't hurt  
7       me as bad. And there, again, I'm here to  
8       work for all growers, not just myself.

9                 I still stand to lose money under  
10       the ranking system. The ranking system has  
11       good points, but it has a lot more bad  
12       points than it does good points.

13                SECRETARY VILSACK: The folks on  
14       this side. Experience with the ranking  
15       system?

16                MR. WOOTEN: I think the -- my  
17       experience with the ranking system has not  
18       been as nearly as good as some of them and  
19       not nearly as bad as others I think.

20                The ranking is -- I think was put  
21       into place to push performance. And if you  
22       -- the way it was designed, if you were --  
23       if you'd done a good job; then you would

1 get rewarded. If you'd done a better job,  
2 if you put more effort into your grow out;  
3 then you would get rewarded for that. Of  
4 course it's got it's good and bad aspects.  
5 But, overall, I really don't know how the  
6 proper way to fix that would be besides  
7 maybe making sure all of the playing field  
8 is level like the -- Garry, I believe it  
9 was, mentioned.

10 MS. PRIDGEN: I don't have a  
11 comment.

12 MS. DOBY: Well, one thing about  
13 the ranking system, there's no transparency  
14 with a checks and balances to prevent this  
15 ranking system from being used to target or  
16 to retaliate against the growers.

17 And one of the things about this  
18 ranking system that when it comes into --  
19 one of the things that come into play is  
20 the company says that some of the growers,  
21 when they're cut off, they're bad growers.  
22 Well, this ranking system, you're not  
23 started out equal. And the system is

1 controlled by the company.

2 I think it's unfair because of  
3 the lack of transparency gives the company  
4 the ability to terminate or penalize  
5 growers based on false claims of poor  
6 performance that, in fact, is out of the  
7 grower's control.

8 I understand why the company  
9 finds this system attractive, but there's  
10 one thing that I don't understand is why  
11 our federal government allows this to  
12 continue. And I really believe that it's  
13 an unfair system.

14 SECRETARY VILSACK: Another  
15 comment that's been in a couple of  
16 presentations has to do with the issue of  
17 debt and the leverage that debt either does  
18 or doesn't provide in a relationship.

19 And I'd be curious to -- to have  
20 the panel's views on whether or not the  
21 issue of debt creates an impetus to -- to  
22 accept things that you would otherwise not  
23 be willing to accept but for the fact that



1       you're concerned about having continued  
2       business and a debt and the ability to  
3       repay the debt.

4                   Is that a serious issue for  
5       growers?

6                   MR. WOOTEN: I think definitely  
7       -- definitely that is an issue because of  
8       the extreme debt load -- you know, any --  
9       anybody under that kind of a debt and  
10      realizing that there's no other way besides  
11      poultry -- being in the poultry industry  
12      that you could actually pay off that debt.  
13      It does definitely put a strain on -- on  
14      any -- to accept conditions given by  
15      integrators.

16                   I've been very fortunate that my  
17      integrator in our area and all the  
18      employees in our complex -- I grow for  
19      Tyson Foods out -- out of the Sned area.  
20      And all the employees have been very easy  
21      to work with, but -- and done a good job.  
22      But they do not understand the pressures  
23      put on us as a lot of them do not

1 understand the pressures put on us.

2 MS. PRIDGEN: I would have to say  
3 that it puts you in a position to where you  
4 don't see another way out of it. I mean,  
5 in our case the farm has been in our  
6 family, you know, for over 250 years and  
7 what are you going to do, you're going to  
8 -- you're going to do what they tell you to  
9 do because you can't afford -- you've got  
10 the farm put up, you've got the  
11 grandparents home place, everything put up,  
12 you can't afford to risk all of that.

13 MR. LUMZY: I agree 100% with  
14 what was just said. In fact, when I  
15 received my contract, in order for me to  
16 receive my first birds, I had to first  
17 invest over \$10,000 in upgrades before they  
18 would even bring me chickens.

19 MS. DOBY: Yes. I'd like to read  
20 and comment about something that I already  
21 had in my statement.

22 When I retired from teaching in  
23 1993 was considering building two 500 foot

1 chicken houses. I was promised this  
2 long-term relationship as long as I raised  
3 a good bird, followed the company's  
4 instructions.

5 And, initially, I was provided  
6 with a contract for that 10-year length of  
7 the loan; however, a few years later the  
8 company brought out another version of this  
9 contract. Said I needed to sign it to  
10 continue to get chickens.

11 Before the end of the initial  
12 10-year term the company again changed that  
13 contract to a 1-year term. I realized that  
14 the company could change contracts easily  
15 by threatening to stop placing birds if I  
16 refused to sign.

17 Well, it's typical for growers to  
18 be asked to do expensive upgrades on their  
19 poultry houses before this first loan and  
20 the building has been paid off. I know  
21 because I was one of those growers.

22 The threats put before you, the  
23 communication, the threat is put before

1       you, if you do not do this, they're not  
2       going to bring you any more chickens to  
3       grow out. This is extortion, plain and  
4       simple.

5                So the growers grow out -- go out  
6       to their lenders and they tell them, "Okay,  
7       the company wants me to put in new  
8       equipment". The lender says, "Sure. How  
9       much you need, we'll fix you right up".  
10      The grower is now in deeper debt and has to  
11      put up more collateral, most of the time  
12      his own personal home.

13               The company tells the grower if  
14      they make these upgrades that they're --  
15      they're going to get paid more under this  
16      ranking system.

17               I asked the company managers, I  
18      went to them, I said, "You want me to do  
19      this. Show me on paper where I'm going to  
20      make this money back to justify borrowing  
21      more money when I still owe money on these  
22      houses"?

23               They couldn't do it.

1           Growers that have made these  
2           mandatory upgrades are now finding  
3           themselves in financial trouble. Some of  
4           them have gotten off farms jobs. Some are  
5           refinancing these loans in order to make  
6           the payments. 10, 15-year poultry loans  
7           are turning into 30-year loans with no more  
8           than a flock-to-flock guarantee.

9           When companies get into trouble  
10          financially they need to cut production and  
11          the growers suffer. In North Carolina  
12          there are growers that have borrowed a lot  
13          of money to make upgrades demanded by the  
14          company. And then the company, because of  
15          bad financial decisions, terminated their  
16          contract. Depending on how many houses the  
17          grower had the debt can be thousands or  
18          even millions of dollars.

19          Precious farm land and homes were  
20          put up to do what the company demanded.  
21          This is where this unfair ranking system  
22          comes into play again. The company said  
23          that these -- some of these growers were

1 cut off because they were bad growers. How  
2 did they get labeled a bad grower? They  
3 got labeled a bad grower by the ranking  
4 system. They had no control over the  
5 inputs, but then they were labeled by this.

6 This past Monday morning in North  
7 Carolina, one of these bad growers went  
8 out, drove down a country road. He was  
9 terminated from his contract, about to lose  
10 his home. Took a gun and ended his life.

11 That's what we're talking about  
12 here today. This is personal. It gets  
13 real poultry growers.

14 And what we're asking today is  
15 the USDA and the Department of Justice to  
16 help these contract poultry growers.

17 SECRETARY VILSACK: Carole, what  
18 about debt and the leverage that it covers?

19 MR. ALEXANDER: In my --

20 SECRETARY VILSACK: No --

21 MR. ALEXANDER: -- in our  
22 particular area we're very fortunate  
23 because of the relationship between USDA

1 and the banks. 80% of the loans in -- in  
2 the counties that I'm in and the counties  
3 that surround me are guaranteed by USDA  
4 funds.

5 Throughout that guarantee process  
6 USDA has reviewed that poultry contract and  
7 has reviewed the terms of the of the loan  
8 and said, "Yes, these two are equal.  
9 There's enough cash low to make the  
10 payment".

11 You know, I don't know that much  
12 about the USDA rules, but it looks like  
13 what would be in one place for one state  
14 would be for all.

15 But the USDA looks over these  
16 contracts and helps balance the grower's  
17 cash flow or has impact upon the grower's  
18 cash flow from the very beginning that  
19 makes the amortization of these loans fit  
20 the terms of the contract.

21 SECRETARY VILSACK: So in your  
22 area it's reliance on the guarantees that  
23 the USDA provides?

1 MR. ALEXANDER: It is. And it's  
2 faith that you can put in the fact that  
3 obviously USDA knows more about it than you  
4 do. So you have a feeling going forward  
5 that it will work.

6 SECRETARY VILSACK: So if  
7 understand your comment correctly, you're  
8 suggesting that there's not as much  
9 leverage as some of these other folks have  
10 experienced because of that?

11 MR. ALEXANDER: That's exactly  
12 right.

13 SECRETARY VILSACK: Carole, how  
14 about your experience?

15 MS. MORISON: I -- I think that  
16 debt has a major influence over what a  
17 grower does, what a grower doesn't do, what  
18 they say, what they don't say, what's  
19 popular and what's not popular.

20 I don't know about the USDA  
21 loans. I don't know. I'm just wondering  
22 if we all should be after you-all for  
23 giving us bad advice.



1 MR. STAPLES: Along those same  
2 lines. If it's such a good contract, why  
3 does it have to be guaranteed?

4 If -- you know, I -- I got my  
5 mine and it's not guaranteed, and I put  
6 some money in it. But my bank done mine  
7 because of my personal wealth or my equity  
8 that I'm putting in there. So what I'm  
9 saying is, if these contracts are as good  
10 as these people say they are, why do they  
11 have to be guaranteed?

12 SECRETARY VILSACK: Since we're  
13 kind of piling on USDA here --

14 ASSISTANT ATTORNEY GENERAL  
15 VARNEY: Want to turn to DOJ for a minute?

16 SECRETARY VILSACK: Well, let me  
17 just ask this one question and then I will  
18 turn to you. Christine, I'm sorry, I'm  
19 probably monopolizing this.

20 But I am obviously interested in  
21 the -- in the discussion that was started  
22 between GIPSA and DOJ when -- when there  
23 are problems and folks feel the necessity

1 of going to the next step of filing a  
2 complaint.

3 And I'm interested in -- in the  
4 reaction of everyone -- and, Carole, you  
5 brought this up, and everyone else's  
6 reaction about, what would be -- how do you  
7 solve that problem? Do you perceive it as  
8 a problem? And if so, how do you solve it?  
9 Do you give -- would you be interested in  
10 GIPSA having more enforcement authority as  
11 -- as was possibly suggested, or do you  
12 think that there is a process of improving  
13 the current system so it works better?

14 Garry?

15 MR. STAPLES: I personally -- I  
16 personally think that GIPSA needs a little  
17 more authority. I don't want to take  
18 anything away from DOJ because I'm pretty  
19 sure they've got their plate pretty full.

20 As I understand it right now, or  
21 the people I know in GIPSA, especially the  
22 one you introduced and put him on the spot,  
23 he's a pretty a good man, I think, Mr.

1 Butler. I think there's been a tremendous  
2 turnaround since he's been there as far as  
3 somebody wanting to help us in the poultry  
4 industry.

5 In past from, what I knew of  
6 GIPSA, poultry was about as low down on the  
7 list as you could get.

8 I think you're going in the right  
9 direction with having full enforcement from  
10 GIPSA for poultry, beef, you know, the  
11 whole -- the whole meat industry.

12 SECRETARY VILSACK: Gary, your  
13 thoughts on that.

14 Do you have anything?

15 MR. ALEXANDER: I'm not very  
16 familiar with the enforcement authority of  
17 GIPSA. But I had always -- always looked  
18 at GIPSA as being, for a lack of better  
19 terms, the DOT of the poultry industry.

20 I felt like the integrators had a  
21 tremendous amount of respect for when --  
22 when GIPSA was brought up. And -- and how  
23 it functions today, and the fact that we've

1 got more credible people in GIPSA looking  
2 at the rules, I think it's a positive  
3 thing, but I'm not familiar with the  
4 enforcement branch.

5 SECRETARY VILSACK: Thoughts on  
6 this subject on this side. Kay. I'm  
7 sorry.

8 MS. DOBY: When I was thinking  
9 about this I had came up with three  
10 suggestions.

11 And, one, would be to prohibit  
12 that use of that unfair ranking system.  
13 There are other ways that companies could  
14 pay growers that create incentives for  
15 growers to do a good job without unfairness  
16 of that ranking system.

17 Another one would be make it  
18 unlawful for companies to force these  
19 growers these expensive upgrades in their  
20 poultry houses at their own expenses.

21 Upkeep is one thing, but if the  
22 companies are convinced that these  
23 expensive upgrades will improve their

1 bottom line, then maybe that's something  
2 they should be paying for. They might be a  
3 little bit more cautious about what they  
4 are requiring.

5 And then the third thing was to  
6 work together to enforce the Packers and  
7 Stockyards Act. And to investigate why the  
8 poultry market is so broken that growers  
9 pay -- like Shane said, had -- you know, he  
10 lost money last year, but it's been  
11 basically flat for the past 15 years.

12 SECRETARY VILSACK: So do you  
13 thing that -- that GIPSA should have more  
14 enforcement authority, or do you think  
15 there should be some kind of improvement to  
16 the current system so the Department of  
17 Justice could act?

18 MS. DOBY: Well, I think there's  
19 some rules there that have not, you know,  
20 been enforced. But, yeah, I think GISPA  
21 needs more enforcement authority.

22 MS. PRIDGEN: I think they need  
23 more authority. My biggest concern is that

1       there's really no open market for poultry  
2       except in my situation, which I'd like to  
3       read my prepared statement in a few minutes  
4       about, you know, what we're doing and where  
5       we're direct marketing.

6                 But, you know, you can still go  
7       to the stockyards and you can still sell  
8       cattle and you can still sell -- you know,  
9       it might not be much of a market, but you  
10      can sell a little bit of pigs, but there's  
11      no -- there's no open market at all for  
12      poultry.

13                There's no options for those  
14      growers who have those houses who choose to  
15      go grow out from under contract except to  
16      grown on -- on a -- on a small scale and  
17      start working, building their own  
18      entrepreneurial business and doing direct  
19      marketing.

20                And then you get hit with, what  
21      I'd like to talk about, which is the lack  
22      of opportunities as far as slaughtering.

23                SECRETARY VILSACK: Well, why

1 don't you just briefly touch on that.

2 MS. PRIDGEN: As you-all know we  
3 had 16 years that we raised under contract,  
4 my family did. And at the end of that time  
5 my dad was left with \$80,000 debt that had  
6 to be paid off. So there we were with the  
7 farm. Well, we didn't want to lose farm.  
8 So we had to start treading water.

9 Well, I -- we were raising lamb.  
10 And I had been selling the meat at the  
11 local farmer's market and I had developed a  
12 core group of customers. I encouraged dad  
13 to start chicken and sell them at the  
14 farmer's market. This couldn't pay off the  
15 huge debt that he had incurred, but it was  
16 better than nothing.

17 Soon we were getting requests  
18 from restaurants, fine clubs and several  
19 small co-op grocery stores. Demand was  
20 growing, but the new problem was the lack  
21 of slaughter infrastructure. The nearest  
22 independent slaughter house was a hundred  
23 and thirty-five miles away. We would have

1 to drive 270 -- 270 miles round trip twice  
2 a week to process and pick up our birds.  
3 And then the owner decided to sell his  
4 property to a developer.

5 So now we would have to take our  
6 birds to either Kings, South Carolina, we  
7 -- I live in North Carolina. So we'd  
8 either have to take them to either Kings,  
9 South Carolina or Manita, Virginia, an  
10 average of 426 miles round trip twice a  
11 week to be processed.

12 It is worthwhile to note that all  
13 the while there were three chicken  
14 slaughter plants and two turkey slaughter  
15 plants within one hour of my farm all owned  
16 by poultry corporations.

17 With diesel fuel at over \$4 a  
18 gallon we were losing money and couldn't  
19 continue to drive that distance.

20 Processing birds on farm under  
21 USDA exemption was not a viable option as  
22 USDA has a 20,000 bird exemption under  
23 PO90-492, but the North Carolina Department



1 of Agriculture only allows a thousand birds  
2 -- chickens to be slaughtered out from  
3 under inspection.

4 It was apparent that we were  
5 going to have to stop raising chickens even  
6 though there was a growing weekly demand.  
7 By then we were marketing about a thousand  
8 birds per week.

9 In late 2007 Chaudhry Halal Meats  
10 in Siler City, North Carolina opened a  
11 poultry processing plant. Even though this  
12 plant is a hundred and fifty miles from our  
13 farms, it afforded us the opportunity to  
14 continue raising chickens and meet the  
15 growing demand.

16 The biggest issue for independent  
17 poultry producers is the lack of local  
18 slaughter infrastructure. Vertical  
19 integration in the poultry industry over  
20 the last 50 to 60 years has decimated the  
21 processing infrastructure.

22 North Carolina is seeing  
23 phenomenal growth in the local food

1 movement. Consumers are taking the USDA's  
2 *Know Your Farmer, Know Your Food* Campaign  
3 to heart, but a lack of local of slaughter  
4 infrastructure and thus lack of ability --  
5 availability of product will hamper the  
6 access of that and the success of that  
7 program.

8 This intense vertical integration  
9 has made it very difficult for any  
10 independent farmer or cooperative group to  
11 compete financially. Because of processor  
12 ownership throughout the entire chain of  
13 production these companies can sell poultry  
14 products for a lot less than I can. One  
15 chick will cost them about 15 cents to  
16 produce. I will have to pay a dollar for  
17 that chick. Feed costs will be two to  
18 three times theirs and processing five  
19 times their cost.

20 The increasing cost of production  
21 means that I cannot be competitive in price  
22 with these large companies and, thus, I  
23 must depend on the purchases of customers

1 with more disposal income.

2 I recognize that this is part --  
3 that part of this is an issue of less  
4 volume, but demand for what we are  
5 producing is growing, however, a lack of  
6 local slaughter infrastructure is the  
7 greatest barrier that we face and one that  
8 will severely inhibit opportunities for  
9 small and midsize poultry producers in the  
10 future.

11 And I do have some  
12 recommendations if that would be okay.

13 SECRETARY VILSACK: If you could  
14 just summarize them just because we're  
15 running out of time. I need to give  
16 Christine five or ten minutes.

17 MS. PRIDGEN: I think that USDA  
18 needs to finalize some mobile meat  
19 processing unit regulations so that we can  
20 get back up and going to help get local  
21 poultry slaughter infrastructure within  
22 communities to help rebuild this local food  
23 system.

1           And what's desperately needed is  
2           we need a requirement to allow states to --  
3           to allow all states to allow 20,000 bird  
4           slaughter out from under USDA -- under this  
5           USDA exemption until this poultry -- the  
6           USDA poultry slaughter infrastructure is  
7           rebuilt. So we need that as an interim  
8           situation.

9           USDA grants and loans need to be  
10          clearly targeted to facilities for small  
11          and mid-sized independent producers or  
12          either producers form in cooperatives.

13          The other things we really need  
14          for USDA to -- to -- USDA's Rural  
15          Development funding for business and  
16          industry loans in order to guarantee these  
17          loans for the bricks and mortar  
18          construction on small and mid scale  
19          slaughter facilities.

20          I would like to ask for more  
21          coordination across the Rural Development  
22          Programs. For example, the USDA value  
23          added grant provides for feasibility

1 studies. This funding would -- could be  
2 used by a group of poultry farmers to work  
3 with economic development entities to see  
4 how many chickens would need to be grown in  
5 order to build a processing facility.

6 Also, I'd like to see USDA FSIS  
7 to work with owners of small, independent  
8 red meat slaughter houses to add a poultry  
9 slaughter line and to help them with  
10 facility design so that they could meet the  
11 regulations.

12 The last thing I would like to  
13 say is I would like for you to consider how  
14 best to implement these recommendations.

15 And what I want you to think  
16 about is if the next generation finds that  
17 the only pathway into poultry farming is to  
18 incur huge amounts of debt with no  
19 assurance of being able to pay it back,  
20 they may wisely decide not to farm.

21 SECRETARY VILSACK: We just had  
22 an interesting briefing yesterday with the  
23 national press and some of the press in

1 Washington, D. C. about *Know Your Farmer*  
2 *Know Your Food*.

3 We just completed an inventory, a  
4 mapping inventory of all the processing  
5 facilities in the country both in terms of  
6 cows, in terms of pork and in terms of  
7 poultry, and also the rendering facilities.  
8 And tried to match it up with where the  
9 smaller producers are so that we could  
10 determine where the gaps are.

11 Our Rural Development folks were  
12 in the room, they are a part of *Know Your*  
13 *Food*, and they are interested in using the  
14 BI program -- this industry loan program to  
15 try to make loans available to those who  
16 want to get into that business. And, as  
17 you know and as you noted, we were are  
18 working on regulations relative to these  
19 small mobile units. And we have already  
20 begun to fund a number of them and we will  
21 continue to do that.

22 So there is a process underway  
23 now in the last year in the Obama

1 Administration to try to create some energy  
2 for that type of activity.

3 Shane, let me give you an  
4 opportunity to comment briefly on the  
5 GIPSA, DOJ issue and then I'd like to turn  
6 it over to Christine for any questions or  
7 comments she has.

8 MR. WOOTEN: I've never had --  
9 I've been fortunate, I haven't had some of  
10 the situations that some of these other  
11 growers have and concerns and things that  
12 have happened to them. So, personally, I  
13 would -- I don't know much about the GIPSA  
14 regulations and stuff. But the only thing  
15 I would say about it is maybe make it more  
16 public of how to start that process  
17 because, you know, I've never needed to,  
18 but if I did, I wouldn't know where --  
19 where to start.

20 SECRETARY VILSACK: Well, mention  
21 was made of Dudley Butler. And I just --  
22 you know, just so you know, this guy is  
23 here today doing his job. His farmstead

1 was recently, for all intense and purposes,  
2 totally destroyed, with the exception of  
3 his home, as result of recent -- recent  
4 tornado. So, Dudley, we appreciate you  
5 being here notwithstanding your own  
6 personal circumstances.

7 MR. BUTLER: Thank you.

8 MS. VARNEY: Well, Secretary, I  
9 have to say the panel has been eye-opening  
10 for me and I have lots of follow-up  
11 questions that I don't think I'll be able  
12 to get to today. So you can expect to hear  
13 from me.

14 But, Mr. Staples, let me say I  
15 fully expect you will not experience  
16 retaliation by virtue of your presence  
17 today, but if you do, you call me at this  
18 number because I want to know about it.

19 What I really want to follow-up  
20 on, Secretary, is this competitiveness on  
21 the contracting side. And I have a couple  
22 of questions that I'd like to get the  
23 panelists to think about if we don't have



1 time talk about now, so certainly during  
2 the break and afterwards.

3 I'm very interested in your  
4 experience after 23 years when you were  
5 terminated. Were you able to switch  
6 integrators? Were you able to go somewhere  
7 else?

8 MS. MORISON: No, we weren't able  
9 to switch integrators. Again, even though  
10 there's four companies in the area, what  
11 one wants, they all want.

12 ASSISTANT ATTORNEY GENERAL  
13 VARNEY: How does that -- how does that  
14 actually work? I would think that a grower  
15 with your -- with your reputation should in  
16 a -- in a competitive market be fairly --  
17 it should be fairly easy to switch?

18 MS. MORISON: It -- it really --  
19 I don't think it really matters as far as  
20 reputation goes, it's just a matter of they  
21 won't put chickens on the farm and they  
22 won't give you a contract, you know. The  
23 upgrades that were demanded of us, had we

1       gone to another company, they would have  
2       said the same thing.

3               And even though, you know, we had  
4       a good growing history, we wouldn't have  
5       had one with another company, we would have  
6       been starting out at the very beginning  
7       with a record with a new company.

8               ASSISTANT ATTORNEY GENERAL

9       VARNEY:   So, then, it's a reduction in  
10      capacity if they're not replacing it or are  
11      they expanding somebody else's capacity?

12              What happens when --

13              MS. MORISON:   All the --

14              ASSISTANT ATTORNEY GENERAL

15      VARNEY:   -- you're taken -- when your  
16      contracts are terminated, is capacity just  
17      reduced in your area or do they --

18              MS. MORISON:   No.  They -- they  
19      get other people to build houses or, you  
20      know, they phase in more birds in other  
21      places.

22              No, they -- every year in our  
23      area they are increasing production.  More

1 -- more birds are being produced every  
2 year.

3 ASSISTANT ATTORNEY GENERAL

4 VARNEY: And I'm very interested in the  
5 upgrades that you all have talked about.  
6 Can you tell me a little bit, because I'm  
7 here to learn, I don't know that much about  
8 your industry.

9 What, in your view, are the kinds  
10 of upgrades that are reasonable and  
11 appropriate and right for the integrators  
12 to be -- wanting from their growers? And  
13 what are the kinds of baskets of upgrades  
14 that are, in your view, are used basically  
15 to -- to take you out of business, which is  
16 what I'm hearing you say today.

17 MS. DOBY: Well, sometimes the  
18 upgrades can be -- it depends on what  
19 they're asking. Now -- and another thing,  
20 it might be the company -- okay. You  
21 started out building houses by the  
22 company's specs, okay. And then the  
23 company, they decide, well, you know, we're

1 -- we're not going to grow this six pound  
2 bird anymore, we're going to grow a nine  
3 pound bird.

4 So that means although you just  
5 built these houses four years ago, you're  
6 going to have to go back in debt \$80,000  
7 because we want these big fans put in  
8 there. We want more, a cooling system put  
9 in there because we're going to this bigger  
10 bird and it's got to be cooled more. So  
11 the grower foots that expense for the  
12 company to grow the birds that's going to  
13 make them more money.

14 And the thing about it is when  
15 you put those upgrades in sometimes like  
16 the companies will say, "Okay, we're going  
17 to give you -- you do this and we will give  
18 you a little bit extra".

19 But that extra will never cash  
20 flow to the pay for that expense. And  
21 that's where the grower gets into the debt  
22 problem.

23 MS. PRIDGEN: What I would like

1 to see is from our family's experience and  
2 the community's experiencing in North  
3 Carolina, these companies are always  
4 looking -- when they're looking at  
5 expansion, they're looking for new houses,  
6 I mean, the newest houses that they can  
7 get.

8 And what I had talked about  
9 earlier that happened is when the tobacco  
10 allotment buyout was going on, there were  
11 farmers who had houses that had been taken  
12 on by this company that were former Perdue  
13 Growers and they were taken on by Case  
14 Farms.

15 And in that situation they built  
16 two new houses to Case's specifications for  
17 Case. But what Case did was went out and  
18 talked to some farmers who didn't have --  
19 didn't grow poultry, into building brand  
20 new houses for them. And, so, when they  
21 got those brand new houses, those new  
22 farmers to start growing, they went back  
23 and dropped those houses that they had

1 initially taken on as the former Perdue  
2 Growers.

3 So, now, this farmer may have  
4 four houses or six houses on his property  
5 and maybe only two of them have chickens in  
6 them and the other four, even though they  
7 have the same equipment in them, you know,  
8 don't -- don't have that.

9 ASSISTANT ATTORNEY GENERAL

10 VARNEY: And then one other question that I  
11 have that I think I will probably have to  
12 follow-up with more off line, but if anyone  
13 of you could tell me, are you in co-ops?  
14 Are there co-ops for growers?

15 Does Cooper-Volstead work for  
16 you?

17 MS. DOBY: There was one a co-op  
18 and it was closed. And that was the last  
19 one.

20 ASSISTANT ATTORNEY GENERAL

21 VARNEY: And why don't co-ops work? You're  
22 all shaking your head no. Tell me why.

23 MR. STAPLES: They probably

1 would. It's just -- I guess you need to  
2 know some poultry growers. It's just hard  
3 -- it's hard to get a lot of poultry  
4 growers to say yes to anything together.  
5 But that's probably one of the biggest  
6 problems.

7 ASSISTANT ATTORNEY GENERAL

8 VARNEY: Any other thoughts on that?

9 MR. WOOTEN: Also we have several  
10 grower based companies -- programs and --  
11 and organizations.

12 I think the -- we had mentioned  
13 earlier about the debt and the --

14 ASSISTANT ATTORNEY GENERAL

15 VARNEY: Right.

16 MR. WOOTEN: -- and -- and I  
17 think a lot of growers are afraid to get  
18 too involved with anything that would go  
19 against the status quo because of their  
20 debt.

21 ASSISTANT ATTORNEY GENERAL

22 VARNEY: Well, Secretary, I have a lot of  
23 work to do from this. And I want to really

1 understand our role in the GIPSA process on  
2 the complaint side.

3 I'm wondering why complaints  
4 aren't treated confidentially until a  
5 certain point in time. I think there's  
6 probably more streamlining we could do.  
7 Whether or not GIPSA has the authority, we  
8 can certainly provide troops and help and  
9 do what we can do.

10 I want to understand more about  
11 the contracting practices and see what we  
12 can do to help make sure that that's a  
13 competitive marketplace.

14 And I want to thank all of you.  
15 I know you take time out of your -- out of  
16 your livelihood to come here and talk to us  
17 and on my part to educate me.

18 Thanks.

19 SECRETARY VILSACK: I want to  
20 join with the Assistant Attorney General's  
21 remarks -- to the panel. I want to thank  
22 you for taking the time and being able to  
23 share, not only your personal stories, but,



1 in some cases, some painful stories of  
2 friends and neighbors who have been  
3 impacted by this industry.

4 My commitment to the folks who  
5 are here today and to poultry growers  
6 across the country is to continue to work  
7 hard with Dudley and those in the GIPSA  
8 area to make sure that our regulatory  
9 system is as good as it needs to be to make  
10 sure that growers and producers have a fair  
11 shake. I mean, at the end of the day  
12 that's ultimately what it's about.

13 I, too, have learned a good deal  
14 here. And I'm sure, Dudley, it's  
15 strengthened his resolve as well to do a  
16 good job.

17 This is obviously an issue that  
18 -- that will require a very close analysis.  
19 The Congress has directed us to do that in  
20 the 2008 Farm Bill. We began that process  
21 with the rules we published last year in an  
22 effort to try to make greater equity in the  
23 relationship and to make sure that folks

1 had notice that contracts were going to be  
2 terminated, that they weren't left without  
3 any opportunity to try to seek alternative  
4 contracts and alternate opportunities. But  
5 this is obviously a difficult issue, a set  
6 of difficult issues.

7           And I might say that it is  
8 reflective of a deep concern that I share  
9 with you today, and that is, about the  
10 future of our rural communities generally.  
11 I think it is very important for the rest  
12 of the country to know what you know about  
13 the challenges and struggles of producers  
14 in this country. I think the rest of us  
15 take what you-all do for us for granted,  
16 whether it's the producers, or whether it's  
17 the folks who process and slaughter the  
18 livestock or the folks who -- who pick our  
19 fruits and vegetables along the entire  
20 stream here, we, as a country, do not  
21 appreciate and do reflect our appreciation  
22 for those who give us a safe, abundant,  
23 affordable supply of food, which is really

1 puts us in a much more competitive  
2 circumstance economically.

3 So we owe you a fair shake. And  
4 I'm committed to doing that as long as I'm  
5 the Secretary of Agriculture.

6 With that, let me ask you to show  
7 your appreciation for the panel and we will  
8 reconvene shortly after lunch.

9 (Whereupon, the taking of the  
10 proceedings were recessed from  
11 approximately 12:00 p.m. to  
12 approximately 1:00 p.m., after  
13 which the following proceedings  
14 were had and done:)

15 MR. FERRELL: I think we'll get  
16 started.

17 In the front, and the people in  
18 the middle, if you want to provide comments  
19 -- if you want to provide a comment, you  
20 should have picked up a ticket at the -- at  
21 the front of -- as you came in the  
22 building.

23 And what I'm going to ask is, I'm

1 going to ask -- there's going to be a  
2 couple of options here.

3 We have two microphones up front  
4 here. And if about, you know, five to ten,  
5 twelve people can get in a -- in a row on  
6 each side in front of the microphone.

7 And you're going to have two  
8 minutes to provide some comments.

9 Our goal is to get as many folks  
10 who would like to provide a comment the  
11 ability to do so.

12 So as you come up to the  
13 microphone, we'll have someone that's going  
14 to take your ticket from you. So that way  
15 we know that everyone who wanted to provide  
16 a comment has -- has been given the  
17 opportunity to do so. And then we'll pick  
18 this up again later on this afternoon.

19 For -- for growers who do not  
20 want to speak at the microphone, we have  
21 other -- some other options as well.

22 Straight out these double doors,  
23 down the hallway, we have a conference room

1 off to the left. And we have some GIPSA  
2 employees that will take your comments  
3 directly that way as well.

4 So if you -- it's up to you where  
5 you would like to provide your comments.

6 So why don't we go ahead and get  
7 started and we'll start on this side.

8 BROTHER DAVID ANDREWS: Thank  
9 you. My name is Brother David Andrews. I  
10 am hear reading the statement of a grower  
11 who not only couldn't -- was afraid to come  
12 as well as afraid to speak. So I'm  
13 speaking on behalf of someone else.

14 First of all, let me give a word  
15 of gratitude for all the time that you have  
16 dedicated to this process. You and your  
17 time is greatly appreciated.

18 From a grower's perspective I  
19 want to assert that the system is broken.  
20 The current system is one that favors the  
21 integrators and allows for the manipulation  
22 of outcomes to growers primarily through  
23 the tournament system.

1                   While the lack of competition  
2                   creates one set of problems, the tournament  
3                   system creates another set. It takes money  
4                   from the growers and gives it to another  
5                   group. The grower has no control over the  
6                   quality of the feed that gets delivered,  
7                   nor how much of each type is delivered.

8                   Another compound -- component to  
9                   the cost equation is the chick cost. The  
10                  integrator has complete control over the  
11                  quality of the chicks delivered to the  
12                  farm.

13                  Another form of manipulation is  
14                  to exclude the best growers and worse  
15                  growers in the average cost calculation.

16                  Another aspect of the tournament  
17                  system is related to time between flocks.  
18                  The tournament system benefits the  
19                  integrators when farms similar in  
20                  performance sell in the same week. This is  
21                  easily achieved by manipulating out times  
22                  and grouping similarly performing farms.

23                  The tournament system that is

1 common in the poultry industry is the only  
2 example that I know of that has the  
3 employees-growers subsidizing the success  
4 of the employers.

5 Thank you.

6 MR. FERRELL: Okay. We'll start  
7 over here. And if can you introduce -- if  
8 you can mention what your name is, too,  
9 that's helpful. Thank you.

10 TOM GREEN: Mr. Butler, poultry  
11 growers and other interested parties. My  
12 name is Tom Green and I'm a former Coffee  
13 County, Alabama poultry grower. Before  
14 that I -- I had a dual military career. I  
15 was an infantryman. And I served in the  
16 aviation branch as a pilot. I flew combat  
17 missions in Vietnam and also served as a  
18 public affairs officer at the Army Aviation  
19 Center.

20 My wife and I went into the  
21 poultry growing business in 1990.

22 I was 52 years old at the time.  
23 We were both excited about going into the

1 new business, totally different from  
2 anything in our past. Poultry fit our  
3 plans that would take us into our golden  
4 years.

5 We invested a little more than  
6 \$500,000 to build four 500 foot poultry  
7 houses on our 90 acres of land just south  
8 of Enterprise. And we depended entirely on  
9 company advice and the SBA and our bankers.  
10 The SBA financed -- they didn't finance,  
11 but they guaranteed our loan.

12 As frequent problems arose  
13 repetitively we -- we sought advice from  
14 other growers. And over time formed a  
15 cooperative that gave us better prices on  
16 supplies and equipment, and all growers  
17 needs that we could fill outside of the  
18 company influence so that we could bring  
19 our prices down.

20 It also served as a forum in  
21 which growers could come together, discuss  
22 issues and express solutions. We  
23 communicated with the USDA packers and



1       stockers to initiate investigations of  
2       irregular suspected and greater activities.  
3       We appealed to DOJ's Antitrust Division on  
4       issues. I had one substantive complaint  
5       forwarded to the DOJ from packers. And the  
6       action -- for an action review. It was  
7       returned to me 14 months later without  
8       action.

9               As a cooperative we participated  
10       in workshops to explore ways to improve our  
11       company-grower relations. Contract equity  
12       was our primary goal.

13              Our contracts continued to be  
14       written on a flock-to-flock basis and could  
15       be terminated by either party with a 10-day  
16       notice for any reason or no reason at all.

17              These contracts were written at  
18       the grower's expense for equipment, trial  
19       and error housing upgrades and no regard  
20       for compensation to offset expenses.

21              In October 1995 Hurricane Opal --  
22       Opal blasted through Alabama and took out a  
23       large number of poultry farms. Many of the

1 more vulnerable, older farms were totaled.  
2 This gave the integrators an opportunity to  
3 bring new projects on, which they  
4 vigorously pursued.

5 Along with the expansion of new  
6 farms, the integrators demanded upgrades  
7 for tone ventilation and new equipment for  
8 the older farms, for the ventilators on  
9 those farms, which, at that time, would  
10 have been a one hundred thousand upgrade to  
11 our debt load.

12 Our new -- our new contracts  
13 contained upgrade requirements. Also  
14 contained a demand for growers to sign  
15 mandatory arbitration in order to settle  
16 any disputes that may come up.

17 Any -- any grower not signing the  
18 arbitration clause by January 15, 1996,  
19 will be terminated and would not receive  
20 chickens. This was also brought to the  
21 attention of the packers and stockers, and  
22 they sent somebody down to investigate and  
23 it resulted in nothing.

1           MR. FERRELL:  Sir, if we can make  
2           -- we're going to try to make sure we get  
3           everyone as possible.

4           MR. GREEN:  Okay.  I've got one  
5           paragraph left.

6           MR. FERRELL:  But in our next  
7           round of comments, we're going to try to  
8           get as many people so you might be able  
9           take another crack at it.

10           We just want to make sure that  
11           everyone who's come here, at least, one  
12           chance.

13           MR. GREEN:  Okay.  This was the  
14           straw that broke the camel's back -- broke  
15           this camel's back.  And my -- Ruth and I  
16           talked about it at length about the  
17           principles, about what happening to us.

18           We talked to lawyers, packers,  
19           Birmingham SBA, everybody.  Nobody could  
20           help.  We were not allowed to sell our  
21           houses and we were not allowed to go with  
22           any other of the other companies of the  
23           three that were working in our area.

1           Ruth and I chose to stand our  
2 principles. We did not give up a  
3 fundamental right to access the public  
4 court of law and guaranteed -- which is  
5 guaranteed by our Constitution, regardless  
6 of price.

7           I had flown too many combat  
8 missions defending that Constitution to  
9 forfeit it.

10           It was truly ironic that  
11 protecting one right, we lost another. We  
12 lost the right to property. We lost 77  
13 acres, four outstanding poultry facilities  
14 and five years of hard work. It was sold  
15 for a hundred and seventy-seven thousand  
16 dollars salvage.

17           We were denied our right to  
18 property by the company acting  
19 unconscionably and in my military mind,  
20 they were criminally acting.

21           Thank you.

22           CRAIG WATTS: My name is Craig  
23 Watts. I've been a contract a poultry

1 producer since 1992. I'm careful not to  
2 use the term independent because I do not  
3 feel today that we're independent, I feel  
4 like we're more of a captive supplier.

5 The competition on the production  
6 end of -- as it relates to us, the growers,  
7 it does not exist, it does not exist. We  
8 have no voice in an industry that we're so  
9 heavily invested in. Growers mortgage  
10 farms and homes based on an assumption that  
11 the relationship with the poultry company  
12 will be long term and mutually beneficial,  
13 but what we get is a growing agreement with  
14 no security at all.

15 Contracts can be terminated at  
16 any time for any reason and as growers we  
17 have no recourse. Contracts can be changed  
18 at any time for any reason. And we're, you  
19 know, forced to sign a contract whether we  
20 like it or not on a take it leave it basis  
21 because, you know, we can either sign it or  
22 face bankruptcy. It's almost like asking a  
23 question, would you rather drown or burn?

1       Either way, it's not a good way to go.

2               Another major issue is a method  
3 of compensation, which this has been beat  
4 to death, but it's called the ranking  
5 system or the tournament system. I've  
6 heard it called a reward system, when it's  
7 actually the grandest Ponzi scheme that's  
8 ever been invented.

9               Timing is everything. What you  
10 get, who you get, when you get it has more  
11 to do than any managerial decision that  
12 I'll ever make. And -- and also influences  
13 my compensation, you know.

14              The ranking system serves as a  
15 cost control method for the companies.  
16 That's what it boils down to. It's no  
17 reward system for a grower, you know. They  
18 say, "Well, it's the bad growers come out  
19 here and do the complaining".

20              I've got proof different. For  
21 what it's worth, I'm a very above average  
22 grower, but I see the faults in it. For me  
23 to make it up here, somebody is getting rid

1 of down here. That's the way I see it.

2 Anybody in this room knows that  
3 there is no such thing as a level playing  
4 field, the inputs. There's just too many  
5 variables. Quality of chicks. Quality of  
6 feed. The feed deliveries. And the beat  
7 just goes on, you know. The stuff that's  
8 outside of our control is almost endless.  
9 That is irrefutable.

10 But when they want to compensate  
11 us, they pretend we've got a level playing  
12 field.

13 All I ask you to do, as Congress,  
14 is prohibit poultry companies from being  
15 able to cancel our contracts just  
16 arbitrarily. Ask the USDA and the  
17 Department of Justice to declare the  
18 ranking system unfair and deceptive.

19 Thank you.

20 WARREN GRANGER: Good afternoon.  
21 I'm Warren Granger from Alva, Oklahoma.  
22 I'm a former poultry farmer of 22 years. I  
23 grew chickens for a large Arkansas

1 multinational company.

2 This hearing is a monumental  
3 event for growers in America. As a poultry  
4 grower I spoke out about the unfairness of  
5 the contracting system through state and  
6 national poultry organizations and any  
7 media that would listen.

8 Several pieces of state and  
9 national legislation were introduced over  
10 the last three decades, only to be stifled  
11 by lobbyists of big chicken. Numerous  
12 complaints were filed by me and many others  
13 to the Packers and Stockyards  
14 Administration, but to no avail. Growers  
15 were told that the PS&A has no teeth to  
16 enforce legitimate claims of the many  
17 injustices inflicted on growers as is David  
18 against Goliath.

19 15 years ago I secretly recorded  
20 the broiler plate pay clerk telling me how  
21 I and members of the Oklahoma Contract  
22 Poultry Growers Association were targeted  
23 and how my grower pay was manipulated for



1 trying to bring about change to an unfair  
2 contracting system.

3 This sound recording was turned  
4 over to the PS&A at that time. We were  
5 told that the DOJ, Department of Justice,  
6 was understaffed and only went after the  
7 big stuff.

8 Recently 50 poultry growers in  
9 Southeast Oklahoma filed a lawsuit against  
10 a giant poultry company from Arkansas for  
11 fraud, negligence and violation of the  
12 Oklahoma Consumer Protection Act.

13 Groups of seven growers at a time  
14 are scheduled for separate trials over the  
15 course of the next several months. The  
16 first trial ended in April with the first  
17 group being awarded 8.3 million. Punitive  
18 damages were rewarded against the company.  
19 And by the way, my secret recording of  
20 15 years earlier was used as evidence in  
21 this trial.

22 Question, why are some of our  
23 land grant universities advocating for the

1 large poultry farmer? Right here today we  
2 have a PhD that will be on this panel after  
3 while that testified for the giant Arkansas  
4 corporation in the Oklahoma trial from  
5 Oklahoma State University. I thought  
6 land-grant universities were suppose to  
7 research and teach prospective ag producers  
8 viable methods to produce food and fiber as  
9 to receive a fair and equitable return on  
10 investment. Why are PhD's testifying for  
11 big corporations against the growers?

12 The poultry farming business is  
13 misaligned. We need your help to level the  
14 playing field.

15 I would like to say thank you to  
16 the Secretary of Agriculture and the U. S.  
17 Attorney General and all these other  
18 officials for hearing the concerns of  
19 farmers across America.

20 Thank you.

21 MR. RUDY HOWELL: My name is Rudy  
22 Howell and I'm thankful y'all are listening  
23 to us.

1           I have grown birds 15 years and I  
2 am very concerned about the payment system  
3 that being based on true competition.  
4 Grower pay can be easily manipulated by the  
5 company. For instance, incorrect feed  
6 deliveries, incorrect feed weights,  
7 inaccurate bird count and easily changing  
8 documentation, all of which affect grower's  
9 ranking and pay.

10           I feel like the USDA and the  
11 Department of Justice should take  
12 aggressive action to enforce the law  
13 against unfair and deceptive trade  
14 practices and acknowledge the current pay  
15 system as unfair and deceptive.

16           Thank you.

17           MR. LAMAR JACKSON: My name is  
18 Lamar Jackson. I've been growing poultry  
19 for 30 years. And I would like to thank  
20 you people for coming here today,  
21 distinguished guests. I could spend all my  
22 time thanking you for just being here.  
23 It's a great pleasure to have somebody to

1 listen to us.

2 We, as growers, appreciate your  
3 concerns for our well-being in becoming  
4 successful growers in these United States.  
5 Integrators, in general, want everything  
6 left alone. They want no new laws to  
7 interfere with their business as usual  
8 policy as they have it now. The system is  
9 definitely a broken one in extreme need of  
10 repair.

11 This administration has an  
12 opportunity to help individual growers who  
13 supply our nation, as well other nations  
14 with a healthy food product, poultry.

15 We need the USDA packers and  
16 stockers to mandate policies that enable  
17 our already existing enforcers, along with  
18 the Department of Justice, to be able to  
19 rigidly enforce and prohibit mandatory  
20 upgrades on housing and equipment that are  
21 totally unnecessary to the cost effective  
22 production of poultry in this country.

23 These upgrades require countless

1 more hours of kilowatt energy to produce  
2 these birds to market. Keeping the grower  
3 in constant debt gives the integrators  
4 assurance that these growers will have to  
5 continue to grow poultry for them. This  
6 eliminates competition and thus makes their  
7 stronghold on growers evident.

8 Let me say that numerous growers  
9 are not attending these workshops because  
10 of being afraid of retaliation on them by  
11 their integrator. A grower this morning  
12 has already been threatened by his service  
13 person if he attends and speaks at this  
14 forum.

15 All the integrator has to do is  
16 make sure that particular grower receives  
17 inferior chicks to start a grow out with  
18 and maybe short his feed delivery, which  
19 can lead to a higher feed conversion rate.  
20 This happens, really it does. This is the  
21 type of undue fair practices that need to  
22 be addressed now. Our payment ranking  
23 schedule is also totally unfair. On a farm

1 the size of mine, which is a hundred and  
2 eight thousand broilers, my paycheck, in a  
3 five-week grow out period, can vary as much  
4 from \$22,000 gross down to \$11,000 for the  
5 same amount of chickens. This makes it  
6 impossible to meet financial obligations  
7 and be able to plan any future endeavors.

8 Please enforce the laws already  
9 in place by giving the USDA and packers and  
10 stockers real authority to do their jobs in  
11 order to help us and this industry.

12 Thank you very much for your  
13 time.

14 MR. BUTLER: Hold on, hold on  
15 just a minute. This is Alan Christian, my  
16 deputy. I want you to tell him about who  
17 got threatened, not -- not right here, just  
18 go back and tell him who -- what the name.

19 MR. JACKSON: I sure will.

20 And I did say this, one more  
21 time. I've been doing this for 30 years.  
22 It might be just 31 because I'm gone, too,  
23 but that's okay.

1 MR. MICKEY BLOCKS: I'm Mickey  
2 Blocks.

3 The lack of competition in a  
4 given geographic region has led to  
5 integrators with all of the power, this  
6 leaves the grower with little or no choice.  
7 The grower is given a contract, it's one  
8 sided, it's a take it or leave it  
9 situation. Companies should not have that  
10 much control in a region.

11 DOJ and USDA need to do  
12 everything possible to limit this type of  
13 power because this power is unfair and  
14 deceptive practices have developed. For  
15 example, the ranking system, forced  
16 upgrades, contracts that can be changed or  
17 cancelled at any time. Compensation, as I  
18 have not kept up with increases in energy  
19 and material costs. These are all signs of  
20 a broken system that needs to be corrected  
21 as soon as possible.

22 Thank you.

23 MR. ROBBIE STAULTS: I am Robbie

1       Staults from the Shenandoah Valley of  
2       Virginia. And I want to thank you for  
3       taking time to listen to my comments.

4                I'm here to share my experience  
5       with contract poultry production. In 1979  
6       I bought a two house poultry farm  
7       contracting with a major chicken company.  
8       The income from the farm was enough to  
9       allow me to pay labor and my bank note.

10               Things were going so well that in  
11       1992 I decided to build two additional  
12       houses. After five years, I was required  
13       to perform company upgrades to all four  
14       houses. During this time operating  
15       expenses were on the rise, but pay from the  
16       chicken company was not being increased.

17               Now, I have an increased bank  
18       note along with increasing expenses, but my  
19       income, it remains static.

20               My plans for early retirement  
21       began to evaporate. After a couple of  
22       years operating in this manner, I came to  
23       the realization that I was never going to



1 pay for these new houses. This is a common  
2 cycle that chicken farmers are trapped in.

3 Does that matter, does it matter  
4 what state or region you're in? No.

5 That's why today is so important.  
6 We need USDA and the Department of Justice  
7 to stop requiring growers to install  
8 expensive upgrades in their poultry houses  
9 at their own expense.

10 And Congress should stop poultry  
11 companies from cancelling grower contracts  
12 without adequate faults, unless they  
13 reimburse growers for the investment they  
14 made to service the contract.

15 Thank you for your time.

16 MR. FRANK MORRISON: My name is  
17 Frank Morrison. I am an ex-contract  
18 poultry grower from Maryland. Our contract  
19 was terminated two years ago due to not  
20 upgrading to the company standards.

21 One of the major challenges  
22 facing contract growers is the ranking  
23 system. I have an example, which happened

1 to us. I could purchase propane for 30%  
2 cheaper than what the poultry company was  
3 charging us. When I informed the company I  
4 was going to purchase and supply my own  
5 propane as any independent business person  
6 would, I was told if I did not -- if I did,  
7 my contract would be terminated. Even if  
8 we wanted to be competitive, the company  
9 will not let us. This contract system has  
10 taken away the entrepreneurial spirit of  
11 the farmer who has for decades found ways  
12 to reduce costs on their farms to stay in  
13 business.

14 The USDA and DOJ need to take  
15 aggressive action and enforce the law  
16 against unfair and deceptive trade practice  
17 by the poultry companies.

18 Thank you.

19 MS. VALERIE ROWE: Good  
20 afternoon. My name is Valerie Rowe. I'd  
21 like to thank you for this opportunity to  
22 speak with you today regarding the current  
23 situation as a poultry grower.

1           I became a poultry grower four  
2 years ago. I did this in an attempt to  
3 save a family farm that was in the process  
4 of foreclosure due to an unfair contract.  
5 That resulted in my elderly inlaw's birds  
6 being cut off, without notice, on the day  
7 of delivery, because they refused to make  
8 expensive and unnecessary upgrades.

9           The problem has turned out to be  
10 an industry wide issue regardless of who  
11 you grow for or what type of bird you  
12 raise. I have learned that a contract is a  
13 contract in name only. Mine was suppose to  
14 be a 5-year contract. It has changed four  
15 times in as many years. Integrators  
16 routinely rewrite these so-called contracts  
17 to their benefit whenever they see fit.  
18 And depend on the fact that the grower is  
19 deep in debt and will sign them out of fear  
20 in order to continue getting checks.

21           I thank God my husband and I have  
22 nonfarm jobs. Without them, we could not  
23 afford paying out of our pocket to raise

1 chickens. We will not be able to continue  
2 this much longer.

3 The solution to this systemic  
4 problem: The USDA, along with the  
5 Department of Justice, must exercise their  
6 power and stop these unfair contracts now.

7 Thank you.

8 MR. WILLIAM CRAMER: Thank you.  
9 My name is William Cramer and I work for  
10 the Interface Center on Corporate  
11 Responsibility. We are a faith based  
12 membership organization who investors  
13 members own a hundred and ten million --  
14 billion dollars in shares in companies like  
15 Tyson, Smithfield and Hormel. Our members  
16 come from a variety of faiths, Methodists,  
17 Baptists, Episcopalians, Catholics and many  
18 others. In addition to owning shares in  
19 major meat companies, restaurants and food  
20 distributors, our members also manage large  
21 health care systems that buy a lot of food.

22 Our members are increasingly  
23 concerned about the conditions under which

1 their food is produced. They're especially  
2 concerned about fair treatment of poultry  
3 growers and chicken processing workers.

4 We believe strongly that contract  
5 poultry growers are the backbone of the  
6 rural economy in the South. When they are  
7 paid low prices, they make poverty wages  
8 and that hurts rural communities.

9 We also feel that the industry,  
10 as currently structured, is unfair to  
11 workers. The lack of competition and  
12 poultry processing means companies can  
13 violate workers' basic rights and disregard  
14 health and safety. As a result, worker  
15 turnover at poultry averages about a  
16 hundred percent a year. We need good jobs  
17 in rural areas of the South and this  
18 industry isn't providing them.

19 There's enough money in the  
20 supply chain for everyone to get a fair  
21 share, but we need to enforce regulations  
22 that promote fair competition so mega  
23 corporations like Walmart and Tyson don't

1 take more than their fair share.

2 The poultry processing -- the  
3 United of States of America was founded on  
4 principles of freedom and free enterprise.  
5 Without fair competition, we do not have  
6 true freedom or free enterprise. The  
7 poultry processing industry in America is  
8 increasingly monopolized and that is  
9 un-American.

10 Our organization and people of  
11 faith around the country are watching these  
12 hearings and other efforts to restore  
13 competition and fairness in food and  
14 agriculture in America. We hope to see  
15 better enforcement of our existing laws and  
16 more effective regulations coming out of  
17 these hearings.

18 For people of faith gathered here  
19 today I ask you to consider the following  
20 questions: If Jesus were here today what  
21 would he say about grower fairness and  
22 worker justice? Who would he support?

23 Thank you.

1 MS. ANGIE TYLER: Thank you for  
2 hearing our concerns and I hope you're  
3 compassionate.

4 My name is Angie Tyler. And I'm  
5 the only grower here from Louisiana. So I  
6 proudly represent every one of them. It's  
7 been a tough year for us.

8 My husband and I have been  
9 raising broilers for 20 years now. And, as  
10 I said, I'm the only one here from our  
11 state.

12 There's a lot of things that need  
13 to be addressed. And this is not one  
14 producer, this is not one integrator, this  
15 is nationwide.

16 And the decisions that y'all make  
17 here today and in the weeks to come, months  
18 to come, even years to come, can be  
19 remembered by the whole agricultural  
20 community historically. This has never  
21 been done before.

22 And what we feel is that the USDA  
23 must take action immediately on any unfair

1 practices. The poultry farmers in our  
2 country are on the brink of collapse. The  
3 ranking system of payment is obsolete, it's  
4 broken, and it needs to be changed.

5 There's too much room there for  
6 manipulation. And there's no checks and  
7 balances whatsoever.

8 And because costs have far  
9 exceeded the pay raises, producers cannot  
10 pay their bills, they can't pay the  
11 production costs. Energy has increased so  
12 many times more than the pay has increased.  
13 And many times the pay has gone down. The  
14 USDA needs to enforce laws already in place  
15 and investigate these unfair practices.

16 Poultry remains the most  
17 economical and healthy source of protein in  
18 our country. As the demand in domestic and  
19 foreign markets increase, along with the  
20 population, our poultry production has to  
21 increase also. The farmers are absolutely  
22 mandatory for this. And we must ensure,  
23 not only survival, but the potential for



1 success and progress as our future. And  
2 we're relying on you for that help to make  
3 sure that we can stay in business and do  
4 our jobs and do it right. And we want to  
5 do that job in a marketplace that is fair.  
6 It's our future.

7 Thank you.

8 MR. CHRIS SANDERS: Good  
9 afternoon. My name is Chris Sanders. I'm  
10 with United Food and Commercial Workers.

11 On behalf of my president and the  
12 thousands of members and my local union in  
13 Kentucky and Southern Indiana, and dozen of  
14 people wearing gold shirts in this room, my  
15 brothers and sisters, and literally 250,000  
16 poultry workers across America, we want you  
17 -- to ask you to pay special attention to  
18 the needs of folks who kill, cut and  
19 process chickens.

20 We're here about competition in  
21 issues in agriculture, but agriculture is  
22 nothing without consumers and, of course,  
23 retailers.

1           So pressure on growers and  
2 vendors, producers and us all across the  
3 industry come from the margins that are  
4 dictated by retailers. I don't mind naming  
5 names, I'm talking about Walmart. Until we  
6 get some grip on the control that major  
7 retailers like Walmart have in this  
8 industry, we won't get anywhere. Walmart,  
9 of course, is not the only grocer in this  
10 industry, but all grocers are taking their  
11 cues from the -- from America's largest  
12 grocer, Walmart.

13           In competition we all know the  
14 word monopoly, the control of whenever one  
15 supplier has a grip on the industry. But I  
16 want us to learn a new word today. It's  
17 monopsony. Monopsony is the tyranny of the  
18 retailer when all roads and all product  
19 goes to one place. And that's Walmart.

20           We have to do something about  
21 this because until we do something about  
22 Walmart its pressures on agriculture  
23 margins, we really won't get anywhere at

1 all. For our people, for my members and my  
2 industry, we can't make a living wage until  
3 Walmart is able to pay the companies more.  
4 It's just a fact, it's reality. There's so  
5 much pressure on margins that everybody is  
6 getting -- is getting squeezed. And for  
7 our folks, Black, White, Hispanic, just  
8 doing their best to make a living wage,  
9 that will never get any better until we get  
10 some improvements in the way that Walmart  
11 has a grip on the industry.

12 So I'm here today on behalf of  
13 200,000 poultry workers or more. Please do  
14 something to put real competition in retail  
15 so we can all survive and thrive.

16 Thank you.

17 MR. ANDY STONE: Hello. My name  
18 is Andy Stone, I'm from Mississippi. I've  
19 got a couple of comments to make on some  
20 stuff I heard here today before I get  
21 started reading my statement.

22 One of the things that was  
23 mentioned here today was communication was

1 a problem in the industry. I can assure  
2 you not. I've had a lot of communication  
3 with my integrator, sometimes at arms  
4 length, sometimes nose length, nothing  
5 changed when I left.

6 And y'all's challenge here today  
7 is listen to us communicate to y'all, but  
8 if y'all do like the integrator, when I  
9 leave, if y'all don't anything, we're not  
10 any better today than we were yesterday.

11 When I started growing chickens  
12 in 1995 I bought land and moved 60 miles  
13 from where I grew up. I moved to the  
14 broiler capitol of my state.

15 I did this thinking that I had a  
16 -- that I had a reason -- that if I had a  
17 reason to switch from one integrator to  
18 another I could. After a few months into  
19 the business I realized that the  
20 integrators have an unwritten pact with  
21 their sister integrators, "You don't take  
22 our growers and we won't take yours".

23 I built three modern houses,

1 equipped it with all the bells and whistles  
2 available and approved by the integrator.  
3 I had a 15-year note and a \$300,000 loan,  
4 but my contract was good for one year.

5 I remember expressing my concern  
6 to a company representative and being told,  
7 "Don't worry about that, we will always  
8 need chickens, that's just how things are  
9 done". Six months into my first year my  
10 representative came out and said that the  
11 company was offering a raise. I said,  
12 "Wow, that's good. Six months into the  
13 business and already going to give me a  
14 raise".

15 However, there was a small  
16 stipulation attached to this raise. To get  
17 the raise, I had -- I had to add equipment  
18 to my houses.

19 I told the representative, "I  
20 don't want to add equipment to my houses,  
21 they're new". He said, "Fine. If you  
22 don't add the equipment, you won't qualify  
23 for the raise". So I added the equipment.

1           My problem is that there is no  
2           guarantee that my integrator will continue  
3           to contract with me. As a result, raising  
4           chickens involves a tremendous --  
5           tremendous sense of insecurity.

6           This past February I received a  
7           letter from my integrator stating, and I  
8           quote, "If you fail to provide the proper  
9           environment, we may not be in a position to  
10          place birds in your care in the future".

11          I received this letter because my  
12          service representatives noticed several  
13          blind birds on my farm. At the time of the  
14          letter my overall ranking was in the top  
15          14%.

16          Since that time, overall ranking  
17          has climbed and put me in the top 10% of  
18          the company, yet I have to wonder from one  
19          flock to the next if my company will be in  
20          a position to put birds in my care.

21          This insecurity hangs over my  
22          head each day that grow chickens. You can  
23          argue this and say no one's job is secure

1 in today's economy, but the situation is  
2 not the same. Your job is a job. My job  
3 is a job with a huge debt attached to it.  
4 With my debt load, coupled with my standing  
5 in the company, I should not have to worry  
6 about the company being in a position to  
7 place birds in my care.

8 The situation in contract poultry  
9 growing is out of control. The companies  
10 have so much power the growers always end  
11 up at a disadvantage. It's time for the  
12 government to step up and rein in these  
13 companies so that growers are treated more  
14 fairly. That's why the hearing today is so  
15 important, but a hearing isn't enough. We  
16 need the USDA and the Department of Justice  
17 to stop poultry companies from requiring  
18 growers to install expensive upgrades in  
19 the poultry houses at their own expense.

20 And Congress should stop poultry  
21 companies from cancelling growers contracts  
22 without adequate cause unless they  
23 reimburse the growers for the investments

1 they've made to service the contract.

2 Thank y'all.

3 MR. BRUCE FAULT: My name is  
4 Bruce Fault. I'm from Fairmont, North  
5 Carolina. And thank you for this  
6 opportunity to speak with you.

7 In an effort to remain within the  
8 time allotted me, I would like to address  
9 the quality of birds that are supplied to  
10 me by my integrator.

11 In my experience of 16 years, if  
12 I am supplied with a good quality input I  
13 am able to grow a good quality chicken. If  
14 the quality of the chicks is poor, we are  
15 unable to produce enough weight to pay the  
16 bills. We work harder with a poor flock  
17 than we do with a good flock.

18 Under the current ranking system  
19 this can significantly -- significantly  
20 impact our overall income. The ranking  
21 system is just unfair and needs to be  
22 corrected immediately. I would like to see  
23 the USDA, along with the DOJ, use the tools



1 already available to them to stop this  
2 unfair pay system immediately.

3 Thank you.

4 SHEILA: My name is Sheila. I  
5 would like to say that we really enjoy the  
6 chicken business and the company we work  
7 for, but we would like to see a few changes  
8 to be made. We would like the ranking  
9 system to be different because of the  
10 unfairness of it. Your ranking depends on  
11 the quality of chicks, age of your houses,  
12 houses being premium or not. We cannot  
13 control the quality of chicks we get  
14 because of such things as diseases, the  
15 handling of the eggs and the delivery of  
16 the chicks. Things can go wrong not being  
17 there on the spot, but at the end of batch  
18 we are asked what went wrong, why does  
19 certain things happen such as the chicks  
20 did not grow, they did not put on weight or  
21 they lost their life.

22 And then it starts, you need to  
23 upgrade to premium so you can do better.

1 We tried to explain upgrades cost money,  
2 which we do not have. And their solution  
3 to the upgrade is that you will get the  
4 incentive pay, which is a half cent more  
5 per pound, which will not pay the loan  
6 back, for the upgrades, in a reasonable  
7 amount of time.

8 And with chicks being the  
9 company's, we would like to see the company  
10 contribute more than just two incentive  
11 checks per year for the propane, which is  
12 greatly appreciated, if fall in the right  
13 time frame.

14 The farmer has to take care of  
15 the litter. And we have to do the PLT, the  
16 PWT, the sawdust and light bulbs except for  
17 two loads per house per year. The  
18 utilities, such as gas, propane, diesel,  
19 electricity, water, supplies and  
20 maintenance. It would be nice if the  
21 company would help more and give a cost of  
22 living raise since we have not had a raise  
23 in about three years or more, but that does

1 not stop the rising prices of the gas and  
2 the diesel, propane, the electricity and  
3 supplies.

4 My husband and I have had to go  
5 to our banker several times to try to get a  
6 solution to keep paying our loan and our  
7 bills from batch to batch. And the banker  
8 has said to us he does not know how we have  
9 survived and how we are making it. Now we  
10 are trying to reduce our loan just to make  
11 it. And we are trying to -- just trying to  
12 pay our bills and the credit cards off from  
13 the propane.

14 Again, I would like to stress as  
15 to how you much we enjoy the chicken  
16 business and we would like to see the USDA  
17 and the Department of Justice declare the  
18 ranking system as an unfair system and to  
19 stop poultry companies from requiring  
20 growers to install expensive upgrades in  
21 their poultry houses at their own -- at our  
22 expense.

23 MR. JAMES SHACKLEFORD: Yes. My

1 name is James Shackelford and I'm here  
2 representing RWDSU Workers of America. And  
3 it's an honor to be here today before you.

4 You know, after working 18 years  
5 in a poultry facility, poultry plant,  
6 chicken plant, you know, and the things  
7 that you see go on and people talking about  
8 it's not enough, you're not making this,  
9 you're not making this. It's just a  
10 blessing for me to be here to see both  
11 sides of it because I never knew, you know,  
12 this side of it.

13 I was granted to be a  
14 representative -- a union representative  
15 three years ago and now I see the other  
16 side. And that's why I'm here today.

17 And it's not about I, I, I, it's  
18 we, it's a team thing. It's no I in team  
19 because you have the growers, you have the  
20 producers, you have the packers, you have  
21 the laborers. And the laborers, you know,  
22 I come to stand and look out for the  
23 laborers today because without the laborers

1       you have -- you have no -- no product. I  
2       mean, you know, the worker they -- they put  
3       it on the market.

4               Also consumers, all of us are.

5               I just left a restaurant just a  
6       minute ago and they couldn't keep enough  
7       off it on the bar, you know. So it's not  
8       shortage of it, we've just got to figure  
9       out and get an understanding of where --  
10      where the monies -- the monies -- you know,  
11      to fairly distribute the monies, you know.

12              I'm here today to stand and look  
13      out for -- for my workers because without  
14      it, you know, you're not going to have -- I  
15      heard a guy say today about vision for your  
16      child, you know, the grower, I understand  
17      that. But also the worker have a vision  
18      also. And their vision is to want their  
19      kids to work in a poultry plant and make a  
20      decent living. And, you know, after  
21      working 30 years in a poultry plant, leave  
22      with a decent pension where you can enjoy a  
23      decent life, but not to automatically write

1 the worker off because the worker do play  
2 an important part also.

3 So I just -- I pray that God  
4 bless the producer and God bless the packer  
5 because when you guys get together and you  
6 can come together in -- in peace, it makes  
7 it great for the worker.

8 Thank you.

9 MR. TOMMY HINES: My name is  
10 Tommy Hines. I'd like to comment on the  
11 systemic problem that the poultry industry  
12 has within intimidation to the growers.

13 I've spoken to numerous growers  
14 about attending this meeting, but most of  
15 them were afraid to come for fear of  
16 retribution from their poultry company.

17 As growers we have invested  
18 everything we own in this business. The  
19 industry does not treat the grower as a  
20 contractual partner with the company, we  
21 are merely someone hired to take care of  
22 the birds for them. You have to do as you  
23 are told or you could be refused placement

1 of birds or could face a drop in the number  
2 of birds places or worse.

3 We need there to be more  
4 oversight from the USDA, Department of  
5 Justice or help from Congress and more  
6 enforcement of the Packers and Stockyard  
7 Act. There is a lack of competition from  
8 the companies for the growers in business  
9 now and, therefore, no incentive to change  
10 the behavior towards the grower. There  
11 should be mutual give and take and mutual  
12 respect as business partners.

13 I'd like to say thanks to the  
14 growers here today for taking this  
15 opportunity to show support for this  
16 workshop and a chance to be counted and our  
17 hope to change this industry.

18 Thank you.

19 MR. STEVE ETKA: I'm Steve Etko.  
20 I'm Legislative Coordinator for the  
21 Campaign for Contract Agriculture Reform.

22 Poultry is arguably the most  
23 broken of agricultural markets where the

1 processor sector has such total domination  
2 that producers are coerced, not only to  
3 sign one-sided take or leave it contracts,  
4 but also to borrow as much as a million  
5 dollars to build facilities on their own  
6 farms for the right to grow the company's  
7 chickens with merely a one flock,  
8 seven-week guarantee of payment.

9 And the payment, itself, often  
10 represents a negative return on investment.

11 To anyone hearing this it would  
12 sound like one of the worse investments  
13 possible and anyone would be foolish to  
14 fall into such deal, but the growers that  
15 get sucked into the systems are not stupid,  
16 far from it.

17 For a poultry grower the cycle  
18 begins with deception about the income  
19 stream a grower will enjoy if they build  
20 the expensive chicken houses and signed the  
21 contract. But the rosy plans of income are  
22 never put into writing, so there's no way  
23 to enforce the promise -- the promises.



1 The contracts themselves are quite another  
2 story, but once the grower bites the hook  
3 and goes deep into debt they start a cycle  
4 of debt burden from which it is very  
5 difficult to escape.

6 The attention of USDA and DOJ  
7 that you all are giving to this issue today  
8 is quite historic. And I applaud both  
9 agencies for hosting this discussion and  
10 for asking the right questions. But this  
11 process will be meaningless unless it  
12 ushers in an era of aggressive enforcement.  
13 Both the Packers and Stockyards Act, as  
14 well as the DOJ Antitrust authorities, to  
15 restore competition and fairness to the  
16 poultry sector. Though not perfect, these  
17 statutes are very strong and the failure to  
18 enforcement by your predecessors has been  
19 nothing short of shameless.

20 In closing, it's important to  
21 mention that the growers who are speaking  
22 here today do so at their own risk. And  
23 you've heard a lot about that. The threat

1 of retaliation for a grower speaking out  
2 publicly is well documented. And even in  
3 the last 48 hours we've had growers who  
4 have been threatened not to attend this  
5 meeting and not to speak out. So for every  
6 grower here today, there are many others  
7 who have stayed home for fear of  
8 retaliation. And that is more than just a  
9 communication problem.

10 So I strongly urge both agencies  
11 to do everything in your power to protect  
12 those growers here today from retaliation  
13 and to take it the aggressive enforcement  
14 action to bring some balance of market  
15 power to the poultry sector.

16 Thanks.

17 MR. B. J. HYDE: Hi, I'm B. J.  
18 Hyde. I just wanted to touch on how we get  
19 paid. We get paid by a feed conversion,  
20 the amount of feed it takes to get the  
21 birds to a certain weight. The problem  
22 with that is the feed gets manipulated a  
23 lot. For example, during the wintertime, a

1 lot of times they'll put this corn mash in  
2 it, instead of feed grain that they get out  
3 whiskey bales instead of corn, you know,  
4 should be in it. And we have no control  
5 over that whatsoever. It's -- it's just  
6 absolutely -- the feed conversion is where  
7 they want it. I mean, it's -- we have  
8 nothing to say about it.

9 I also want to touch on some of  
10 these upgrades that they make you do. They  
11 also want you to use certain vendors and  
12 such as that, they won't accept anybody  
13 else. So they kind of manipulate us that  
14 way, too.

15 That's all I've got to say.

16 Thank you.

17 MR. OMAR HOLCOMB: Hi, my name is  
18 Omar Holcomb. I live in South Marshall  
19 County. And I want -- two things I want to  
20 talk to you about. One is the political  
21 ramifications that are used in chickens.  
22 And the other is a little anecdote that  
23 happened to me recently.

1           Since I've been doing this for 17  
2 years chickens has been used as -- has been  
3 a -- been used in politics. The first time  
4 was in the '90's when the steel imports for  
5 Russia were -- were -- protections, trades,  
6 were put on there. And -- and several ship  
7 loads of chickens had to turn around and  
8 come home from Russia.

9           And because somebody is  
10 protecting one industry, the farming  
11 industry takes it. And recently the --  
12 there was protection put on tires from  
13 China. And China put -- turned around on  
14 chickens and stopped it. So our industry  
15 is being used as a, if you want, a  
16 political football. And it's a two billion  
17 industry in Alabama. And I doubt if the  
18 tire industry in Alabama is a two billion,  
19 but it's being used that way.

20           The second is a little anecdote  
21 that happened to me two weeks ago  
22 yesterday. As I had my chickens -- these  
23 growers will relate to this. I had my feed

1 up, chickens all ready, the time came, the  
2 catchers all showed up and there we sat  
3 because there was a bomb threat at both  
4 processing plants. So we sit there for  
5 about six hours. And I'm talking to field  
6 rep, who's really been good to me.

7 She said, "Okay, they'll just  
8 give you an hour each hour you wait, plus  
9 20%". I said, "Okay, what's our options"?

10 "Well, you can wait another six  
11 or seven hours, they'll come back at one  
12 o'clock in the morning.

13 By then my birds will have been  
14 off feed 18 to 20 hours before they pick  
15 them up. That means another six hours  
16 before they process them, or, said, "We can  
17 go in there and lower all the equipment,  
18 see if we can get some feed out here", and  
19 -- because I was totally out of feed, "And  
20 then we can raise -- and then we can raise  
21 it all up and then process them".

22 Okay. We'll just catch them at  
23 one o'clock in the morning. That's what we

1 both decided.

2 Well, I called them a few days  
3 later. "Well, what did they decide to do"?  
4 "You competed with everybody else", just  
5 like that. They lied to me just straight  
6 to my face. I had to compete with them.

7 And that wasn't quite fair,  
8 nobody on Monday, Tuesday or Wednesday or  
9 Friday had to wait for bomb threats to  
10 clear out. Now, I can live with that, but  
11 I don't like to be lied to.

12 So thank you very much.

13 MR. TONY GOOLSBY: Thank you. I  
14 appreciate this opportunity to get to  
15 address this -- this forum. I thank God  
16 for America and I thank God for being born  
17 an American. And I just praise God that  
18 I'll die as an American.

19 I was born in a little house on a  
20 farm in 1950, delivered by a midwife. I  
21 don't know how old I was before I ever seen  
22 my first doctor. I've lived on a farm all  
23 my life. All my ancestors were farmers.

1 And we go back before the Civil War. Some  
2 of my ancestors was here before the White  
3 man got here.

4 In 1997 there was a farm came up  
5 for sale, a hundred and five acre farm  
6 close my mother and daddy's homestead  
7 there. I wanted that hundred and five  
8 acres so bad, but I couldn't figure out a  
9 way to buy it.

10 I had a pretty nice little home  
11 and 20 acres down at Rainesville, Alabama.  
12 And this company named Cook Poultry moved  
13 into the area and announced they were  
14 building a new poultry breeder, hatchery  
15 and all that kind of stuff. And they were  
16 wanting people to -- growers -- wanting new  
17 growers, sign contracts and build houses.

18 I talked to my banker and I  
19 talked to my wife. And my banker said,  
20 "Yeah, we can go with you on it if that's  
21 what you want to do". So in 1998 we  
22 started the loan process. She and I sold  
23 everything we had. Took our savings. We

1       invested probably a hundred and fifty to a  
2       hundred and seventy-five thousand of our  
3       money. We borrowed \$600,000 from the bank  
4       that was guaranteed by the USDA. And that  
5       guarantee was -- had an insurance premium  
6       on it that I paid thousands of dollars for  
7       -- for that guarantee.

8               Okay. In a few years into my  
9       contract with Cook Poultry they delivered a  
10      new set of hens to my farm. Later on that  
11      week they came in with a new contract. And  
12      they said, "Mr. Goolsby, we want you to  
13      sign this new contract".

14             And I said, "Well, I -- we've got  
15      a contract".

16             "No, we need you to sign this new  
17      one".

18             This is in 2002. And I had a  
19      contract that was still in effect. Had a  
20      brand new set of hens in these houses that  
21      was the top of the line, the best set of  
22      hen houses in the area. And I said, "Well,  
23      I don't -- I don't understand. I don't see



1        why that you want me to sign a new contract  
2        when -- when we're under contract with you  
3        now".

4                        "Well, that's just the way it is.  
5        We want you to sign this new contract".

6                        I said, "Well, I just -- I think  
7        I'll just go with the one I've got". And  
8        like Mr. Wooten earlier in the day had said  
9        -- I'm from the same county he's from.  
10       There's five different integrators in that  
11       area up there, you'd think there would be a  
12       lot of competition. I had the best set of  
13       houses in the country. I told them, "I'll  
14       just go with this set of hens and I'll --  
15       and I'll see if I can find me a contract  
16       with another integrator".

17                       They said, "No, you can't do  
18       that. You either sign this contract or  
19       we're going to come pick these hens up".

20                       Now, these hens is already on the  
21       farm, done been there a week or two.

22                       And I said, "Well, you can't do  
23       that, we've got a contract, you signed it

1 and I signed it and it's a legal binding  
2 contract, you can't do that".

3 "If you don't sign this new  
4 contract, we're going to pick them hens up.  
5 We'll be here tomorrow morning at six  
6 o'clock to pick them up".

7 The next morning at six o'clock,  
8 that was on a Wednesday, I was sitting in  
9 the driveway when they pulled in and I  
10 said, "You need to turn around and go back  
11 because you're not getting these hens.  
12 I've got a contract with you. And it's a  
13 legal binding contract. I'm going to hold  
14 you to it, you're not getting these  
15 chickens". And, so, they left and they  
16 went back.

17 On Thursday they had nine lawyers  
18 in the judge's office in the De Kalb County  
19 Courthouse behind closed doors. And they  
20 got Circuit Judge Randell Cole to issue  
21 them a writ of seizure notice against me  
22 without my knowledge, without my  
23 representation, without any -- any

1 opportunity for me to give my side to the  
2 judge to show him my contract or anything.  
3 He issued them a writ of seizure. He sent  
4 a copy to the District Attorney's office.  
5 He sent a copy to the Sheriff's office on  
6 Friday. I didn't know the first thing  
7 about it.

8 Monday morning, about daylight, a  
9 deputy knocked on my door. And I'd done  
10 been up since about 3:30 because of --  
11 you've got to get up early and go feed the  
12 chickens, make sure the thing is going. So  
13 I was sitting there drinking some coffee.

14 They -- they hand me this writ of  
15 seizure. And they say, "Tony, the judge  
16 has ordered us to come out here and see  
17 that the chicken company gets those hens  
18 out of your houses".

19 I said, "How can he do that? We  
20 -- I haven't been notified, I haven't had a  
21 hearing. I've got a contract. How can he  
22 do that"?

23 "Well, we're just doing our job".

1                   "Well, okay".

2                   They go to chicken houses. And I  
3 get in my truck and I go down there.  
4 There's things that needs to be done when  
5 you're going to catch chickens. You've got  
6 to get your waters up and stuff like that.

7                   And I had read every word of the  
8 writ of seizure and it didn't say anything  
9 about me not going to the chicken houses.  
10 Me -- it just said I wasn't to interfere  
11 with them catching them.

12                  I go down there and I raised my  
13 waters. And I tried to get my equipment  
14 ready. And the deputies come. And I come  
15 out of the chicken houses there.

16                  And they walk up to me and say,  
17 "What are you doing down here"?

18                  I said, "I'm trying to take care  
19 of my equipment I've got \$500,000 in".

20                  And they said, "Well, you're not  
21 suppose to be there".

22                  And, so, I said, "Well, alright,  
23 I'll go home".

1           Well, they had the cars pulled in  
2 behind my truck and had me blocked. And  
3 they said, "No, you're going to stay here  
4 until the chief deputy and the investigator  
5 gets up here".

6           I said "No, if you'll just move  
7 your cars, I'll go to the house and get out  
8 of your way".

9           "No, you're going to stay here".

10          I hadn't broke any law. I hadn't  
11 -- you know, I had threatened anybody,  
12 anything.

13          So I get in my truck, it's cold  
14 weather. I'd just had an accident about a  
15 month before, broke my back, broke all my  
16 ribs, busted my skull. I was just nearly a  
17 dead man. Barely could walk. Sitting in  
18 my truck with the heater on and the other  
19 police come up.

20          And they jerked the door open and  
21 dragged me out of my truck and downed me  
22 and handcuffed me and throwed me in a  
23 police car and carried me to jail. Kept me

1 in jail all day, all night. Didn't book  
2 me, didn't fingerprint me or nothing until  
3 the next morning about four o'clock, 4:30  
4 in the morning.

5 They came and got me and  
6 fingerprinted me and charged me with  
7 interference with a government operation,  
8 put a \$500 bond, and released me on my own  
9 recognizance. Told me I could call my wife  
10 to come get me.

11 I went home and took a shower and  
12 I drunk come coffee, made a few phone  
13 calls, and I went Fort Payne. Went to my  
14 lawyer's office and gave her \$5,000 to  
15 start defending me on them arresting me and  
16 everything.

17 Went to the District Attorney's  
18 office, he wouldn't talk to me. Went to  
19 the Judge's office, he wouldn't talk to me.  
20 Went to the Sheriff's office, he wouldn't  
21 talk to me.

22 I go back home. I get on the  
23 phone and I called a man that was here

1 earlier today, I wished he was still here,  
2 Mr. Ron Sparks, the Commissioner of  
3 Agriculture. And he knows me and I know  
4 him. And I told him what had happened.  
5 And he said, "Tony, I'll" -- this was  
6 Tuesday about dinner time, a little after  
7 dinner.

8 He said, "Tony, I'll be there the  
9 first thing tomorrow morning and we're  
10 going to check into this and we're going to  
11 do something about this".

12 MR. FERRELL: Sir, if you could  
13 just sum it up.

14 MR. GOOLSBY: Tomorrow morning  
15 never came. I called two or three days  
16 later they let me talk to his assistant.  
17 His assistant said, "Mr. Goolsby, I assure  
18 you we're looking into this, you will hear  
19 from us".

20 That was in 2002. And I've never  
21 heard from them.

22 The poultry company sued me, Cook  
23 Foods sued me and Santa Rosa Farms for 4.4

1 million dollars for forcing them into  
2 taking such a drastic action.

3 We went to court. And the jury  
4 awarded me a verdict just like that  
5 (snapping fingers). The Judge throwed the  
6 verdict out and ruled in the chicken  
7 company's favor.

8 I -- I appealed it down to the  
9 State Supreme Court. And the State Supreme  
10 Court throwed it out, ruled in the chicken  
11 company's favor, but there was one legal  
12 point that I had that they couldn't back up  
13 on if the jury gave me a verdict, a  
14 favorable verdict. I had the right to come  
15 back to county court in De Kalb County and  
16 start all over again. And, so, we did  
17 that.

18 Cook finally settled with us. We  
19 had done sold most of our farm. Done sold  
20 our chicken houses to keep our home. We  
21 had to sell just nearly everything we had  
22 so we'd have a home to live in.

23 So that's what Cook Poultry done



1 to me. That's a personal -- all these is  
2 personal stories that's been told today and  
3 everyone of them is true. Every word  
4 that's been said today is true.

5 This antitrust thing, the  
6 Attorney General, the USDA, you've got the  
7 power, but these lobbyists for these  
8 integrators and these other big, huge  
9 conglomerates that are buying the  
10 legislation and buying the actions --

11 MR. STALLINGS: We've got some  
12 other people who need to talk, your two  
13 minutes --

14 AUDIENCE: Let him talk, let him  
15 talk. Let him talk. Let him talk.

16 MR. GOOLSBY: I'm proud to be an  
17 American. You know, I love this country,  
18 but we need our government to step up for  
19 us and quit -- quit working for the  
20 lobbyists in Washington and down here in  
21 Montgomery and start working for the  
22 people. Our Constitution says, "We the  
23 people".

1 I thank you for the opportunity  
2 to speak. And I'm sorry for -- for my  
3 emotions, I apologize. Thank you.

4 MR. STALLINGS: Thank you.

5 MR. FERRELL: I think for the  
6 remaining four folks, if you want to go  
7 ahead and give your comments, and then  
8 we'll go to the next panel. And then we'll  
9 pick it up with more comments after that.

10 Thank you. Proceed.

11 MR. GARY KUSHNER: Thank you for  
12 this opportunity.

13 My name is Gary Kushner. And I  
14 serve as General Counsel to the National  
15 Chicken Counsel, which is the national  
16 trade association representing a lot of  
17 those bad guys we've just heard about. I  
18 guess this is one of those days where  
19 timing is everything.

20 In fact, I had hesitated to rise  
21 to the microphone during today's session.  
22 Believe it or not, I felt it important that  
23 the many fine people who left their farms,

1 traveled long distances to come and share  
2 their grievances deserved to have that  
3 opportunity.

4 And it's hard not to be moved by  
5 the passion with which they tell their  
6 personal stories. But I felt it important,  
7 particularly hearing Mr. Goolsby talk about  
8 personal stories, to offer the perspective  
9 of a lawyer, at least, who represents the  
10 integrated poultry industry.

11 And I only want to make one  
12 point, and it is just one point, and it's a  
13 legal point because that what these  
14 workshops largely are about.

15 And that is that I don't know the  
16 facts of any of the specific allegations  
17 that we've heard today. And it may well be  
18 that there are contracts that are unfair,  
19 that are -- that there are contracts of  
20 adhesion as a lawyer would call them. That  
21 there are contracts that have been  
22 breached, that may well be the case.

23 But I've yet to hear anything all

1 day, other than the word competition, that  
2 links those contracts and those grievances  
3 that these fine people have shared with us  
4 to anti-competitive conduct.

5 And, certainly, you folks at  
6 GIPSA and at the Department of Justice are  
7 aware that the law is well settled. Eight  
8 Federal Circuit Courts have made very clear  
9 that in order to bring a case under the  
10 Packers and Stockyards Act alleging unfair  
11 or unjustly discriminatory or deceptive  
12 practices, there must be a showing of  
13 adverse effect on competition.

14 That's not to say there are no  
15 remedies for ill will or for a particular  
16 personal experience that may not have been  
17 handled properly that may be unjust, that  
18 may represent a breach of contract. We  
19 have a long and large body of competent --  
20 contract law well settled in common law and  
21 in many states did provide ample remedy.

22 And where there is true and --  
23 and demonstrated anti-competitive activity,

1       there is the Packers and Stockyards Act as  
2       well as the -- the number of laws that  
3       Assistant Attorney General Varney touched  
4       upon earlier today.

5               So I just wanted to make that  
6       clear that it's not to belittle any of the  
7       stories that we're told today, they are  
8       heartfelt and heartwarming, but to just  
9       make clear with purpose, as I understand it  
10      of these workshops has been, and that's to  
11      discuss competition and the laws under  
12      which competition is regulated in the  
13      United States.

14             Thank you very much.

15             MR. DONALD WALKER: I'm Donald  
16      Walker from Oxford, Alabama. I'd like to  
17      take this time and to talk about something  
18      that's very dear to me. Valerie helped me  
19      with this comment last night, but, Ms.  
20      Valerie, I'm not going to do this, I'm  
21      going to shoot from the heart.

22             What Mr. Goolsby just said,  
23      folks, is happening to a lot of people.

1 This room is full of people that's  
2 bleeding, not from the heart, but from the  
3 hip and it's time this was corrected. The  
4 integrator has run over growers for years  
5 and years.

6 I've been in the poultry business  
7 ever since I was eight years old. I've  
8 grown up in the poultry business. I've  
9 been in it since '90 on my own. But it's  
10 time that things changed, not just here in  
11 Alabama. We've got people all over the  
12 Southeast here that's hurting. And it's  
13 time that something happened, some way,  
14 somehow, things has got to change or the  
15 Third World is going to feed us.

16 This box lunch we got out there  
17 for seven dollars and a half, may cost us  
18 \$20 ten years down the road if something is  
19 not changed, people.

20 Young people not wanting to get  
21 in the chicken growing end. And I've got  
22 two children and I wouldn't advise either  
23 one of them to do it. They've seen what

1       it's like, they don't -- they don't want  
2       it.  Mother and daddy is having to deal  
3       with it, so they don't want any part of it.

4                But, again, I just thank you for  
5       the opportunity to be here and I appreciate  
6       this time.

7                HILDE STEFFEY:  My name is Hilde  
8       Steffey.  And I'm here today representing  
9       Farm Aid, which is the national nonprofit  
10      organization working with family farmers to  
11      stay on their land and to thrive.

12               At Farm Aid we hear from family  
13      farmers every day.  We've operated a 1-800  
14      hotline since our beginning in 1985.  And  
15      last year we had just under 1,000 contacts.

16               What we're hearing from poultry  
17      growers has us deeply worried.  Nobody  
18      knows more about the problems of  
19      concentration in the poultry sector than  
20      family farmers.

21               But you may notice the smaller  
22      turnout at this workshop and smaller lines  
23      at other hearings you hold this year.

1 Family farmers are fearful of retaliation  
2 from integrators if they comment and for  
3 very good reasons.

4 We've heard troubling stories  
5 about what happens when a farmer speaks out  
6 against unfair, one-sided and deceptive  
7 contracts, many of the same stories you're  
8 hearing today. Farmers are provided with  
9 poor quality feed or sick chicks that die  
10 within days.

11 Poultry companies halt or delay  
12 the delivery of new birds. Farmers are  
13 required to make expensive upgrades.  
14 They're borrowing without fair  
15 compensation, or their contracts are  
16 suddenly drop altogether.

17 The lack of antitrust enforcement  
18 in recent decades has been responsible for  
19 the misguided trajectory and limited  
20 balance of our current food system.

21 The result has been a severely  
22 concentrated marketplace in which power and  
23 profit are limited to a few at the expense



1 of countless, hardworking family farmers  
2 who ask nothing more than a level playing  
3 field.

4 We regret that recent  
5 administrations have turned a blind eye to  
6 the very real threat of corporate  
7 concentration to family farm livelihoods to  
8 these our national food security.

9 We applaud this administration's  
10 historic commitment to address issues of  
11 competition and concentration in  
12 agriculture. And we urge you to make full  
13 use of experience and wisdom of the family  
14 farmers you're hearing from today. They  
15 are very courageous to be here speaking out  
16 against a contracting system that is not  
17 just unfair, but plain wrong. Please don't  
18 let them down.

19 Thank you.

20 MR. TERRY TUCKER: My name is  
21 Terry Tucker. I'm proud to say that I am  
22 fourth generation farmer in the community  
23 that I live in. And I hope it don't end

1 with me as far as my family is concerned.  
2 I've been in the poultry business for 18  
3 years.

4 We did quite well in the poultry  
5 business, but, you know, I also know the  
6 different stories and I know the  
7 manipulations that go on as well in the  
8 poultry business. I saw my neighbors, you  
9 know, lose their farms. I saw both spouses  
10 having to go out and take other jobs just  
11 to make their payments. And, you know, as  
12 Americans we pride ourself with equality,  
13 you know. We'll send our -- our children,  
14 our daughters, our sons, our husbands, our  
15 wives off to war to fight for this  
16 equality.

17 And this ranking system that we  
18 have in the poultry industry is ridiculous,  
19 you know. You've heard a whole different  
20 things that's going on in this ranking  
21 system, you know, from bird delivery to  
22 feed and several others. And I want to  
23 address two of those.

1           And I want to address the bird  
2 delivery. One of the things is the fact  
3 that, you know, we don't have any control  
4 over that if -- I raise straight run birds.  
5 And that means that's mixture between male  
6 and female birds.

7           Well, if I get more male birds on  
8 my farm and Joe down the road, you know,  
9 gets more females, guess who's going to --  
10 if he's -- if he's a halfway decent poultry  
11 farmer and sees after his chickens, I'm  
12 going to beat him out because I got the --  
13 I got the more dominant bird, I got the  
14 male bird. Now, how fair is that?

15           Feed delivery, I want to address  
16 that just for a minute, you know. If I run  
17 out of feed during the course of a grow out  
18 and let's just say -- I'm going to throw a  
19 number out there. Let's say I'm out of  
20 feed for 48 hours. Well, let's say Joe  
21 down the road, he's not out of feed, we're  
22 selling together under this so-called fair  
23 ranking system, that's what the integrators

1 say, we know better. Guess who's going to  
2 beat me out? Joe is going to do it.

3 We really need your help from the  
4 Justice Department and the Department of  
5 Agriculture to look into this ranking  
6 system because it's killing us. Yeah, I've  
7 made money in the poultry business, I can't  
8 stand here and tell you that I haven't, but  
9 I've also lost money due to this ranking  
10 system.

11 So, please, we need your help.

12 Thank you.

13 MR. FERRELL: I think we're going  
14 to go ahead and just take one more comment.  
15 And then we'll go to the next panel and  
16 we'll get to that panel; then we'll pick up  
17 with more comments then.

18 So if there's still people that  
19 would like to provide comments, we'll allow  
20 more time to do that later on in the day.

21 MR. BRAD CAINEY: Thank you for  
22 taking my comments. My name is Brad  
23 Cainey. I'm from Nashville, Tennessee.

1 And thank you to Farm Aid who informed me  
2 about these hearings.

3 My reason for coming down from  
4 Nashville today is because I feel -- I have  
5 to step off topic, I'm not a chicken  
6 farmer, I'm a chicken eater. I believe the  
7 health care crisis will not be solved until  
8 we address ag policy and consumer  
9 preferences.

10 David Kessler, the former of head  
11 the FDA, says in his book, *The End of Over*  
12 *Eating*, it took 30 years to challenge and  
13 change the social stigma of cigarette  
14 smoking. He estimates that one-quarter of  
15 the population, 75 million Americans or  
16 more, are addicted to food. We need to  
17 change this epidemic of obesity. It is  
18 national security.

19 In this past decade life  
20 expectancy dropped. The processed food  
21 part of our western diet is shortening  
22 lives. According to Michael Pollen food  
23 use to be 18% of household expenses. It is

1 now at 8 or 9%, thank God, but at what  
2 price is this food so cheap?

3 Health care and health insurance,  
4 in the same period, went from 10 to 18%.  
5 Again, national security.

6 The medical term for the lost of  
7 farmers is called a bleed out. One million  
8 farmers is not safe, two million farmers is  
9 safer. We need to grow more farmers.

10 If the trend continues to  
11 urbanization, let's bring production to  
12 urban areas.

13 Finally, on the subject of  
14 justice, criminal, not civil penalties  
15 should be applied to all polluters. And  
16 this should reach international law.

17 Thank you.

18 UNIDENTIFIED SPEAKER: I've been  
19 in the chicken business some 15 years.  
20 I've watched the chicken business and  
21 integrators evolve to a level that the  
22 average farmer can no longer sustain a  
23 living at, nor can we carry the rest as

1 we're asked to carry.

2 15 years ago growers only had a  
3 7-year mortgage on new houses. Now, new  
4 houses take 15 to 20 years to pay off with  
5 very minimal base rate increase. I don't  
6 know if these farmers are able to pay off  
7 these houses.

8 I just want to tell my story.  
9 There was a hundred and fifty growers  
10 involved in a regional shut down. As we  
11 was growers, we was ranked in the top big  
12 bird division of Pilgrim Pride.

13 February 27th we got announcement  
14 that our plant was going to be closed. By  
15 May all birds was gone. 600 houses sitting  
16 empty. In those houses who's going to feed  
17 our children?

18 I would say shut down with no  
19 reflection to the growers and producers.  
20 We were told by Pilgrim staff we was the  
21 best at what we did. Our community was  
22 desiccated and most growers was heavily  
23 indebted, owe \$200,000. And we had growers

1 with new houses and with only three grow  
2 outs.

3 900 jobs have been lost. Most of  
4 our houses have been -- I mean cost of  
5 upgrades. Our local businesses are  
6 suffering because of loss of income in  
7 local economy. A hundred and six million  
8 dollars jerked out of our economy.

9 All the equity each farm has  
10 worked so hard to build overnight with our  
11 house has turned into huge liabilities.  
12 Paying insurance, taxes, no birds.

13 Several -- several growers were  
14 not able to survive with such a hit. And  
15 the uncertainty of our future most of our  
16 local farmers have managed to keep credit  
17 with our local suppliers and banks.

18 Now, we are asked to restart this  
19 process and put our integrator's balance  
20 sheets back into the green. This process  
21 of restarting our houses has cost us  
22 unnecessary thousands of dollars; however,  
23 we do have another chance now. Our plant



1 will reopen. Almost a year and a half has  
2 past. We will miss two years of income  
3 where the interest has not -- has stopped  
4 -- has not stopped accruing.

5 I do give Don Jackson, the CEO of  
6 Pilgrim's Pride, an enormous amount of  
7 credit. He managed to do the unthinkable  
8 by saving Pilgrim's Pride through one of  
9 the gloomiest times of financial ruin.

10 I would also like to take time to  
11 give our local and state leaders credit.  
12 They worked with us around the clock and  
13 our CEO to put a feasible plans together  
14 which led to the reopening of our plant.

15 But the balance of my future is  
16 still, and my grower friends, is in the  
17 hands of Pilgrim's. I would like to ask a  
18 series of questions that will hopefully  
19 ensure such trying times never occur in my  
20 lifetime, my son's lifetime or future  
21 generations.

22 How can my fellow growers be  
23 protected from such an event ever happening

1       again? Should we be paid for down time or  
2       should we get start up money? We are a  
3       team, integrators and growers and poultry  
4       workers, too. Should we have longer  
5       contracts? Should we have guaranteed loans  
6       from integrators?

7                   Now, you tell me the industry  
8       needs, it just not one company's problem,  
9       but it's the whole industry's problem that  
10      needs fixing.

11                   We thank you for your time. And  
12      we thank you for the opportunity to grow  
13      birds again on our farms. We hope the  
14      changes will make a brighter future for all  
15      the growers and integrators. We are one  
16      team. What can you do for us growers? We  
17      are the South Georgia Division of Pilgrim's  
18      Pride, Douglas, Georgia, the best of the  
19      best.

20                   MR. FERRELL: If our panelists  
21      can come up to the table and we will get  
22      started.

23                   MR. FAMILANT: Hi everybody. My

1 name is Norman Familant. I'm the Chief of  
2 the Economic Section at the Antitrust  
3 Division of Justice that works on most  
4 agriculture matters.

5 And we're going to have a very  
6 fast paced discussion here among the  
7 panelists. We're going to cover a lot of  
8 issues. They're going to be many of the  
9 same issues that we've been discussing --  
10 you've a been discussing so far today.  
11 That's no surprise because those are the  
12 issues on everybody's mind, but I think it  
13 will be interesting to -- to see -- to get  
14 the perspective of this panel.

15 During the -- during this panel  
16 we're going to -- we have a plan, we hope  
17 it will work. If you have questions, write  
18 them down on the index cards that were  
19 available when you came in and pass them  
20 off to the sides where many of the  
21 volunteers in the jackets, and the burgundy  
22 outfits, will collect them and bring them  
23 up.

1           I'll try to work them in. I  
2           won't be able to work all of them. And I'm  
3           not sure how much time we'll have left at  
4           the end. But the -- but, as you've been  
5           told before, there is an open testimony  
6           hour directly after us. So, hopefully, you  
7           can pose your question then.

8           Let me -- we -- we -- we have a  
9           very capable and interesting panel with a  
10          -- from a very wide array of backgrounds.  
11          And, so, let me introduce them. I believe  
12          they're all in alphabetical order here.

13          Benny Bishop currently serves as  
14          chief operations officer for Peco Foods in  
15          Tuscaloosa, Alabama. He grew up on a  
16          poultry and row crop farm. And is a  
17          graduate of Jacksonville State University  
18          with a BS degree in business  
19          administration. Benny has worked full time  
20          in all areas of the poultry industry for 40  
21          years.

22          He has served on the boards of  
23          the Alabama Poultry Association, the

1 Arkansas Poultry Federation and is the past  
2 president of the Mississippi Poultry  
3 Association.

4 Let's see. Sorry for -- because  
5 we're in the order here.

6 Max Carnes runs the Carnes Farms  
7 in Baldwin, Georgia. His growing business  
8 started in 1977 when he built three houses.  
9 He has grown that business to 16 houses  
10 now. That entire time he had contracted  
11 with Fieldale Farms. He's a graduate of  
12 the University of Georgia. He has two  
13 other business interests. He's in the  
14 paving business and on the Executive  
15 Committee of the Georgia Highway  
16 Contractors Association of which he is the  
17 past president. He -- he also has an  
18 interest in Zaxby's Food Operations in  
19 North Carolina, but Zaxby does not buy its  
20 broilers from Fieldale Farms.

21 Let's see. Next we have  
22 Professor Michael Dicks. Doctor Mike Dicks  
23 was raised in rural Orange County,

1 California. He began his agricultural  
2 career working in the vegetable fields and  
3 the ranches of the Irvine Company. He was  
4 active in FFA and Ag Explorers. He  
5 obtained degrees in biochemistry and animal  
6 science from California Polytechnic State  
7 University in 1975.

8 Doctor Dicks served in Kenya for  
9 three and a half years with the U. S. Peace  
10 Corps. He obtained his Master's and his  
11 Doctorate in agricultural economics,  
12 specializing in natural resource policy,  
13 from the University of Missouri. He has  
14 worked with USDA's Economic Research  
15 Service in Washington, D. C. And is  
16 currently at Oklahoma State University in  
17 the area of agricultural policy.

18 Doctor Dicks has analyzed  
19 contracts, production records and financial  
20 information for hundreds of poultry growers  
21 in eastern Oklahoma and western Arkansas.

22 And has measured the economic  
23 impact of the poultry industry on a local,

1 regional and state economies. He has a  
2 large number of professional publications.  
3 He currently operates a hundred head Angus  
4 cow calf operation. And is a member of  
5 numerous community, church and social  
6 organizations.

7 Number -- let's see -- sorry.  
8 Next is John Ingram.

9 John Ingram is from Forest,  
10 Mississippi. He's currently a poultry  
11 grower for Cook Foods of Mississippi. He  
12 also builds poultry facilities. He served  
13 10 years in the U. S. Army on active duty  
14 and six years with the Scott County  
15 Sheriff's Department. He also worked as a  
16 business manager at Killian's Motors,  
17 Incorporated, Forest, Mississippi, for  
18 12 years.

19 Let's see. Next to him -- I'm  
20 sorry for the shuffling around here -- is  
21 Cindy Johnson.

22 Cindy Johnson had an early  
23 exposure to the poultry industry and a

1 grasp of how the industry works through her  
2 father who has a PhD in poultry economics.  
3 She majored in agriculture at the  
4 University of Georgia and graduated from  
5 the University of Georgia Law School in  
6 1982.

7 After working in Valdosta for two  
8 years, Cindy moved with her husband and son  
9 to Dalton, Georgia. She was offered a job  
10 as an appellate lawyer with the insurance  
11 defense firm of Kenny and Kim, where she  
12 remained for six years. In June of 1990,  
13 she joined the law firm of Waycaster,  
14 Morris, Johnson and Dean. Since 1990,  
15 Cindy has represented hundreds of growers  
16 in state and federal courts and in pre-suit  
17 negotiated settlements. In 2002, she left  
18 her former firm to join her husband in  
19 their practice in Cohutta, Georgia.

20 Next is Doctor Robert Taylor.

21 Professor Taylor is the Alpha  
22 Distinguished University Professor in  
23 Agricultural Economics and Public Policy of



1 the College of Agriculture at Auburn  
2 University. Prior to joining the Auburn  
3 faculty in 1988, he held faculty positions  
4 at the University of Illinois, Texas A&M  
5 University and Montana State University.  
6 He has conducted applied research on a wide  
7 variety of topics, including market  
8 concentration, conservation, buyer power  
9 and bio-energy. He's authored or  
10 co-authored five books and over 200  
11 articles -- and 200 articles and reports.  
12 And has testified before Congress on  
13 concentration and consolidation in the food  
14 industry, particularly on issues in the  
15 livestock and poultry industry.

16 And, finally, is Mike Weaver.

17 Mike Weaver farms 350 acres in  
18 Pendleton County, West Virginia. He raises  
19 Angus beef cattle as well as broilers -- as  
20 well as broilers for Pilgrim's Pride that  
21 are processed at the Morefield, West  
22 Virginia processing plant.

23 He started in the poultry

1 business with turkeys and switched to  
2 broilers about six years ago. His broiler  
3 facility is comprised of two houses with  
4 94,000 birds per flock.

5 Mike is president of the Contract  
6 Poultry Growers Association of the  
7 Virginias. He is a retired special agent  
8 for the U. S. Fish and Wildlife Service.  
9 He served as a board member of t he  
10 Allegheny -- Allegheny Highland Alliance,  
11 the West Virginia Special Olympics Program,  
12 the Potomac Highlands Wounded Warrior  
13 Outreach and Roritan National.

14 So let's go right away to our --  
15 to my first question area. And -- and I'm  
16 going to turn to some -- I'm going to turn  
17 to specific panelists for the first  
18 responses for all of these question areas.

19 Number one, in addressing our  
20 trends in poultry panel topic, we first  
21 need to gain some insight into key changes  
22 in poultry production and marketing over  
23 the past decade. What changes have

1 occurred in the typical initial investment  
2 in the scale of efficient operation and the  
3 time required for each flock to reach  
4 maturity?

5 What do we know about the  
6 quantity and quality of poultry produced  
7 over the last decade and the importance of  
8 exports?

9 And I'll, of course, turn to  
10 Professor Dicks.

11 MR. DICKS: Thanks, Norman.

12 It's great to be here and thank  
13 y'all for coming. It is a great country  
14 that we can all come and voice our opinions  
15 and be heard. And I hope that we -- we all  
16 are heard respectfully.

17 Even -- even university  
18 presidents -- university faculty aren't --  
19 aren't immune to being victimized or hurt,  
20 intimidated. Even this morning I've had  
21 groups call my dean and call my president  
22 of the university asking for background  
23 information and paperwork, Freedom of

1 Information Act to try to get me to cease  
2 my participation in these hearings. So  
3 those that know me know that I am  
4 un-intimidated.

5 Let me -- let me start by giving  
6 a few recent changes that, I think, are  
7 important just to give -- to give a  
8 perspective on the industry.

9 First of all, we -- we -- most of  
10 know that the new top cool cell house has  
11 largely been adopted by the industry by  
12 this time. It's more efficient than the  
13 others ones, particularly in terms of  
14 energy efficiency, which has been a  
15 tremendous help to the growers, although  
16 that it is a much more expensive facility.

17 Sometimes -- the last estimates I  
18 have on that was from 2007, 2008. Those  
19 houses are about \$225,000, which would  
20 include all the equipment necessary to run  
21 them. That's a fairly substantial  
22 investment for one of those houses. And  
23 I'm -- I'm saying the typical house is

1       40 feet by 400 feet.

2               Average farm size has increased.  
3       We now -- in my area we're looking at about  
4       three houses is the average farm size. I  
5       think a decade ago that was probably two  
6       houses.

7               The average market age of  
8       broilers is 47 days, the same as it was  
9       about 20 years ago. The average bird today  
10      is heavier than it was ten years ago. It's  
11      now about 5.63 pounds compared to about  
12      five -- five pounds in 2000.

13              Feed efficiency has increased,  
14      slightly, but that slight increase is a  
15      tremendous gain in terms of profitability.  
16      It's gone from 1.92 pounds to 1. -- sorry,  
17      from 1.95 to 1.92 pounds.

18              On -- on farm mortality rate  
19      dropped from 5% to 4.1%, which is -- which  
20      is fairly substantial.

21              And if -- you know, for a  
22      cow/calf operator to get below 5% would be  
23      -- would be a real -- a real thrill.

1           Post-mortem condemnation rates  
2 have dropped from 1.22% to .87% in 2009.  
3 And, again, that -- that has some real  
4 profit potential.

5           And then the last thing is on  
6 that trend is that per capita consumption  
7 of poultry continues to increase from about  
8 80 at the start of decade to almost 90  
9 today.

10           So those are the, I think, the  
11 things that would indicate improvement in  
12 the industry, more profitability, more  
13 efficiency.

14           On the other hand there's some  
15 things of a wider nature that I think are  
16 important for all us to think about. It's  
17 being interesting listening to all problems  
18 today. And believe me, those things didn't  
19 fall short on me. I am sensitive to  
20 agriculture producers. I -- I spend a  
21 great deal of my time -- I -- I -- I am an  
22 agriculture producer. I'm probably out in  
23 the countryside. I give 50 to 60 extension

1 presentations a year. And I -- and I do a  
2 lot of work with producers.

3 So hearing your stories, I assure  
4 you that I listen very intently to those  
5 stories. They're not much different than  
6 the stories I hear from cattle producers,  
7 swine producers, wheat producers, corn  
8 producers, et cetera.

9 While the trends that I've told  
10 you indicate that there is an increase in  
11 productivity and efficiency, these other  
12 major trends that I think are -- are  
13 exceedingly important. And one -- and the  
14 things that I think you really need to  
15 think about. And I'm sorry that Mr.  
16 Vilsack has left because some of these fall  
17 on his doorstep as we heard this morning.

18 One of the things that's created  
19 some of the problems in the industry is --  
20 is -- started in 1994 with the  
21 reorganization of USDA. When USDA was  
22 reorganized, they took Farmer's Home  
23 Administration and stuck into Farms Service

1 Agency. Then ASCS.

2 That reduced the staff and also  
3 made changes in each one of those offices.  
4 And that trend has continued. The total  
5 number employes in the FSA -- in the local  
6 FSA office has -- has dwindled, as well as  
7 the number of FSA offices.

8 And that means there's less  
9 people to service those loans and to look  
10 and see if those loans are -- are worthy of  
11 being delivered.

12 Also, as you-all know, we're in a  
13 financial situation in this country and the  
14 world. And a lot of that has to do with  
15 cheap and easy credit policies, not only  
16 from the federal government and the Federal  
17 Reserve, but on down to the local banks.  
18 And I think that's had a tremendous impact  
19 on what you're seeing in the industry  
20 today.

21 One of -- one of the largest  
22 problems I see and I've commented on this  
23 before the Senate Ag Committee in 1997, was



1 the Federal Agricultural Improvement Reform  
2 Act in 1996. That -- that farm bill, as  
3 most people call it, the Farm Bill of 1996,  
4 eliminated -- essentially eliminated farm  
5 storage programs.

6 So from that time on the  
7 government virtually had no more commodity  
8 storage programs. And I insisted at that  
9 time -- because yields in the country are  
10 increasing at a decreasing rate and  
11 becoming increasingly more variable while  
12 demand continues to increase, at some point  
13 that means we're going to have price  
14 spikes.

15 And if you'll go back and read my  
16 testimony, I said that within a decade when  
17 I was asked how long it would be, I said  
18 within a decade we'd see some major price  
19 spikes in commodities. Now I missed it by  
20 a year. It was 2008 not 2007. So I missed  
21 it by a year, but it is there and it's  
22 going to happen again. And some of the  
23 problems that you're facing today and that

1 are coming down on the integrators are  
2 because we have gotten rid of commodity  
3 policy and we're not -- we're not managing  
4 supplies any longer. And, so, we're going  
5 to see much more variation in -- in feed --  
6 feed prices. Much more volatility and  
7 probably a continuing trend upward in those  
8 prices.

9 So, I think, you know, again,  
10 those are -- that's a -- that's a major  
11 policy we're about to revisit. The current  
12 farm bill is probably one of the most  
13 complicated instruments that I've had a  
14 chance to deal with. And I've been doing  
15 it for a long time. I know Bob might want  
16 to contact -- comment on that himself.

17 I think also reaching peak oil in  
18 the last couple of years, meaning the total  
19 amount of oil that's all out, is never  
20 going to get greater. And -- and we have  
21 no energy policy. That's had a tremendous  
22 impact. I don't know how many people have  
23 said that today, that those rising propane

1 prices and rising electricity prices are  
2 squeezing profits. That's certainly the  
3 case.

4 If you enter into a contract in  
5 2004 for a set price, your propane price  
6 between 2004 and 2009 went up from roughly  
7 on the retail price for the nation a dollar  
8 a gallon to two and a half dollars a  
9 gallon. Now, that's a tremendous squeeze  
10 on profit. And most people did have a  
11 profitability to warrant that increase.

12 That's something, again, that --  
13 that falls back in the lap of Congress and  
14 the federal government, is coming up with  
15 that energy policy.

16 Finally, just one last thing. I  
17 want to make sure that before I -- before I  
18 get done that today I want to -- I want to  
19 talk about this financial performance  
20 sector. That's one thing that hasn't  
21 changed.

22 You know there is, and I've heard  
23 a lot of that today. There is one thing

1       that is common is agriculture, and I know  
2       you've all heard this. There's an idiom  
3       that come from 50 years ago I heard when I  
4       was a kid, "Cash poor and asset rich".

5               And that literally means I've got  
6       great profitability, which the U. S.  
7       Agriculture sector does. Your --your  
8       industry, your -- you growers, most  
9       agriculture producers in this country have  
10      a very high profitability. I'll explain  
11      that if you'd like. But you have a very  
12      low dollar sales per amount of fixed assets  
13      you have. And that causes you to have a  
14      low return on investment.

15             And essentially what I'm telling  
16      you is, you're making good money, but  
17      you're using it all to pay for your assets.  
18      And I think you know that. That's true for  
19      every part of agriculture.

20             MR. FAMILANT: Some follow-up  
21      comments from Max Carnes.

22             MR. CARNES: I'll give a short  
23      one. Thank you. Going back -- we started

1       our family in 1977. And, at that time, we  
2       built three houses for about \$26,000 each.  
3       The last houses that we built were 500 by  
4       50. And they're approximately a hundred  
5       and seventy-five or 225,000. I can't  
6       remember which now.

7                But going back over some of the  
8       changes that we have seen through the  
9       years. When we started out we had the old  
10      time eight foot drinkers that you would  
11      slosh out or rub out with your brush and  
12      whatnot. And, of course, now we've gone to  
13      the nipple drinker that's a lot more  
14      efficient and a lot easier to operate.

15               Our lighting program has changed  
16      dramatically. And to begin with, we had 24  
17      hours of daylight. And now we manipulate  
18      it for the different size birds that we  
19      want. And we -- we've gone from an  
20      incandescent bulb to a fluorescent bulb and  
21      back to an incandescent. And that will  
22      probably change again, too.

23               Also, when we first started, we

1 had the regular pancake brooders in the  
2 middle of the house. And then that has  
3 changed to a forced air heater on the side  
4 of the house. And that has gone back now.  
5 We have a combination of the brooders and  
6 the forced air heaters.

7 Of course, a cool cell is one  
8 thing that I think has helped us more than  
9 anything else in the world. To be able to  
10 cool the birds, I know always before when  
11 the chickens got about 93 degrees you might  
12 as well -- or the inside temperature got to  
13 be 93 degrees, you might as well plan on  
14 start picking up some dead birds. That has  
15 been, I think, the biggest innovation that  
16 -- that we have had since I've been growing  
17 chickens.

18 Also, now, we have the computers  
19 that control everything in the house, which  
20 makes everyone's job a whole lot easier.  
21 It's just a -- a -- a big, big help to have  
22 that temperature change so minutely so that  
23 everything works out well.

1           The other thing that we have  
2           changed in our houses, when we first built  
3           our houses we had posts in the house. All  
4           of those have been changed now and we have  
5           all clear span houses.

6           So we have seen tremendous amount  
7           of innovations in the -- in the farming  
8           industry. And it has been a big help.  
9           It's -- it's made our job a lot easier, but  
10          you still have to pick up those dead  
11          chickens. I can't fix that for you.

12          Thank you.

13          MR. FAMILANT: Any -- any brief,  
14          follow-up comments by any of our panelists?

15          On this question, yeah.

16          Everybody okay?

17          Alright, let's go to question  
18          two. Let's get to the contracts. We'll  
19          deal with the compensation aspects, that  
20          is, the tournament ranking system and  
21          requirements for improvements in additional  
22          investments and the two questions that  
23          follow this one.

1           But, first, let's address the  
2 basics. Although there surely is variation  
3 in the contracts, what are the key  
4 non-compensation terms in the contract with  
5 which you are familiar?

6           What's typical -- what's the  
7 typical term of the contract?

8           When there is concentration --  
9 when there is -- excuse me. When there is  
10 a contraction in the market, do the  
11 integrators cut back on the frequency of  
12 flocks in the contracts, or do they cut  
13 back on the number of chicks placed?

14           And I'm going to ask Mr. Bishop.

15           MR. BISHOP: Thank you for the  
16 opportunity to be here and speaking on  
17 behalf of my company Peco Foods, and also  
18 on behalf of the poultry industry.

19           The key non-compensation terms  
20 that we have in our current contract, of  
21 which I'm most familiar with, there's a --  
22 or are a long list of these things.

23           But, first all, we've got to



1 consider the terms of broiler contracts.  
2 And it's important to keep them in  
3 perspective the nature of a processor's  
4 business. And my company is the same way.

5 First of all, all us, as poultry  
6 processors, are producing chicken products  
7 for, not only the U. S. food supply, but  
8 also a global market. It's critical these  
9 products be wholesome.

10 And, second of all, we have  
11 customers and markets out there that demand  
12 a specific sized bird and a uniformed bird.  
13 We can't just arbitrarily go out and grow  
14 any kind -- any size bird, any kind of bird  
15 we want to, we have to have something to  
16 market.

17 Processors like us rely on  
18 hundreds of growers to help us grow these  
19 various type birds and various sizes. The  
20 chicks that we own, of course, as  
21 processors, are entrusted to growers. They  
22 have to properly care for them, not only  
23 from a cost competitive standpoint, but

1       also from an animal welfare standpoint. We  
2       all depend on these animals for our very  
3       existence.

4                You talk about non-compensation  
5       terms of contracts, first of all, the  
6       processor provides chicks, feed and  
7       medication. The processor also provides  
8       management guidelines and technical service  
9       support.

10              The grower provides housing,  
11       equipment, labor and utilities to care for  
12       these chicks and grow them to the proper  
13       weight. The contract prohibits the grower  
14       from having other fowl on the farm and  
15       prohibits the growers -- grower from using  
16       any other type feed, rodenticides  
17       pesticides, insecticides, herbicides, any  
18       kind of medication that's not provided by  
19       the company or the processor or approved by  
20       the processor.

21              The processor is looking for that  
22       grower's individual skills and experience  
23       on that farm. And the contract prohibits

1 any successor or reassignment of that  
2 contract unless approved by the processor.

3 The processor is also given the  
4 right to access on the grower's farm for  
5 the purpose of inspecting the flock and the  
6 grower's operations. The contract  
7 generally provides that a grower is an  
8 independent contractor and not an employee  
9 of the grower or the company -- the  
10 processor or the company.

11 Any veterinarian's reports  
12 considering -- concerning flock health is  
13 also available to the grower upon request.  
14 The processor agrees to pay for damage on  
15 the farm caused by his employees. Feed and  
16 live birds are to be weighed by bonded  
17 weigh masters. Feed trailers will be  
18 sealed if requested by the grower.

19 Growers have the right to be a  
20 member of and participate in any  
21 organization or association they choose.

22 The contract generally has  
23 default provisions with an opportunity to

1       cure, in except in circumstances where  
2       there is serious violations that might  
3       threaten the processor's property, the live  
4       birds or the processor's employees.

5               The second part of the question,  
6       what's a typical term of the contract. I  
7       can only speak for our company. And I'm  
8       sure it varies throughout the industry.  
9       But the terms of our contracts at Peco are  
10      from flock-to-flock to up to 15 years and  
11      anywhere in between. Our new house  
12      contracts are 15 years. Contracts on older  
13      farms, depend on the age and condition of  
14      houses, and, also, some circumstances  
15      surrounding those houses.

16              Some lending agencies that  
17      finance some of our farms dictate the lien  
18      or the terms of the contract and we abide  
19      by those. We currently grow in houses that  
20      age from brand new to 40 years old. The  
21      average age of our 1570 houses is 15 years  
22      old.

23              Our company has been in business

1 for 73 years. And in the last 10 years  
2 we've had 749 contracts. We've terminated  
3 3% of those contracts for just cause.

4 The last -- the third question,  
5 when there's contrast in the market, do  
6 processors cut back on the frequency of  
7 flocks and contracts are then cut back on  
8 numbers of chicks.

9 Again, I can only speak for our  
10 company. During the recent severe market  
11 contractions, and there have been a few in  
12 the last several years, Peco Foods has  
13 attempted to manage through these  
14 contractions by simply cutting back the  
15 frequency of flocks grown. That's the only  
16 thing we have done.

17 In an effort to mitigate the  
18 impact of these contractions on our  
19 growers, we've offered an increased out  
20 time pay to help the growers' cash flow.

21 As a result of this action, our  
22 company, rather than the grower, has borne  
23 the principle brunt of these market

1           contractions.

2                     Thank you.

3                     MR. FAMILANT:   Mike Weaver.

4                     MR. WEAVER:   There's several  
5           different aspect of contracts that directly  
6           affect growers.  And I'm going to try to  
7           address those here.

8                     They're talking about these  
9           non-compensation aspects of the contract.  
10          Probably one of the most significant for us  
11          as growers is the term of the contract.  I  
12          believe Mr. Bishop here says that theirs  
13          flock-to-flock.  And, as a general rule,  
14          from what I've seen, and I've seen many  
15          contracts from many different companies  
16          around the country, flock-to-flock is about  
17          the standard.

18                    You may see on your contract,  
19          I've had one myself in the past, where it  
20          said the term of the contract is five years  
21          or ten years or 15, but in reality, that --  
22          that contract is flock-to-flock.  And  
23          because it also goes on to give the company

1 the authority to terminate that contract  
2 with or without cause. And they vary a  
3 little bit on that, too.

4 Some of them say, however, some  
5 of them say with cause, some of them say  
6 with or without cause.

7 One of the biggest problems I  
8 think with the poultry contracts is that  
9 there is no input from the growers. We  
10 have no say so whatsoever in that contract.  
11 As -- as all you growers know here, and I  
12 -- Mr. Bishop's company might be different,  
13 I don't know, I hope it is, but they are  
14 more or less take it or leave it contracts.  
15 When they bring it to you, you sign it, you  
16 grow chickens, you don't, you don't grow  
17 chickens.

18 There's termination requirements  
19 or stipulations in those contracts. As I  
20 just mentioned, capital investment  
21 requirements, which never used to be  
22 listed, but now, thankfully, under the 2008  
23 Farm Bill that has to be included in the

1 contract. All it does, though, is tell you  
2 that you may be required to make capital  
3 investments. It doesn't say how much it's  
4 going to cost you, how long it's going to  
5 take you to pay it back or how much money  
6 in addition they're going to give you to  
7 pay you for making those capital  
8 improvements.

9 One of the -- one of the real  
10 problems with the contracts is, and I  
11 expect most growers here have experienced  
12 this is, that it's only a contract until  
13 they bring you the next one, you know. It  
14 might say 15 years, but two months from now  
15 they might decide to change that contract.  
16 So they bring you a new one and you sign it  
17 or you don't grow chicks, you know. To me,  
18 that's not a contract. If get one for 10  
19 years, it should been for 10 years.

20 We also have no control over the  
21 age they take the bird for processing.  
22 It's up to the company. It's their -- in  
23 my case -- in my case, I grow a four pound



1 bird. And recently they've been taking our  
2 birds as early as 34 days. We're lucky to  
3 get a three and a half pound chicken in  
4 that amount of time. And that loss of that  
5 weight, we don't get paid for it, is our  
6 loss. They don't get -- that doesn't made  
7 up to us in anyway whatsoever.

8 We have -- we have no say so in  
9 the number of breeder chickens. It says  
10 specifically in the contract that that --  
11 the number of birds they place on your farm  
12 is up to them. And you have nothing to say  
13 about it. So if they bring you 10,000  
14 chickens or they bring you 2,000 chickens,  
15 it's completely up to the company.

16 The transferability in that  
17 contract, we have no input into. If I  
18 decide to sell my farm and I have somebody  
19 wants to buy my farm, I can't transfer that  
20 contract to them without the approval of  
21 the company. In reality, that company has  
22 a new -- or negotiates a new contract with  
23 that person.

1           And that's -- the requirement for  
2           upgrades has become a real problem as far  
3           as any growers that want to try to sell  
4           their farm because somehow the company has  
5           figured out that if they want to force  
6           somebody to make upgrades on their farm  
7           that they're trying to sell, they'll --  
8           they either make those upgrades themselves  
9           at their expense so that they can sell  
10          their farm or the person that buys the  
11          farms is forced to make those upgrades.  
12          And I think that's absolutely wrong, too.

13                 In my particular case, under the  
14          2008 Farm Bill, we were given the right to  
15          opt out of binding arbitration, which is a  
16          wonderful thing, and I hope nobody in here  
17          agrees to binding arbitration, you  
18          shouldn't. If you do, you need to talk to  
19          your attorney about that.

20                 But we -- my company restricted  
21          me, even though I can opt out of binding  
22          arbitration, from a jury trial. It says my  
23          only right is through a trial in front of a

1 judge. So I got out of binding  
2 arbitration, but now I can't even go before  
3 a judge. And I thought this was America.  
4 I thought we are able -- we were all  
5 entitled to a jury -- a trial by jury.  
6 Under my contract, I'm not.

7 MR. FAMILANT: Any other quick --  
8 quick comments before we move on?

9 MR. TAYLOR: I'd like to  
10 emphasize one point Mike made.

11 In recent years contracts are  
12 going for longer and longer periods. There  
13 are 3-year contracts and seven and some  
14 ten.

15 15-year contract mentioned, I  
16 have yet to see a multi year contract that  
17 required the integrator to provide more  
18 than one flock of chicks. It could be for  
19 a thousand years, it doesn't matter.  
20 You're guaranteed one flock of chicks. And  
21 then after that the integrator can change  
22 the contract or whatever. That's when what  
23 economists called hold it up can occur. I

1 have not seen Peco's contract, but all of  
2 the others I've seen.

3 MR. FAMILANT: We should turn now  
4 to the key compensation aspect of the  
5 contracts: The tournament ranking system.

6 First, let's get a brief  
7 description of a typical payment scheme.  
8 When did this compensation aspect of the  
9 contracts emerge? When -- when did we get  
10 terms? And why do you think these emerged?

11 And this last question is  
12 particularly of interest to me as an  
13 economist, why do we observe it so  
14 universally in broilers, but not so in  
15 raising other animals?

16 And I'm going to turn John  
17 Ingrum.

18 MR. INGRUM: First of all, I want  
19 to thank everybody for being here today.  
20 I've grown poultry for ten years. And the  
21 problem I see in the ranking system is it's  
22 not fair. And there's no way it could be  
23 fair, you know.

1           A lot of the growers will tell  
2           you that the companies tell you that the  
3           ranking system is a fair way of judging the  
4           grower on their performance, but there's no  
5           way it could be -- it could be fair because  
6           we don't have any control over the birds  
7           they bring us.

8           Sometime's I've -- I've dumped  
9           chickens that -- you know, there's a  
10          hundred chickens in a tray. And I've  
11          dumped the chickens where's there 35 to 40  
12          of those chickens dead in that tray. So --  
13          and I -- and, also, one of the growers said  
14          earlier I have been out of feed for two or  
15          three days with six-week old chickens. And  
16          it's based on the breeder chickens you get  
17          and whether they're male or female. And it  
18          also is based on how long you out of  
19          chickens. If you're out of chickens 14  
20          days, and you're out of chickens 21 days,  
21          that has an effect on how your chickens are  
22          going to be perform based on your litter  
23          quality. So I don't -- I don't see how the

1 ranking system could ever be a fair system,  
2 you know.

3 The poultry industry has really  
4 been strange to me because I have a son  
5 that's a computer expert. And we use to  
6 try to figure out how to come up with our  
7 feed conversions on -- based on what our  
8 chickens should weigh. This kid is a  
9 master on a computer, never could figure  
10 out the chicken business, never could  
11 figure out the feed. And, so, I knew then  
12 that it was something wrong.

13 But, as far as a ranking system,  
14 there's -- there's no way it could be fair.  
15 And to base our performance if -- if the  
16 company -- I was out of feed one time as  
17 long as three days when my chickens started  
18 to eat on each other, but when I sold those  
19 chickens they still based my performance on  
20 what I done, but I had no control over the  
21 feed that they brought me. So there's no  
22 way that the ranking system could ever be  
23 fair. That's in my opinion.

1           MR. FAMILANT: Professor Taylor,  
2 any follow-up on this?

3           MR. TAYLOR: Well, your question  
4 about why is that in the poultry industry  
5 and not others, is simply because the  
6 integrators require it. They set it up  
7 that way.

8           There's the myth that this system  
9 takes grower -- eliminates grower's risk.  
10 It doesn't. It actually -- the common pay  
11 system -- if you have a high cost, you get  
12 a low unit price, or if you have a low  
13 cost, you get a high unit price. And it  
14 doubly penalizes or doubly rewards growers  
15 for good or bad flocks.

16           A very troubling aspect is a  
17 grower cannot verify any of the numbers  
18 used to calculate pay.

19           The second thing is feed quality  
20 varies, chick quality varies. Economists  
21 call this pay system a tournament, to me  
22 it's a lottery. And the problem is, it can  
23 be a rigged lottery, I'm not saying it is a

1       rigged lottery, but it can be and a grower  
2       has no way of figuring out if they were  
3       singled out for good chicks or if they had  
4       a sweetheart deal and were singled out for  
5       really good feed and really good chicks.

6                So it's a very troubling aspect  
7       that a grower cannot verify the numbers  
8       used to compute their pay.

9                MR. FAMILANT: I've seen some  
10       discussion that we're -- we're beginning to  
11       see tournaments in some other animals.

12               Have -- have -- have -- are you  
13       familiar with any evidence of that?

14               MR. TAYLOR: Not like the poultry  
15       system.

16               MR. WEAVER: I have a comment on  
17       this.

18               MR. FAMILANT: Sure.

19               MR. WEAVER: There's -- stop and  
20       think about this my fellow growers.

21               Under the ranking system if  
22       you're provided with poor -- poor quality  
23       chicks and poor quality feed, which is an



1 input from the company that we have no  
2 control over, you're going to have poor  
3 production.

4 This means you're going to have  
5 less pounds than you should have if you got  
6 inputs from that company. So you're going  
7 to lose money on the weight that you don't  
8 have. Plus, under the ranking system,  
9 you're going to have points deducted from  
10 your pay because you -- you produced  
11 poorly.

12 So under the ranking system we  
13 get hit twice, we get subtracted on twice.  
14 And there's no way that that is fair.

15 Another way that it's not fair is  
16 the fact that it robs Peter to pay Paul.  
17 Why should it be fair for -- for the  
18 companies to be allowed take money away  
19 from you to give it to me because I did  
20 better than you did. There's no way that  
21 could be fair and it shouldn't be legal.

22 We've -- we've got to have a  
23 better system of paying our growers here in

1 the United States.

2 MR. FAMILANT: Professor Taylor,  
3 what's the problem?

4 MR. TAYLOR: Let me mention one  
5 thing I've observed about the tournament  
6 pay system. There are a lot of subtleties  
7 dealing with whether an average is used or  
8 whether a median is used or whether a  
9 weighted average is used. And the  
10 integrators exclude some flocks, sometimes  
11 high, sometimes low. They completely  
12 determine what is excluded. They have min  
13 and max pay.

14 The point I'm getting up is, in  
15 contracts, most of them have a stated base  
16 contract pay. Let's say it's five cents.  
17 And there are bonuses for those that really  
18 have good flocks above that and penalties  
19 for those below. But a base pay of five  
20 cents, if you take a weighted average of  
21 all of those for flocks, it usually comes  
22 out to be less than what a contract says.  
23 And to me, that's deceptive and unfair.

1 MR. FAMILANT: Benny Bishop.

2 MR. BISHOP: I just wanted to  
3 make the comment, there's been some  
4 comments talked about poor chick quality,  
5 poor feed quality.

6 And, first of all, you know, from  
7 the company's standpoint, it's not in the  
8 best interest of any company in this  
9 business, and, again, I'm speaking for our  
10 company, but for the industry as a whole,  
11 to send out poor quality chicks and bad  
12 feed to any grower. I'll say that to  
13 anybody in this room or in this industry.

14 And if you look at what's  
15 happened in the industry over the last ten  
16 years, we've improved livability by over  
17 1%. Back in 1999 and 2000 the average  
18 livability was only 95%. Today 2009, 2010,  
19 we've raised that livability to 96% plus.

20 USDA records show that whole  
21 birds condemns are over 1%. Ten years ago  
22 1.2, 1.3. Today, the last 12 months, the  
23 average whole bird condemned is less than

1 one-third of one percent.

2 And the industry does not achieve  
3 this with poor quality chicks and poor  
4 birds coming off the farm.

5 MR. WEAVER: I'd like to make  
6 another comment about that if I could.

7 MR. FAMILANT: Go ahead, briefly.

8 MR. WEAVER: The reason industry  
9 is allowed -- is able to achieve that is  
10 because of good growers.

11 MR. BISHOP: I agree, good farm  
12 management, but there's some good inputs,  
13 they're not all poor.

14 MR. DICKS: If I could just make  
15 a couple of comments.

16 MR. FAMILANT: Go ahead.

17 MR. DICKS: You know, you asked  
18 about the -- you know, I grew up in the  
19 tomato industry. And I can tell you that  
20 they have the same kind of a tournament  
21 system basically in the tomato industry in  
22 terms of providing those tomatoes to the --  
23 to the processor. And that's what we did.

1       And you're -- you're paid based on how much  
2       sun scald there is; how much rot there is;  
3       how much different than -- if it's less  
4       than -- if it's more than 12%, they turn  
5       the whole tub back around, 40 something  
6       tons of tomatoes, and back to the fields  
7       and you get to dump them. So it's the same  
8       kind of deal, but a little harsher.

9                 In the beef industry I'm pretty  
10       glad that we've gone to the grid system. I  
11       get paid, not only the quality of my  
12       carcass, but the yield of my carcass in  
13       terms of also the rib eye, back fat, all  
14       kinds of characteristics on that. So,  
15       again, there is -- there is something to  
16       the merit system.

17                And I want to follow-up on what  
18       Benny says. You know, one of the things  
19       for me, as an economist, is try to figure  
20       out why things are the way they are. And  
21       just so you understand, you know, I don't  
22       want to put a lot into all the nuances of  
23       these -- of these -- of this tournament

1 system. And I know there's lot of ways it  
2 could be improved probably and they're  
3 probably some things wrong with it, but --  
4 but let's look at why it's happening.

5 First of all, the -- the  
6 integrators don't make a large profit.  
7 That's a lot -- you know, a lot of -- but  
8 here's what I want to tell you. And I know  
9 you're all rolling your eyes about that.

10 If you take the cash sales and  
11 divided by the cash expenses or, sorry, you  
12 take the cash sales and minus the cash  
13 expenses and divide by the cash sales,  
14 that's profit, okay. That's not return on  
15 assets. These -- these integrators are  
16 making 1 to 2% profit. The thing that  
17 they're -- the way they're making returns  
18 their return on assets is by lots of  
19 quantity.

20 What they have to do is run those  
21 plants at a hundred percent capacity. They  
22 cannot afford to produce chicks and not  
23 have those chicks come back live, as big as

1       they can.

2                   And, so, what they're doing is  
3 they're reimbursing those growers to try to  
4 induce the biggest birds they can get in  
5 the most efficient production. Now, that  
6 just makes sense. So that's what -- that's  
7 what that whole tournament process is.

8                   Now, I want to -- the reason I'm  
9 saying this is because if you have a better  
10 way, right, of -- of -- of -- of coming up  
11 with a formula -- and you're in the  
12 business -- I always tell farmers that,  
13 you're in the business, you're on the  
14 ground, if you have a better way of coming  
15 up -- a way of paying yourself for being  
16 efficient, bring it forward, bring it  
17 forward, let's talk about it. Maybe --  
18 maybe that's what the industry will go to.

19                   MR. WEAVER: I have a suggestion  
20 for that. If you don't mind, I'd like take  
21 a couple a minutes here.

22                   MR. FAMILANT: We have talked --  
23 we've got to move along. So just try to do

1       it real quickly in 30 seconds.

2               MR. WEAVER: Well, okay, plain  
3       and simple. What we need is a base pay, a  
4       true base pay for growers that can't be  
5       subtracted. Once we get that, we'll be in  
6       a position to where we know what our pay is  
7       going to be at least. And the companies  
8       won't be at their will to take away from us  
9       when they want to.

10              If we -- we have a set amount  
11       that we know we're going to receive, we can  
12       budget ourselves and operate on that.

13              And it has to be an amount that  
14       allows us to pay our bills and make it a  
15       reasonable amount of return.

16              MR. FAMILANT: Okay. As -- as I  
17       suggested earlier, we also want to address  
18       another aspect of the contract, situations  
19       in which integrators require upgrades and  
20       additional investments by growers in order  
21       to hold their contracts.

22              How often does this occur? What  
23       do the processors cite as the reason for



1       these demands they make?  What is the  
2       evidence on whether these upgrades lead to  
3       cost effective improvements in the quantity  
4       and quality of poultry grown to maturity?  
5       And what is the effect on the growers?

6                 So we'll turn to Mr. Weaver  
7       first.

8                 MR. WEAVER:  Just to go down the  
9       list there.

10                The first one is, how often does  
11       this occur, that varies tremendously.  
12       You-all know that as well as I do.  But, as  
13       a general rule, major upgrades are pretty  
14       much on the five to 10-year cycle.  It  
15       depends on how old your houses are and the  
16       whim of the integrators essentially is what  
17       -- what it comes to.

18                Integrators -- I -- I -- it says  
19       processors.  And I'm assuming you mean all  
20       integrators?

21                MR. FAMILANT:  Yes.

22                MR. WEAVER:  Cite reasons for  
23       these demands as typically can improve

1 production, but one of the problems with it  
2 is they never delineate who the -- who the  
3 improved production is going to be, is it  
4 going to be for them or is it going to be  
5 for us as growers, but we're the ones who  
6 have to bear the cost for it. And that's  
7 -- that's the true problem that I see.

8 The integrators don't bear any of  
9 that cost typically. Now, sometimes they  
10 do cost share a little bit.

11 One good example I can give you  
12 is one of our growers was forced to do  
13 \$600,000 in upgrades in his poultry  
14 operation and they cost shared with him.  
15 They gave him \$78,000. So that was a  
16 really big cost share, wasn't it?

17 AUDIENCE: Good return on  
18 investment.

19 MR. WEAVER: Yeah, that's right.

20 Another thing they don't do is  
21 give us a cost projection on how this is  
22 going to help us, you know.

23 I would -- I would -- if they

1       could -- if they could come to me and say  
2       we want you to make this hundred thousand  
3       dollar improvement. And here's a cost  
4       projection as to how you're going to get  
5       paid back for that, and here's how much  
6       increase we're going to give you, and it  
7       take you this amount time to make this  
8       back. If they could show that to me in  
9       black and white and make it reasonable, I'd  
10      agree to do it. They wouldn't have to  
11      force me.

12                 And that -- it should tell  
13      everybody who -- who even pays any  
14      attention to that situation at all, and you  
15      all have heard it all day in here, they  
16      bring that contract to you with that  
17      upgrade in it and tell you if don't sign  
18      it, you're going to get -- you're not going  
19      to get chickens, well, that's forcing  
20      people to do it, isn't it?

21                 But if they came to me and showed  
22      me this cost projection and said we're  
23      going to pay you this much more. And we

1 can prove to you that this improvement is  
2 going to make you this much more money and  
3 here's how long it will take you to get it  
4 back, I'd gladly do it, but that never  
5 happens.

6 What's the evidence on whether  
7 these upgrades lead to cost effective  
8 improvements and quantity and quality of  
9 poultry growth? From what I've seen  
10 there's very little evidence.

11 You all know, as well I do, that  
12 at times it's just the whim of the  
13 integrator. We all have our opinions as to  
14 why they force us to do them upgrades and  
15 go into additional debt.

16 A lot times there is just  
17 speculation on the part of the companies.

18 Like I said, if they brought --  
19 brought me a spread sheet and showed me  
20 this is how much it's going to cost you and  
21 this is how long it's going to take you to  
22 get your -- recoup your investment, it  
23 would be a whole lot easier for me to make

1 a decision on whether I do that or not, but  
2 the way it is, my decision is not too hard  
3 anyway because they can come to me and say,  
4 "If you don't do this, you're not going to  
5 get chickens". And that's -- like I said  
6 earlier, this is the United States of  
7 America, I don't think we should have to  
8 suffer through that.

9 Where they're asking us to take  
10 on additional debt for these improvements  
11 that -- that many times is not funded. And  
12 even when they do give us an increase for  
13 it, it doesn't cash flow, there's no way to  
14 pay for itself.

15 More times than not these  
16 improvements that they force us to do  
17 benefits the integrator 100%, or at least a  
18 whole lot more than it does the growers  
19 that are being forced to make these  
20 upgrades.

21 So I think we need to encourage  
22 packers and stockyards to create some  
23 regulations saying that if poultry

1 companies have upgrades, that they'd like  
2 to make, if they think it's worth it to  
3 them and their production is going to  
4 increase that much, they should pay for it.

5 MR. FAMILANT: Cindy Johnson.

6 MS. JOHNSON: Thank you. I guess  
7 you folks were starting to wonder whether I  
8 was going to talk today or not.

9 I'm Cindy Johnson. And think I'm  
10 the token lawyer, maybe the token woman on  
11 this panel as well. I'm humbled, I'm  
12 honored to be here today. I want to, first  
13 of all, thank whoever turned the  
14 air-conditioner off because I thought I was  
15 going to have to chatter through this. And  
16 I also want to thank especially my husband  
17 and my law partner publicly, for having  
18 traveled down this road representing  
19 chicken farmers for a very long time with  
20 me at great risk to our family. Thank you,  
21 honey, I love you.

22 I was talking to our 24-year old  
23 daughter back a few weeks ago because I was

1       trying to remember how long I've been doing  
2       this. And I said, "Elsa, how long have I  
3       been representing these chicken growers?  
4       It seems like forever".

5                She said, "Momma, I don't know".

6                She said, "All I know is when I  
7       was little girl I used to think that  
8       ConAgra must be a very bad man".

9                So it's been a long time, but  
10       I'll get to upgrades.

11               Back in the '90's I was assisting  
12       some other attorneys and some people that  
13       were active in the industry trying to  
14       organize poultry growers in the State of  
15       Georgia. And I went to a lot of meetings  
16       and did hearings around the state.

17               And one of the things that always  
18       came up was upgrades and how the companies,  
19       the integrators would keep growers in debt  
20       with upgrades. And that's the same song  
21       and dance I hear today when -- from these  
22       growers is we just can't get out of debt  
23       for the upgrades.

1           From a legal perspective, as a  
2 lawyer, it's always puzzled me that the  
3 chicken processing companies call poultry  
4 growers independent contractors and at the  
5 same time control the manner and the method  
6 of how they grow chickens. The legal  
7 definition of an independent contractor in  
8 the State of Georgia is by definition,  
9 "Being able to control the manner or method  
10 of how you produce a result".

11           If the integrators want to  
12 experiment with new technology, they should  
13 do that at that their own expense, not at  
14 the expense of the grower.

15           If -- if a grower is growing as  
16 good a chicken as the man down the road  
17 with the fancy new equipment at the same  
18 cost to the company as the guy with the new  
19 fancy new equipment, why should he have to  
20 go and get into a lot more debt to put in  
21 the fancy, new equipment when it's not  
22 going to result in any additional money to  
23 him? I don't understand it.



1           And I think it's a symptom of the  
2           problem we have with the lack of power in  
3           growers who have invested more than half of  
4           the capital in chickens in this country  
5           collectively.

6           And there's a problem when you  
7           have a group of people who have invested  
8           more than half the capital in chickens and  
9           have no power and no say and get as little  
10          money as they do compared to the profits of  
11          the processors.

12           MR. FAMILANT:   John Ingrum.

13           MR. INGRUM:   It always puzzled me  
14          the word upgrade.   Upgrade to what?

15           I have a -- my farm is down the  
16          street from another guy.   And his farm is  
17          probably 35 years old and my farm is 15.  
18          And this guy repeatedly beat me every batch  
19          after batch after batch.   Me and him was  
20          good friends.   I go down there to try find  
21          out what he was doing differently from me,  
22          but his houses was older than mine.

23           And my serviceman came out one

1 day and he said, "We're going to close so  
2 and so down the road down".

3 And I said, "Why"?

4 He said, "Well, his houses is too  
5 old".

6 I said, "Too old"?

7 This guy is kicking my butt month  
8 after -- batch after batch. I mean, that  
9 shouldn't have nothing to do with how old  
10 his houses is. And they ended up putting  
11 him out of business, closing him down.

12 Then I had another friend. He  
13 had \$600,000 he owed on his farm. He had a  
14 10 house farm. And he had to do upgrades.

15 When he got through upgrading on  
16 that ten house farm he owed 1.2 million  
17 dollars on a farm that was 15 years old.  
18 He upgraded his self slap out of business.  
19 He ended up -- he couldn't -- when he'd  
20 make a chick it ended up costing him money  
21 to grow chickens. He simply walked away.

22 You know who suffered, SBA,  
23 because the SBA guaranteed his loan to get

1       that upgrade.

2                   And then I had another friend --  
3       there was four brothers in chicken  
4       business. And they upgraded and upgraded  
5       and upgraded to where these guys owe a  
6       million dollars on a farm that's 15 to  
7       20 years old.

8                   When -- I mean, when do the  
9       upgrades get to the point to where we don't  
10      upgrade to the standard? It's -- we only  
11      upgrade to the -- to the point of our  
12      service tech because every service tech  
13      that comes requires us to do different  
14      things.

15                   I had to put lights down the  
16      center of my chicken house, half house. My  
17      service tech said, "I want these lights  
18      down to make it brighter, the chickens will  
19      do better".

20                   I said, "Okay".

21                   Did it. It wasn't very much  
22      expense, \$1500.

23                   The next service -- this guy was

1       only there three or four months.

2               The next service tech came out  
3 and says, "Why did you put them lights only  
4 half way down that chicken house"?

5               I said, "Well, because the guy  
6 told me before to do it".

7               He said, "Well, you know, I don't  
8 like that, I want them all the way down the  
9 chicken house".

10              And then I had another service  
11 tech after that, it's about six months  
12 after that, because, you know, they rotates  
13 them around to keep you from jumping on  
14 them.

15              And he came out and he -- I mean  
16 -- I -- I work on poultry houses. So I had  
17 my stuff in order.

18              So he comes out and he's looking  
19 up in the air because they don't really  
20 need -- they was trying to figure out a way  
21 to extend my out time because they really  
22 didn't need me to be in rotation at that  
23 time. So he was looking up in the air.

1                   And I said, "Hey, the chickens  
2 are down here, tell me what the problem  
3 is".

4                   He said, "Do you see that power  
5 line up there"?

6                   I said, "Yes".

7                   He said, "I want that down".

8                   I said, "Well, I'm sorry, bud,  
9 but that belongs to Mississippi Power. I  
10 don't have no control over that".

11                   And he says, "You're not getting  
12 chickens until you take that line down  
13 because our feed trucks might hit it".

14                   Well, my feed bins are not even  
15 close to the power.

16                   So I said, "I can't do that".

17                   So I go to Mississippi Power.  
18 And they said, "Yeah, you can do it, we can  
19 take them down, but it's at your expense".

20                   \$6,000. When do the upgrades  
21 stop? Was that an upgrade or was that just  
22 a want? And that's what we have -- we  
23 have. And, I mean, I see this grower after

1 grower after grower.

2 I've got a friend Charles --  
3 Charlie -- Charles Moore. He's suppose to  
4 have been here today. He cried on the  
5 phone last night because he couldn't be  
6 here.

7 He was a Wall Street investor.  
8 When he bought his chicken farm he had over  
9 \$300,000 in the bank, cash. He was getting  
10 a retirement check and -- about \$2500 a  
11 month with \$300,000 in the bank. He was  
12 doing pretty good, wouldn't you think?

13 He messed around and got into the  
14 chicken business.

15 MR. FAMILANT: Mr. Ingrum, if you  
16 could wrap up pretty quickly.

17 MR. INGRUM: They -- they  
18 upgraded him out to where he's broke.  
19 Upgrades, so when do upgrades stop?

20 MR. FAMILANT: Okay. I want to  
21 turn to the topic that's come up today.  
22 Let's talk about the options that growers  
23 have to choose among alternative processors

1 with which -- with whom they might  
2 contract.

3 What is the distance span from a  
4 grower within which the grower can consider  
5 a processor? Do further distances impact  
6 the market weight? How typical is it for  
7 growers to have two or three options within  
8 that business plan? And has -- and has  
9 such choice become less comon over the last  
10 decade?

11 Some obvious related questions if  
12 we can get to them. Does grower profit  
13 increase as the number of available  
14 processors increases? And how often do  
15 growers switch processors?

16 We've heard over here about  
17 difficulties they face, but I'm -- I'm  
18 interested if -- if -- in any data, that  
19 anybody, any of the panelists have about  
20 how often growers do switch.

21 And I'm going to turn Max Carnes.

22 MR. CARNES: I feel fortunate  
23 where we are, there are four or five

1 integrators that I could choose from. But  
2 I can tell you this, the best time to  
3 choose your integrator when you're building  
4 that brand new house. It's a lot harder to  
5 talk to somebody else once you've been  
6 growing birds for a single integrator.

7 Distance that grower can consider  
8 a processor. Of course, you could look  
9 around from your house and see if there are  
10 any other -- different type integrators or  
11 different types farms from you. But, as a  
12 general rule, I would think probably 75  
13 miles is going to stretch it pretty close  
14 to the -- how far they want the feed trucks  
15 to come.

16 Do distances impact market  
17 weight? Absolutely. The longer that bird  
18 is sitting in that haul truck the -- he's  
19 losing weight the whole time. Of course, I  
20 know the people that I work with, and I  
21 assume everybody else, the first thing when  
22 that truck gets through the processing  
23 plant then he is weighed then. So your



1 weight loss turns to your integrator after  
2 it's weighed then.

3 And do -- does profit increase  
4 with the number of integrators? And I -- I  
5 really don't think it does. I think we've  
6 already talked about this earlier today  
7 that the contracts are going to be very  
8 similar. It's hard to sell a chicken a lot  
9 more expensive than -- than somebody else  
10 has. So I -- I don't think there's a whole  
11 lot of difference, it's just the type  
12 person that you want to fit in with, the  
13 type integrator that you fit with. You --  
14 you can be comfortable with all of them,  
15 but you -- you need to talk with the people  
16 who grow for those -- for that company and  
17 find out whether it's a good fit or not.

18 And I -- there are very few  
19 people who switch integrators from one to  
20 the other. And I would think that the ones  
21 that do switch are -- will be switching all  
22 the time. You have some people who are  
23 never satisfied, I think, but -- I feel

1 very fortunate where I am.

2 MR. FAMILANT: Professor Taylor.

3 MR. TAYLOR: Okay. There are  
4 five sub questions here in a couple of  
5 minutes. So I'll try to hit them fast.

6 On the distance issue, it's  
7 roughly 40 miles out is as far. And they  
8 would prefer only 20 or 30 miles out.  
9 Tyson had a web page up for quite a while  
10 that said 40 miles.

11 The main reason, minimize feed  
12 hauling costs. So the location of the feed  
13 mill is the number one consideration.  
14 Processing plant is number two. So they  
15 want to minimize feed and bird hauling  
16 costs. And that concentrates the poultry  
17 operations.

18 Does grower profit increase?  
19 Well, the publicly available data indicates  
20 that there's no profits. Grower profit  
21 related to the number of integrators.  
22 There's no public data on grower pay, none.  
23 Integrators have it, but they share it with

1 each other by complex and by region.

2 That's not available. So there's  
3 no publicly available data with which to  
4 answer that question. My impression is,  
5 no, it doesn't matter.

6 On the whole switching issue, no,  
7 publicly available data on that either, but  
8 switching is very, very low. My crude  
9 subjective estimate is it would be less than  
10 1% per year.

11 The real problem with switching,  
12 you build a house that's got an economic  
13 life of, let's say, 30 years. You have two  
14 integrators, A and B. If you start with  
15 integrator A for a few years, you might  
16 have 25-year life remaining. You look at  
17 switching to B. Well, it's the same  
18 contract and basically the same pay. And  
19 if a grower for A switches to B; then they  
20 make integrator A mad and they're stuck  
21 with B forever.

22 So switching is very low,  
23 tremendous barriers to switching, including

1 the mandated upgrades. Switching rarely  
2 occurs without a grower, even with fairly  
3 new house and equipment, being required to  
4 make some kind of expensive upgrades.

5 MR. FAMILANT: Before we leave  
6 this area of contracts, I -- we have one  
7 question from the audience that seems to  
8 fit in here. The question is: Why don't  
9 we observe at least one or two processors  
10 owning -- owning growing facilities?

11 Why don't we see that  
12 experimentation? It just seems so  
13 systematic that -- that we have the grower  
14 contract system.

15 Do any of you have any response  
16 to that question?

17 MS. JOHNSON: I would like to  
18 respond to the question because I've had  
19 that come up in trying to organize farmers.  
20 And I'll tell you, it's about as easy to  
21 herd cats as it is to organize growers.

22 And the reason for is, that it's  
23 an atmosphere that is permeated by fear.

1 Growers don't like to be seen at grower  
2 association meetings. They don't like the  
3 companies to know they're talking to each  
4 other. They fear retaliation and, hence,  
5 they don't get together and try to  
6 coordinate efforts.

7 MR. FAMILANT: No, no. But why --  
8 why doesn't the processor just decide to  
9 own farms and --

10 MS. JOHNSON: Oh, I see the  
11 question, I misunderstood the question.

12 Because it's much cheaper to talk  
13 a farmer in to doing it. Of course, it's a  
14 cost decision, of course.

15 MR. WEAVER: It's because of the  
16 investment.

17 MR. FAMILANT: You think that the  
18 processor is not willing to make those --  
19 that scale of investments in the growing  
20 facilities?

21 MS. JOHNSON: If there was money  
22 growing in chickens, the processors would  
23 be growing chickens.

1           MR. FAMILANT: I think we should  
2 now step back and pull together a lot of  
3 previous discussion into a really important  
4 question. What do we know about the  
5 current state of grower profitability?

6           What are the key factors that  
7 would lead to a prediction of grower  
8 profitability, which grower is going to be  
9 profitable, which is not? How sensitive is  
10 grower profitability to a reduction in the  
11 number of flocks he or she raises each  
12 year? And what is happening to the ability  
13 of growers to meet the terms of their  
14 existing loans and secure the loans?

15           And I'll turn to Professor Dicks  
16 first.

17           MR. DICKS: Well, I think I --  
18 you know, first of all, I want to -- sorry,  
19 is that working?

20           I want to define profitability  
21 again. You know, I think there's a  
22 disconnect between what some people think  
23 profitability is and what we, as economists

1 or finance people think it is. And I think  
2 when -- when people talk about  
3 profitability one thing that you're  
4 thinking at is my return on -- to my  
5 assets, my total return.

6 And when we say profitability,  
7 what I'm talking about is when I take those  
8 gross sales and divide by those -- or the  
9 cash sales and divided by that -- or  
10 subtract out those cash expenses and divide  
11 by cash sales again. That's my  
12 profitability, that's my profit margin.

13 And, again, I've already said  
14 that for the growers that profit margin is  
15 15 to 30%. And -- and -- and, so, if you  
16 think about that, what am I telling you?  
17 You know, if you'll take -- if you'll take  
18 your revenue and consider that a 45 to 50%  
19 of that revenue is going to go to your  
20 operating expenses. Alright.

21 AUDIENCE: (Inaudible).

22 MR. DICKS: Then -- then that --  
23 yeah -- you know -- again, I can only go

1 off what data I have.

2 And here is the -- here are --  
3 the other problem is, and I want to get  
4 this right out front is, we have very  
5 little data. Okay. Most of the data we've  
6 collected on -- on -- on -- on farm -- on  
7 poultry growers comes from Schedule F's,  
8 Schedule F's or Schedule K's. And that --  
9 that data is not poultry enterprise data,  
10 that's farm data. A lot of times there's  
11 categories on there that have nothing to do  
12 with the poultry enterprise. So we have to  
13 kind of nitpick about it.

14 I've -- I've probably done, I  
15 don't know how many, hundreds of poultry  
16 farms in Eastern Oklahoma and Western  
17 Kansas -- Western Arkansas. And I'm going  
18 to limit my comments to that, but I would  
19 be willing to bet that given the state of  
20 the industry, that that will not to  
21 atypical for the rest of the United States.  
22 And, again, I'm telling you what we've  
23 looked at, that's what that profitability



1       measure is, is about 15 to 30%.

2               But the problem is, again, is  
3       that sales to fixed assets ratio. How many  
4       sales am I generating per dollar of my  
5       fixed assets and that's incredibly low.  
6       It's low by every standard that was set for  
7       financial -- for the financial standards.  
8       And that should be in the neighborhood of  
9       80 cents to 90 cents and it's only 20 to 30  
10       cents. So you have tremendous -- you're  
11       over capitalized. And that is true for all  
12       of agriculture, you know.

13               I'll -- I'll tell my students  
14       over and over again that buying land is a  
15       poor business decision if you're a crop  
16       farmer. Buying a poultry house is a poor  
17       business if you're a -- if you're a poultry  
18       grower, but it's a great -- it could be a  
19       great investment.

20               So remember that what you're  
21       doing is, again, you're -- you're using  
22       profitability to pay for those assets in  
23       the hopes at -- at some point those assets

1 are paid for and I'm going to get both the  
2 gains from the profit margin and from that  
3 sales of fixed asset ratio. So -- so  
4 that's -- but that's -- that's the --  
5 that's the reality of it.

6 So let me just wrap this up. You  
7 know, what affects profitability? The two  
8 -- probably the biggest -- the biggest  
9 expense that you have is your -- is your  
10 electrical expense, your -- your energy  
11 expense, electric and propane.

12 MR. WEAVER: No, your mortgage.

13 MR. DICKS: Well, that's --  
14 that's a fixed expense. So I'm talking  
15 about just the variable expenses right now,  
16 the cash expenses.

17 And -- and you have no control  
18 over them, none of us do. And that --  
19 that's stung you hard in the last -- in the  
20 last three years. And, of course, the  
21 budgets that I'm telling you -- the data  
22 I'm talking about, I haven't updated it  
23 since 2006, 2007. Of course you know that

1        those costs have gone skyrocket since that  
2        point in time. I, as a producer, can tell  
3        you also that the fertilizer prices have  
4        gone through the roof. And that's -- it's  
5        killing us.

6                    Those are the things that I think  
7        I want to make -- make sure I get across  
8        now.

9                    In terms of profit per flock.  
10        You know, the -- the profit that you make  
11        per flock is a function of the number of  
12        birds you get; correct. But the profit you  
13        -- but then the return on assets that you  
14        -- that you make is both a function of the  
15        number of birds that you get and the number  
16        of flocks that you get per year. So -- so  
17        the control of those two numbers is going  
18        to affect your return on assets, you know.

19                    Why is it that you would -- would  
20        you -- that you would get less birds or  
21        less flocks? The poultry industry, because  
22        it's a vertically coordinated industry, is  
23        trying to manage your supply.

1           Why is it trying to manage that  
2 supply? Because market conditions exist  
3 that warrants doing something with supply  
4 to maintain a price, a price that's  
5 acceptable, a price that will give you some  
6 kind of return and give the -- give the  
7 integrator some kind of return.

8           And when the market dies, as it  
9 did, because exports dropped from almost  
10 20% down to 16% of supply, it dropped  
11 fairly substantially, they have to do  
12 something to make up that difference.

13           If they continue to put out the  
14 number of birds, you're going to have a  
15 huge drop in price in order to get rid of  
16 them or you're going to dump them in a  
17 ditch, one or the other. So the only thing  
18 you can do is cut back on -- cut back on  
19 output. And if they do it uniformly, they  
20 have two choices, they can give you less  
21 birds per flock or they can give you less  
22 flocks per year, both of which affect your  
23 profit margin.

1           But they also, again, remember as  
2 I told you, the integrators have to try to  
3 get a hundred percent of capacity. They  
4 have to try to manage those plants at full  
5 steam in order to make a profit themselves.  
6 And when they cut back birds, they know  
7 they're going to lose money, they have to  
8 know that. You're losing money, they're  
9 losing money, the industry is losing money.

10           You know, that's -- that's the  
11 way the market works. I don't -- I mean, I  
12 -- I don't know what else to say. But, you  
13 know, I understand I'm -- I'm in the -- I'm  
14 in the business myself of raising cattle  
15 and the market is pretty tough on us.

16           You know, I had a hundred and  
17 sixty-six head in 2000. I'm down to 30 and  
18 wish I had them down to zero. For the same  
19 reason that -- that some -- some of you,  
20 I'm sure, wish you were not in the poultry  
21 industry because it's been pretty hard in  
22 the last five years.

23           Alright. Now, we're back being

1 in a turnaround and maybe I'd like to be  
2 back to a hundred head after the prices  
3 I've seen. But, unfortunately, it's going  
4 to take me five years to get there because  
5 I can't move them every 40 days.

6 So, anyway, I'll let -- did I do  
7 okay?

8 MR. FAMILANT: John Ingrum, quick  
9 comments.

10 MR. INGRUM: You know, I sit up  
11 here and I listen to all of these things  
12 that comes around, but the bottom line is  
13 that our -- is our market on the chickens  
14 is based on our weight and our feed and the  
15 number of flocks we get versus the number  
16 of chickens we have placed in the houses.

17 And the -- a lot of the  
18 integrators are cutting the number of  
19 chickens we get in the houses or increasing  
20 our out time to a longer period of time in  
21 which resulted in us missing chickens and  
22 that has something to do -- a greater  
23 affect on what we get paid, but most of our

1 payments are still based -- it's the same.

2 I bought my farm from a guy that  
3 was in -- in the farm 30 years, in the  
4 chicken business 30 years. And he told us  
5 -- told me that we get paid the same thing  
6 that they use to get paid when they were  
7 growing chickens, but the difference is the  
8 houses cost 200,000 now and 50,000 when he  
9 built his, but we get paid the same.

10 And when you talk to a lot of  
11 growers they'll say, "Well, we use to make  
12 good money". And they did.

13 But when you -- when you pay  
14 50,000 for a house and -- and then you pay  
15 220,000 for a house, it's -- and you get  
16 paid the same, I don't see how anybody can  
17 make money in chickens.

18 And when we go in to talk to that  
19 banker or we talk to that integrator, they  
20 don't tell us these things, they just shows  
21 us the numbers and our head swells and we  
22 want to get into the chicken business.

23 My son is 22 years old. He asked

1 me one day, he said, "Daddy, how could you  
2 anybody talk you in to being in the chicken  
3 business"?

4 And I said, "Son, they told me  
5 how much money was I going to make".

6 He said, "Yeah, you might cash  
7 flow that money, but the bottom line is  
8 this".

9 I gave up a job making \$80,000 a  
10 year to go into the chicken business to  
11 make 30. There's something wrong with  
12 that. And -- but it's based on the  
13 numbers.

14 MR. FAMILANT: Professor Taylor.

15 MR. TAYLOR: Well, the only set  
16 of information on actual profitability for  
17 contract poultry producers done with  
18 managerial accounting, rather than tax  
19 accounting, is the Alabama Farm Business  
20 Analysis Association, which I have nothing  
21 to do with. But trained farm management  
22 experts sit down with participating farmers  
23 and ranchers and growers who have to pay



1 quite a bit to participate. And they go  
2 through everything, every little receipt  
3 and decide what percentage of the pair of  
4 gloves you buy goes to cows and to poultry  
5 and so forth. Those records go back to  
6 1995.

7 10 of the 15 years, after taking  
8 out basically minimum wage, there is a  
9 negative return. They've lost money, on  
10 average, 10 out of 15 years. And the loses  
11 are much larger than the gains.

12 Another set of public  
13 information, is a highly detailed survey  
14 done by USDA. It's called an *ARMS Survey*.  
15 And you can go, even online, and get a  
16 summary for different production  
17 specialties.

18 For the poultry specialty  
19 averaged over 1996 through '08, 13 years,  
20 the average rate of return on equity, they  
21 take out a charge for unpaid family and  
22 operator labor, after taking that out,  
23 there is a negative return on equity.

1           Part of the deception that goes  
2 on, and I've seen this in a written  
3 representation made by an integrator to  
4 growers, they show 20% return, you're  
5 making 20% on your money.

6           They're not using the same  
7 accounting concept that they're required to  
8 use in their own financial statements.  
9 They're including what little you get for  
10 your labor there. If you take minimum wage  
11 out for labor, it's probably negative.

12           MR. FAMILANT: Let me -- let me  
13 continue with this thought because this is  
14 going to be a question for Professor  
15 Taylor, too. What information do growers  
16 have when they enter into the business and  
17 sign those very first contracts?

18           Are there significant  
19 opportunities for the integrators to exert  
20 what economists call post contract  
21 opportunism and impose unanticipated  
22 demands on the -- on the growers? And with  
23 what frequency do we -- do we observe this?

1 Do we -- is there any data on the -- on the  
2 frequency?

3 MR. TAYLOR: Frequency is  
4 basically is every one of them.

5 The -- there is very little  
6 public information on contract poultry  
7 production. There's all kinds on wholesale  
8 and retail chicken prices weekly, highly  
9 detailed.

10 You can go to your USDA web sites  
11 or listen to the news and you can get  
12 morning and afternoon cattle and hog  
13 prices. There is nothing on average  
14 contract pay, not even annual.

15 You can go to USDA and get cost  
16 of production budgets for corn and cotton  
17 and hogs and cattle, nothing on poultry.

18 So potential growers are really  
19 at the mercy of representations made to  
20 them by integrators.

21 MR. FAMILANT: Mr. Bishop, your  
22 comment?

23 MR. BISHOP: What information do

1 growers get when they first enter the  
2 business and signed the contracts?

3 Of course, we have a list of  
4 things that we furnish any potential  
5 grower. And that grower also has to make a  
6 decision to sit down with his banker and  
7 get a lot of the information there, too.  
8 So if they're misguided, I think it would  
9 be from the lending institution.

10 First of all, whenever we get a  
11 new grower, a potential new grower, we give  
12 them a packet that offers a copy of our  
13 contract. We don't hide anything. They're  
14 eligible to take a look at it, read it.

15 Copy of the building  
16 specifications. List of contractors and  
17 builders that service the area. List of  
18 equipment suppliers. We furnish a list of  
19 banks and lending agencies that finance  
20 poultry loans.

21 We show and discuss any company  
22 cost projection and calculations.

23 We tell them to sit down with the

1 bank and let them go through this totally  
2 again and decide if they want to get in the  
3 chicken business and if that bank wants to  
4 loan them the money.

5 We file a list of other items  
6 that are needed such as the amount of  
7 property, permits, utilities, dead bird  
8 disposal provisions, litter storage, dirt  
9 work, road construction. Even have to  
10 remind them about the equipment they'll  
11 need like tractors to operate their farm.

12 We want to them know everything  
13 there is before they get into the business.  
14 A copy of our live production program is  
15 given to them. We encourage every  
16 potential grower to go and visit with other  
17 growers, go and talk to them, see what they  
18 think about the business.

19 Take your contact and discuss  
20 with whomever you want to, your family,  
21 your friends, your attorney. We'll offer  
22 to take you to visit the poultry operation.  
23 We offer to take you on tours of our

1 plants, our hatcheries and our -- our feed  
2 mills.

3 It's all about post contractual  
4 opportunism and unanticipated demands.  
5 Again, I can only speak for our company.

6 We look at the relationships of  
7 our growers as being long-term. If it's  
8 not mutually -- something is wrong if it's  
9 not mutually beneficial to both of us.  
10 It's not in the best interest of our  
11 company or any other company, I don't  
12 think, to impose economic hardships on a  
13 grower. And as long as we keep continuing  
14 to put growers out of business, the bank is  
15 not going to loan money to get new growers  
16 to replace them.

17 A productive grower network is  
18 important for us. It's essential for us to  
19 compete in the marketplace. We have to  
20 have good growers.

21 Our management feels strongly  
22 about upgrades for the ones that are  
23 lowering costs or improved efficiencies on

1       our live operations. We'll offer  
2       incentives to offset those costs. It has  
3       to be mutually beneficial to both us and  
4       the grower or we're not interested in  
5       looking at it.

6                These changes in technology  
7       improvement -- improve management  
8       practices, not only in this industry, but  
9       as in any other business. And to what  
10      frequency, I think it's varying.

11               MR. FAMILANT: I think this leads  
12      to a natural follow-up question that at  
13      least three of you have submitted in some  
14      form.

15               In most areas there are -- there  
16      still are numbers of -- of people who  
17      wanted to grow broilers and wanted to --  
18      they want to secure loans.

19               How are we suppose to integrate  
20      this fact that there are -- there are these  
21      people lined up to get in the business? If  
22      growers don't expect to see a return on  
23      their investment, why are they getting into

1 the industry? And, again, as many people  
2 have asked from the audience, why do banks  
3 lend to these people?

4 Let's -- let's turn to Mr.  
5 Weaver.

6 MR. WEAVER: Is that my question?

7 MR. FAMILANT: Yes.

8 MR. WEAVER: I have some other  
9 comments I'd like to make as far as the  
10 growers income and such that we were  
11 addressing earlier and I didn't get to  
12 address.

13 But current growers are  
14 increasingly discouraging their families,  
15 their sons and daughters, their nieces and  
16 nephews to get into the poultry business  
17 because they, plain and simple, will not  
18 make money doing it.

19 I'll use myself for example. And  
20 I think the statement has been made here  
21 that the biggest cost you have is your  
22 fuel. And outside of your mortgage, that's  
23 true.



1           But my mortgage on my poultry  
2           operation is \$84,000 a year. Last year I  
3           grossed a hundred and nine thousand  
4           dollars. And I was the number one grower  
5           three times last year.

6           So what does that tell you folks?

7           Part of that was -- one -- one of  
8           the previous questions was that the  
9           companies cut back on the number of flocks  
10          or placing the number chickens you get.

11          Part of that drop in my income  
12          was that I lost the equivalent of a whole  
13          flock of chickens last year because of the  
14          cutbacks.

15          We're -- a lot of our growers in  
16          our area are so frustrated, they've lost so  
17          much money, that they intend to close down  
18          their operation in the very near future.  
19          Luckily for them, they're most of the  
20          people who have their operations paid for  
21          and they can do it without losing their  
22          home and their farm. But most of us are in  
23          debt to one degree or another. And if we

1 do that, we're probably going to lose our  
2 home and our farm.

3           Somebody this morning made the  
4 comment that that farm had been in their  
5 family for eight generations. Those are  
6 the kinds of situations we're placed in.

7           And the question being what --  
8 you know, why would people want to get into  
9 these contracts like this?

10           As a general rule, the majority  
11 of growers I've talked to that have done  
12 that, when the companies that -- no  
13 disrespect to Mr. Bishop, I don't know how  
14 he runs his business, I hope everything he  
15 said is true, and I wish it -- I wish it  
16 was that way industry wide.

17           But, as a general rule, the  
18 figures that growers get when the companies  
19 trying to talk them into building houses  
20 are misrepresented.

21           Now -- and I've seen them do it.  
22 They'll say, "Well, now, here's -- here's  
23 the average that growers make, but if you

1 do real good, you can make as much money as  
2 you can". And that's another 30, \$40,000 a  
3 year.

4 Well, unfortunately I have never  
5 met a grower that is on top every time. If  
6 there's one out there, I wish you raise  
7 your hand, I'd like to shake your hand, and  
8 I'd like you to tell me how you do it  
9 because I've never met anybody else who  
10 could do it. I don't think this happens.

11 And I read statistics that Doctor  
12 Taylor here did that show that it doesn't  
13 happen.

14 MR. FAMILANT: If we could move  
15 along because we've got -- I really want to  
16 get in at least one more question and let  
17 -- and let Professor Dicks respond to this.

18 And we're coming up on our hard  
19 stop on our time.

20 MR. WEAVER: This last question  
21 here says, if they don't want these  
22 particular contract terms, why do they sign  
23 them?

1 MR. FAMILANT: Yeah.

2 MR. WEAVER: I think we've  
3 already answered that. They get an  
4 ultimatum, you sign here or you don't get  
5 chickens.

6 MR. FAMILANT: Professor Dicks  
7 for some -- some quick thoughts.

8 MR. DICKS: Well, just a couple  
9 of things.

10 You know, Mr. Weaver, if I'll ask  
11 you, you know, you said you had an  
12 eighty-five -- \$84,000 dollar mortgage  
13 payment. How much of that was interest?

14 MR. WEAVER: I don't know. Let  
15 me think a second here. It's like \$25,000  
16 of that was interest.

17 MR. DICKS: So that's the only  
18 expense. The other part is principle.  
19 That doesn't -- you know -- that's --  
20 that's the same as money in the bank.

21 MR. WEAVER: It's not principle,  
22 but --

23 MR. DICKS: You know -- you know,

1 but look here, folks, this is -- you know,  
2 one of the problems in America today, and  
3 you know this is true for all of America,  
4 is we have a real problem with financial  
5 literacy in this country. And that's why  
6 -- that's why we're having the problems we  
7 have with all the mortgages crisis and  
8 that's why we're having a problem having  
9 this conversation.

10 You know, if we're going to tap  
11 -- if we're going to talk about finance, we  
12 ought to talk about using the same terms.  
13 You have to look at the same things; right?

14 If you were making a principle  
15 payment that's no different -- you've made  
16 the decision to investing in a poultry  
17 house rather than invest in the stock  
18 market. That's an investment. That's not  
19 -- you can't make that -- you can't use  
20 that as a deduction. I understand that  
21 that means you have less money, but  
22 nonetheless, but that principle payment is  
23 not -- not considered in finance as an

1 expense. So you can't use that.

2 And that's one of the things I  
3 want to come back to --

4 AUDIENCE: Well, look at --

5 MR. DICKS: -- excuse me, let me  
6 finish.

7 MR. FAMILANT: Let him finish,  
8 please, please.

9 AUDIENCE: -- is down by 76%, it  
10 is an expense.

11 MR. FAMILANT: Let him make his  
12 point.

13 MR. DICKS: Well, let me just say  
14 this, I'll just make it real easy on you.

15 You know, I -- I -- yeah --  
16 again, I -- I can tell you -- I can't -- in  
17 -- in my twenty -- 21 years plus at  
18 Oklahoma State University, I don't know how  
19 many farms, both my students and I, have  
20 analyzed doing business plans for.

21 But I will tell you this, across  
22 the country I've -- you know, I've farmed  
23 in four different states, I've been all

1 over the United States and all over the  
2 world, and I can tell you that of all the  
3 farms in the United States that I've looked  
4 at, I bet you less than 2% of them have the  
5 financial records necessary to run a  
6 business. And I'm not dissing anybody,  
7 that's a real problem, that's one that I'm  
8 -- I'm trying to fix.

9 You know, I'll just ask y'all out  
10 there, how many people have an income  
11 statement on hand, a balance sheet, a cash  
12 flow statement, enterprise budgets and the  
13 financial ratios necessary to look at your  
14 operations?

15 And I guarantee you this, if your  
16 bank doesn't have it, your bank shouldn't  
17 have lent you any money. And I've looked  
18 at a lot of the Farm Service Agency  
19 guaranteed loans and they don't have them.

20 And, in fact, just to let you  
21 know our state office, our state office,  
22 our state FSA office this week has sent out  
23 a notice that provided guidelines to the

1 banks on what was necessary in order to  
2 give loans for concentrated feeding  
3 operations.

4 So it -- it -- it indicates there  
5 is a problem out there. And one of the  
6 problems that -- that this question is  
7 getting at is why are people -- why are  
8 people getting into the poultry industry  
9 when you-all have these problems.

10 Well, number one, is they're not  
11 being told -- they're talking to you and  
12 they're getting -- they're getting a form  
13 that's only giving them that gross profit I  
14 was talking about. So it looks pretty  
15 good.

16 And they go down to the bank.  
17 And what does the bank give them a loan on,  
18 their collateral, plus it's a guaranteed  
19 loan.

20 All of those things set in motion  
21 something that we're seeing here today is a  
22 lot -- a lot of problems in the industry.

23 If you're not -- if you're taking



1 out a loan, right, and you can't cash flow  
2 with 60% of your variable expenses, you  
3 shouldn't have taken out that loan in the  
4 first place because if you took it out with  
5 the understanding that you were going to  
6 only have 45% of that be variable expenses,  
7 and the propane expense went up or the feed  
8 expense or something else happened, you're  
9 going to be underwater and you're not going  
10 to be able to pay your note.

11 And if I'm a banker, I don't want  
12 to do that. I don't want to give you that  
13 because I don't have want to own a poultry  
14 -- I don't want to own a poultry farm.

15 MR. WEAVER: Mr. Dicks, here's  
16 something right here I'd like to offer for  
17 an example. And anybody that wants to is  
18 welcome to come and look at this.

19 This is a grower settlement from  
20 1985. In 1985 these growers could make as  
21 much as 4.85 cents a pound for their  
22 chickens. Today the company I grow for our  
23 base pay is 5.05, that's two-tenths of a

1 cent more than it was 25 years ago in 1985.  
2 That's the problem, that's part of the  
3 problem.

4 Another part is this right here.  
5 This -- this is a receipt for Kentucky  
6 Fried Chicken for a 12-piece bucket of  
7 chicken that was purchased last week. This  
8 -- this 12-piece bucket of chicken costs  
9 \$26.99. And out of that -- out of that  
10 \$26.99, the grower that raised the chicken  
11 got 30 cents.

12 MR. FAMILANT: Alright. Let's --

13 MR. WEAVER: The -- the state and  
14 -- and the city that sold this, where this  
15 was purchased, got \$2.16 and they didn't do  
16 a thing for it.

17 MR. FAMILANT: Alright.  
18 Everybody -- everybody wants to keep  
19 talking, but indulge me here. We've got to  
20 stop very, very shortly and I want to get  
21 this last question in because it's very  
22 important. This will be our last question.

23 We've recently had court rulings

1       stating that producers must prove  
2       competitive harm before succeeding in a  
3       case alleging an unfair practice under the  
4       Packers and Stockyards Act.

5                What are examples of how alleged  
6       unfair practices might and might not be  
7       related to competitive harm? In view of  
8       these decisions, what will growers or USDA  
9       have to do differently in order to  
10      challenge a possibly unfair practice? And  
11      what could a grower, an ordinary grower be  
12      able to put together? What kind of  
13      economic evidence could that grower put  
14      together to support such a complaint of an  
15      unfair practice?

16               And I'm going to turn to Ms.  
17      Johnson for that.

18               MS. JOHNSON: Thank you. I  
19      appreciate it.

20               As I said, I've been representing  
21      growers for a long time, about 20 years.  
22      And back in the 90's when we were trying to  
23      get these growers in Georgia organized I

1 use to go to meetings and I would be the  
2 featured speaker most of the time.

3 And they would get up and they  
4 would introduce me and they'd say, "Ms.  
5 Johnson here has won every case she's had  
6 for every poultry farmer she's ever  
7 represented". And that wasn't quite true.  
8 I'd lost one, it was on a technicality.

9 But I would get up and I would  
10 wave the flag and talk about how there's  
11 this wonderful sword that growers have  
12 available to them. And it's called the  
13 Packers and Stockyards Act.

14 And it prohibits any unfair or  
15 unjustly discriminatory or deceptive  
16 practice.

17 And when they terminate your  
18 contract because you're at this meeting we  
19 can go forward and we can file this claim  
20 under the Packers and Stockyards Act and we  
21 can get your chickens back. And that gave  
22 a lot of comfort to the farmers who stuck  
23 their necks out in Georgia back in the

1 '90's.

2 And it grieves me to have to tell  
3 you folks who are sitting here today that  
4 that sword that we had available to us to  
5 use for all those years has turned into  
6 more like a feather than a sword.

7 I don't see a single grower here  
8 from Georgia. And I know why that is  
9 because the growers in Georgia who took on  
10 this battle have been pretty much cut down  
11 and stomped on.

12 The fellow who was here earlier,  
13 the gentleman from the Council, Poultry  
14 Growers, what's that called again?  
15 National Broilers Growers, or whatever,  
16 Council -- Chicken Growers. I can't get  
17 the name right.

18 He made a good point. The  
19 Council has spent a lot of money on lawyers  
20 to convince our courts that growers ought  
21 not have any federal rights. And that is  
22 -- that's a snowball. It's keeps on  
23 rolling down the hill and gathering up more

1 and more snow and keeps rolling over  
2 farmers.

3 The most recent decision is the  
4 Terry Case out of the 6th Circuit. And  
5 that case isn't over yet. And I'm not real  
6 comfortable talking about a case that's not  
7 over, and, especially, when the lawyers for  
8 Tyson are sitting over there on the second  
9 row.

10 But suffice it to say, there's  
11 something wrong in America when a grower  
12 like Mr. Terry over here in the red shirt  
13 complains to the -- to GIPSA, to the USDA,  
14 the federal agency that's charged with the  
15 responsibility of making sure that growers  
16 receive adequate pay for their efforts  
17 complains because Tyson is stealing from  
18 him, gets cut off for his efforts and has  
19 no remedy. There's something wrong with  
20 the laws in America if he has no redress.

21 MR. FAMILANT: Thank you. Any  
22 quick comments from any other panelists on  
23 this, on this particular topic?

1                   MR. CARNES: We do have one  
2 grower from Georgia. Thank you.

3                   MS. JOHNSON: Or the panel. And  
4 if I can make an observation. And I have a  
5 lot of respect for Mr. Carnes. We talked  
6 before the panel today. And he seems to be  
7 a very capable grower, a very astute  
8 businessman, but I believe he's a -- also  
9 in another business. And that's the paving  
10 business.

11                   And it's possible to grow  
12 chickens when you have another business and  
13 do it profitably. And it's -- it's called  
14 writing off some of your losses.

15                   And I don't know whether you've  
16 ever lost any money in the chicken  
17 business, but I want to address -- the  
18 question that you had a little while ago  
19 that I misunderstood, I've had a little  
20 time to think about that question. And it  
21 really goes to the upgrade question as  
22 well.

23                   And that is, why don't -- why

1 don't companies go out and build their own  
2 chicken houses and hire their own employees  
3 and put their own employees in these  
4 chicken houses and grow chickens and I'll  
5 tell you exactly why they don't. It's  
6 because of supply and demand.

7           It's because if they were  
8 investing more than half of what they've  
9 already got in processing plants, they got  
10 to turn around and put the same amount or  
11 more money into the houses to grow the  
12 chickens. First of all, they have that  
13 huge capital outlay in the -- in the  
14 assets.

15           And then they've got to hire all  
16 the employees to grow the chickens. And  
17 those employees are entitled to benefits  
18 under federal law as employees, including  
19 unemployment if they're laid off.  
20 Including workers' compensation if they get  
21 hurt in the chicken house. All those  
22 benefits that you get if you're employed,  
23 you don't get if you're an independent



1 contractor; right?

2 AUDIENCE: Right.

3 MS. JOHNSON: What was -- when  
4 was the last time you got a check from the  
5 government when the -- for unemployment  
6 when the chicken processor left you out of  
7 chickens. It doesn't happen. Okay. So  
8 it's a way for the processing companies to  
9 control costs and to adjust for the ebbs  
10 and flows of the market.

11 And I'm not an economist, I'm a  
12 lawyer, but that's what I have observed  
13 over the last 20 years.

14 MR. FAMILANT: Thank you.

15 I want to thank the panelists for  
16 a truly spirited exchange here.

17 And I want thank the audience.  
18 You guys were as attentive as any panel  
19 audience I have ever seen in my life. You  
20 guys paid great attention.

21 Thank you very much.

22 Ten minutes -- ten minute break  
23 now before the next open discussion.

1           (Whereupon, the taking of the  
2           proceedings was recessed from  
3           approximately 3:53 p.m. to  
4           approximately 4:16 p.m., after  
5           which the following proceedings  
6           were had and done:)

7           MR. FERRELL: We're going to go  
8           ahead and get started again. And for the  
9           next hour we'll have another round comment  
10          period.

11                   And we'll use the same form as we  
12          did before, if people who got a ticket who  
13          wanted to have -- provide some comments,  
14          could just line up in front of each  
15          microphone.

16                   And I -- I would -- I ask for  
17          your all's cooperation in trying to keep it  
18          as two minutes as close to possible because  
19          for each persons that provides a longer  
20          term amount of comments means fewer people  
21          get to actually provide comments. So if  
22          you could keep it closer to two minutes the  
23          better.

1           And, so -- oh, and I just might  
2 mention, just to help you keep staying  
3 closer to two minutes, we do have a timer  
4 that has a light. And it goes from green,  
5 yellow to red.

6           And, so, anyway, we'll go ahead  
7 and get started right here.

8           MS. LYNN HAYES: Hi, I am -- I  
9 want to thank you all for this opportunity  
10 to be here. And appreciate the fact that  
11 both the DOJ and USDA are playing very  
12 close attention to this issue.

13           My name is Lynn Hayes. I'm an  
14 attorney with the Farmers Legal Action  
15 Group. We're a nonprofit law firm that  
16 represents farm -- family farmers and  
17 ranchers. We've been working with contract  
18 poultry growers for probably 15 to 20 years  
19 now. And since I'm a lawyer I have a very  
20 hard time with two minutes, although, I'm  
21 use to seeing those lights.

22           But let me just try to make some  
23 suggestions on how DOJ and USDA should work

1 together on -- particularly to enforce the  
2 Packers and Stockyards Act.

3 And I think the first thing that  
4 we need to -- that the Department of  
5 Agriculture needs to be very firm on is the  
6 understanding that the Packers and  
7 Stockyards Act is different than every  
8 other antitrust and unfair practices act in  
9 this country.

10 The emphasis of that act was not  
11 just to protect consumers, but separately  
12 to protect producers. And, therefore, we  
13 need DOJ and USDA to develop a very clear  
14 policy analysis of how they are going to  
15 protect producers under that act.

16 We need to have them develop, in  
17 detail, how they're going to take all these  
18 scenarios that have been presented in the  
19 poultry industry today, from the ranking  
20 system to the insecurity on the duration of  
21 the contracts, to the upgrade issues. And  
22 take those scenarios and develop the legal  
23 analysis that will be used under the

1 Packers and Stockyards Act to address those  
2 issues, which aspects of them can you  
3 address and how.

4 And I think that it's absolutely  
5 imperative that the agencies have a clear  
6 analysis of that.

7 And my suggestion would be with  
8 this joint task force is that you put your  
9 best and brightest lawyers and your best  
10 and brightest economists together and you  
11 sit down and you have the lawyers do the  
12 legal analysis for each individual scenario  
13 or practice that has been raised.

14 And to the extent that you don't  
15 automatically have the information, in  
16 part, because there's so limited  
17 information in the industry, you ask the  
18 economists what do we need and how would we  
19 ask the question and how do we get it.

20 Then you use the very broad and  
21 effective investigation and information  
22 gathering authorities that USDA has and  
23 force the integrators to give you the

1 information. That has never been done, to  
2 my knowledge, was the attempted effort to  
3 have regular reports from the integrators.

4 And my understanding, I believe  
5 under the Packers and Stockyards Act, you  
6 have the authority to ask the integrators  
7 for any information on their relationship  
8 with the growers that you want and need to  
9 assess their practices and whether they're  
10 legal under the act.

11 With that regard, I don't want --  
12 I -- I also think that it's absolutely  
13 imperative that in these regulations that  
14 USDA will be issuing in the near future  
15 that they take -- that the Agency maintain  
16 it's position. That under A and B of  
17 Section 192 that you don't to prove  
18 anticompetitive effect. That has been the  
19 position of the Agency, I believe, from day  
20 one in the passage of the Act. You should  
21 maintain that position.

22 In addition to that, you should  
23 go the next mile and define how it is at

1       that -- how the various practices that you  
2       will be addressing in the rules do, in  
3       fact, affect competition or injure, cause  
4       adverse competition.

5               And when you do that it needs to  
6       be looking, not at the consumer, which  
7       traditional antitrust law does, but, in  
8       fact, at the producer and the monopsony  
9       power of the integrators and how that  
10      affects the producer.

11             And I think that's the unique  
12      aspect of the Packers and Stockyards Act.  
13      And that we need to develop a very strong,  
14      clearly defined policy and guidelines on  
15      exactly how you're going to enforce in each  
16      of the livestock and poultry industries  
17      under the specific -- to apply it to the  
18      specific scenarios that you're hearing  
19      about.

20             And that, then, in addition to  
21      that on a long-term basis -- that can be  
22      done right now. But on a long term basis I  
23      think you should be issuing regular orders

1       requiring packers -- or integrators in this  
2       case to report to you the information that  
3       the Agency needs to investigate and  
4       maintain a handle on exactly what is  
5       happening in the markets.

6               And I think that you have the  
7       authority to do that. Have a system that  
8       you will then use that information, analyze  
9       it on a regular basis and bring any  
10      enforcement actions between USDA, referring  
11      them to DOJ, that that information on an  
12      ongoing basis presents.

13              My time is up. Thank you very  
14      much.

15              MR. FRED PARRISH: My name is  
16      Fred Parrish. And I had a statement  
17      prepared, but pretty much most of it has  
18      been covered real well. But -- so I just  
19      wanted to share some experiences under this  
20      tournament pay or performance pay.

21              I've had add some flocks of  
22      chickens that were delivered that were  
23      sick. One had aspergillosis and the



1        company knew it, it come from the hatchery,  
2        and I had a high mortality and the birds  
3        didn't perform. And I had one that had  
4        rickets and a high mortality and the birds  
5        really didn't perform. And I wound up with  
6        a, I think one of them was a hundred and  
7        sixty-seven and one of them was a hundred  
8        and eighty-four points below average. And  
9        the company knew that it wasn't anything I  
10       did, but I'm the one that suffered the  
11       loss.

12                    They took my performance and  
13       subtracted it from base pay and that's what  
14       I got. But it wasn't anything I done, it  
15       was something that happened to the birds  
16       before I got them.

17                    I've had them bring feed out that  
18       would be molded and you couldn't get it out  
19       of the bins. To them it doesn't matter,  
20       you know. You'll hear them say, "Well,  
21       yeah, it does matter, why would they do  
22       that"? They do it, I don't know why, but  
23       they do.

1                   And I wound up on the -- the  
2 probationary thing. They cut placement,  
3 which cuts my pay because I had fallen down  
4 to the six block average of 60 points below  
5 average.

6                   And -- but, now, you know, when  
7 they wanted something out of me the next  
8 batch, they wanted me to take birds back  
9 early because somebody wasn't going to be  
10 ready. And I told them, you know, is  
11 you-all done this to me, you knew it was  
12 your fault that I'm here, you know. I'm  
13 not doing you no favors if you're not going  
14 to help me. I told them, "You know, if you  
15 give me back my birds, you know, take me  
16 off probation then I will take them back".

17                   Well, I reckon they needed bad  
18 enough at that time and they did give them  
19 back to me on my next flock and took me off  
20 of probation.

21                   As it was them, and I lost a lot  
22 of money off of that because I've got six  
23 houses that holds -- well, now, I was

1 getting 12 -- was getting 20,000 for the  
2 house, but they've cut it back to 19, but,  
3 at that time, we were only getting sixteen  
4 seven. And when we originally started with  
5 them we were getting 20,000 to the house.  
6 And the only thing that changed was the  
7 number of birds we got. The weights went  
8 down when they was suppose to go up.

9 And whatever they say they make  
10 things so that you can't hardly get out of  
11 debt. It keeps you in debt one way of the  
12 other, you know. They may give you a  
13 raise, but they cut weights and you still  
14 ain't making no more money.

15 I made as much as \$50,000 the  
16 first year I put in a batch. Now, after  
17 I've spent close to \$200,000, I think my  
18 best check has been 52 or \$53,000. That's  
19 with an incentive pay. And that's been  
20 12 years that I've been with them, you  
21 know.

22 It's just not right the way they  
23 did it. I mean, it's manipulative.

1 Thank you.

2 MS. PATTY LAVERIA: Hi. My name  
3 is Patty Laveria, but I'm actually going to  
4 read a statement for someone who -- a  
5 grower who is very interested in coming  
6 today, but couldn't make it to this  
7 meeting.

8 His name is Reed Phifer. And  
9 he's grown turkeys and broiler chickens for  
10 23 years under three different integrators  
11 with -- with many contract changes.

12 And, so, what he wrote was that I  
13 believe when a poultry company entices a  
14 grower to borrow and a lending institution  
15 to loan a very large amount of money to  
16 build what I consider to be no more than a  
17 company farm, the company should be forced  
18 to see that the debt is paid in full.

19 I think this should be done even  
20 it means making the poultry company a  
21 co-borrower and as much as responsible as  
22 the primary borrower. This means that if  
23 money is borrowed to be paid back in a

1 10-year time frame, the contract should  
2 stay in place for that period of time.

3 What the company can accomplish  
4 through this channel is to have in  
5 possession a facility that produces their  
6 poultry with cheap labor and no capital  
7 outlay. This is labor the company knows  
8 they cannot afford -- this is labor the  
9 company knows cannot afford to question  
10 anything asked of them.

11 I feel making the integrators  
12 stand behind their contract until the debt  
13 is paid in full should be mandatory. This  
14 is the -- this is for when the contract was  
15 presented to the lending institution. This  
16 was the major factor used in calculating  
17 how this very large amount of money will be  
18 repaid.

19 The integrator is selling the  
20 lender a bill of goods that the loan will  
21 be repaid on the premise that the payback  
22 numbers are generated by the integrator's  
23 contract are exact and guaranteed.

1           I understand from talking with a  
2 previous grower that Tyson is going to a  
3 guaranteed payback contract. This is not  
4 to say they want a burden of this  
5 magnitude, but it is saying the lending  
6 institutions are not loaning money unless  
7 their payback is guaranteed.

8           A second point that he makes is  
9 just that a poultry company should never  
10 have authority to require mandatory  
11 upgrades without measures in place to fund  
12 the additional work at no cost to the  
13 grower.

14           The company should feel confident  
15 in their ability to define the exact  
16 procedures needed to produce their poultry.  
17 This should be clearly defined in their  
18 initial contract wording so as to make sure  
19 there is no need to add amendments which  
20 could cause the grower undue stress.

21           When and if the company learns of  
22 new technology that will help profit the  
23 production of their poultry, they should be

1 responsible for the additional capital  
2 outlay.

3 And one last point that he makes  
4 is that the grower should have some piece  
5 of mind concerning contract security. They  
6 honestly have no idea what may happen from  
7 one day until the next.

8 This is one reason I would  
9 suggest that companies needing additional  
10 space for growing their poultry be required  
11 by regulation to stand behind any loan  
12 acquiring monies for this purpose until  
13 paid in full.

14 UNIDENTIFIED SPEAKER: I'm  
15 reading a comment on behalf of a grower who  
16 would not come here today, was not able to  
17 come here today because of fear of  
18 retaliation. I'm reading his conclusion  
19 first.

20 These comments are real and  
21 serious. I cannot reveal my identity for  
22 fear of severe consequences, like no more  
23 chickens. There is, incidentally, a

1       blacklist among integrators so any grower  
2       cut off will not be picked up by another  
3       integrator.

4               The subject for this memo is,  
5       "Input as a contract poultry grower the  
6       Secretary of Agriculture and the Attorney  
7       General for USDA Poultry Workshop". This  
8       is an uncommon opportunity and I thank you  
9       for it.

10              Unpaid mandatory upgrades.  
11       Requirements prefaced by you will not  
12       chickens get back until 36 months ago new  
13       cool cell pads 20,000 -- \$2,000. 24 months  
14       ago demand arms, \$2500. 20 months ago new  
15       feed bins \$8,000.

16              Requirements prefaced by, perhaps  
17       you should just stop growing chickens  
18       because you're old and it would cost too  
19       much to bring your houses up to standard.  
20       12 months ago new ceilings, new ceiling,  
21       new heaters, new baffles, new cool cells  
22       door, a hundred twenty thousand dollars,  
23       and four months lost production.



1                   Requirements prefaced by, you  
2                   want to sell farm, new controllers will be  
3                   required: Two months ago new controllers,  
4                   \$14,000.

5                   Summary, a hundred and fifty  
6                   thousand dollars over three years for the  
7                   privilege of remaining to be a contract  
8                   grower.

9                   Recommendation: Integrators are  
10                  paid in full for required upgrades.

11                  Two, lack of contract security.  
12                  I get a one year contract, which says that  
13                  if I fail to respond to any requirement,  
14                  they can refuse to put chickens back in my  
15                  houses.

16                  Summary: Integrator has  
17                  demonstrated numerous times by you will not  
18                  get chickens back until that there is not  
19                  even 1-year security.

20                  Recommendation: Integrator  
21                  should be required to give real contract  
22                  which extends through the amortization of  
23                  houses and improvements.

1                   Unfair payment system: The  
2 tournament method of payment has been used  
3 for years. This means that the integrator  
4 computes the flock average cost, covers how  
5 that's done.

6                   Summary: There's a common thing  
7 that the integrator than can send the check  
8 with the chickens, meaning that all the  
9 factors are controlled by an integrator.

10                  Recommendation: USDA should  
11 declare this practice as unfair.

12                  Insufficient base rate increases:  
13 Got a token raise of about 5% two years,  
14 which brings compensation for over a  
15 million dollar facility to just under  
16 minimum wage.

17                  Summary: Why do I do this? My  
18 children will have no part of it.

19                  Recommendation: For the industry  
20 to survive, there has to be better  
21 compensation to contract growers.

22                  Financial institutions are  
23 rapidly slowing the number of poultry farm

1 loans and requiring more security. This  
2 will bring the industry and this country to  
3 its knees.

4 Finally, lack of Packers and  
5 Stockyards action. I had a visit from  
6 Packers and Stockyards about ten years ago.  
7 They listened to my story and thanked me  
8 for my time and left. Do they still exist?

9 Summary. As it currently  
10 operated, it has not effect on the poultry  
11 industry.

12 Recommendation. Congress should  
13 amend the Packers and Stockyards Act to  
14 give USDA full enforcement over unfair and  
15 deceptive practices in the poultry sector.

16 Congress should prohibit poultry  
17 companies from cancelling contracts without  
18 adequate cause.

19 Packers and Stockyards should be  
20 required to enforce growers rights rather  
21 than uphold poultry companies.

22 Thank you for your time.

23 UNIDENTIFIED SPEAKER: Thank you

1 for the opportunity. The purpose, my  
2 friend could not make it, he just got cut  
3 off of chickens last week. They pulled his  
4 contract. And he asked me to come and give  
5 this testimony of what me -- what he has  
6 proposed that might would help all of us in  
7 the chicken business.

8 The purpose of this is to protect  
9 and give security to the livelihood and the  
10 source of retirement for each farmer who  
11 has worked for years, years of no  
12 comfortable future for their family.

13 He said one permit should be  
14 issued to each existing poultry house under  
15 contract at present by the federal or state  
16 government before any more houses to be  
17 built.

18 A new person interested should  
19 have to purchase a permit house per house  
20 solely from the owner who has permit in  
21 hand, one permit to a house.

22 Example, if there was 975 houses  
23 in a state, the integrators could not build

1 no more houses unless a new fellow, a new  
2 person interested should have to find a  
3 farmer that wants to get out of the  
4 business on his own terms, buy his  
5 permitted houses from him so that no  
6 integrator could cut him off for little or  
7 no reason.

8 This is to ensure that the  
9 permitted farmer has a little security for  
10 his or her future. No more houses could be  
11 built in the state without a permit.

12 One permit equals one house. If  
13 a farmer has four houses he has four  
14 permits. One permit is valued at \$30,000.

15 People in cities and counties are  
16 complaining about the smell, flies and  
17 environmental impact to these communities.

18 The chicken companies want to  
19 build new houses every year so houses that  
20 have a little age can be cut off or made to  
21 update to comply with their rules,  
22 regulations so they have you so deep in  
23 debt that you cannot make a rational

1 decision.

2 At present farmers have put up  
3 all their land, houses, everything they  
4 own, their parents and grandparents to get  
5 into this operation with no say so at all  
6 to where someone else pushes the pencil to  
7 how much you make.

8 This is the first million and a  
9 half dollar investment for a minimum wage  
10 job that I've ever had with no security at  
11 all.

12 I thank y'all.

13 MR. BILL RONICK: Good afternoon.  
14 My name is Bill Ronick. I'm with the  
15 National Chicken Council. And I appreciate  
16 the opportunity like many of the other  
17 speakers and panelists today, we appreciate  
18 this opportunity.

19 I'd like to mention a couple  
20 things for the record, they've been said  
21 before, but I'd just like to reemphasize  
22 those and I have a couple of other  
23 thoughts.

1                   Companies have tremendous  
2                   economic and competitive incentives to  
3                   produce good chicks and good feed. If they  
4                   don't, they're at a competitive and  
5                   economic disadvantage to other companies.  
6                   And, so, they want to produce the best  
7                   chicks and the best feed that they can, but  
8                   it's a biological process in the case of  
9                   the chicks, and that makes it much more  
10                  difficult.

11                  For 35 years, until last year,  
12                  broiler production increased. We talk  
13                  about volatility in agriculture, there  
14                  certainly is that, there's certainly is  
15                  that in broilers. But if there's stability  
16                  in agriculture, I would suggest that the  
17                  broiler industry offers more stability than  
18                  some other parts of agriculture based on  
19                  that 35-year record. If you go back 35  
20                  years, I would suggest the reason  
21                  production was adjusted downward then was  
22                  because of government policy. And I'm not  
23                  suggesting the reason we adjusted

1 production down last year was government  
2 policy, but I think it was part of it.

3 This year broiler production,  
4 luckily, is increasing again, USDA says 2%.  
5 I think maybe we can do a little bit more  
6 than that, but every other meat, beef,  
7 pork, turkey, their production is down this  
8 year. Broilers is the only one that's  
9 going up. Next year we're going up again  
10 more than 2%, 3%, maybe more. So we're  
11 continuing to get back on this track of  
12 continually growing year after year.

13 One of the questions is why don't  
14 companies grow -- own grow out facilities.

15 Well, a large company in  
16 California, one of the largest companies  
17 does, in fact, grow its -- own essentially  
18 all their grow out production. In  
19 California they're one of the most  
20 profitable companies, I haven't seen their  
21 books, but I understand they're one of the  
22 most profitable companies.

23 There's a small company in Ohio



1 -- I've already spoke for two minutes.

2 A small company in Ohio does  
3 that, owns their own production, so whether  
4 large or small. And then there's other  
5 companies in between that grows -- that  
6 owns some of their own production.

7 And just quickly, Brazil, Mexico,  
8 China, a lot of other countries would not  
9 only just like to take our export markets  
10 overseas, they would like to export their  
11 product here.

12 And I'm going to say -- and we're  
13 not going to get into the word if, I'm  
14 going to say when these companies meet  
15 USDA's inspection requirements, their  
16 product will be coming here. And we will  
17 be competing against not just their  
18 product, but their growers, their feed,  
19 their chicks. So it's a global world  
20 competitively and it's getting more so.

21 International trade, our exports  
22 take about 20% last year. Russia and  
23 China, as we speak, are disrupted, they're

1       our two biggest markets. They account for  
2       40% of our exports. We hope those markets  
3       return, but, as I speak, they are  
4       disrupted. And, luckily so far, I don't  
5       think that problem has gone back to the  
6       growers, I think there's some insulation  
7       there.

8               The one question I was asked that  
9       I didn't hear a good answer is, when I talk  
10      to companies, most companies, many  
11      companies, if not most companies, have a  
12      list of people who want to grow chickens or  
13      want to add to production.

14             Now, I understand in the short  
15      run, perhaps, you can misrepresent the  
16      information, but we've been doing this for  
17      four, five decades. And as Abraham Lincoln  
18      said, "You can trick some of the people or  
19      fool some of the people some of the time,  
20      but it's very difficult to fool all the  
21      people all the time". So I'd like to hear  
22      an answer about, if this such a bad deal,  
23      why have we've been able for four or five

1       decades to continue to have people who  
2       would like to get into the business.

3                 And I appreciate this  
4       opportunity. Thank you.

5                 MR. KIRBY NASERY: I'm Kirby  
6       Nasery. I've been in the business for 21  
7       years as a poultry grower.

8                 To answer your question that you  
9       just asked. When I got in it in 1989, I  
10      was working offshore on an oil rig. My  
11      father had retired. My wife had a really  
12      good job and we were doing really good. We  
13      put every dime back we made back into  
14      chicken -- six chicken houses for seven  
15      years. We paid for them in seven years.  
16      That's -- that's unheard of, but we put  
17      every dime we made back into them.

18                I wasn't even going to bring that  
19      up, but the reason I got up was for the  
20      ranking system. Right now I'm number nine  
21      out of 333 growers on a six block average.  
22      I've got two three house farms. I'm also  
23      number 126 of 333 farms.

1                   Now, how is the ranking system  
2 fair? Everything I have got is the same.  
3 I've got the same equipment. Get the  
4 chickens the same day, sell them the same  
5 day. How is this possible if the ranking  
6 system is fair?

7                   Do I spend more time in three  
8 houses than I do the other three houses?  
9 Do I better -- do I do a better job?

10                  My -- my opinion of it is we get  
11 a lot of split loads of feeds. And I have  
12 never called the Packers and Stockyards  
13 about this, but we will get three farms --  
14 three different farms on one truck of feed.

15                  You've got a driver that comes  
16 out there, stays on the cell phone the  
17 whole time he's unloading feed, you know.  
18 6,000 pounds on three houses, which is one  
19 bin of feed, makes two points feed  
20 conversion. Two points feed conversion can  
21 cost me \$3,000.

22                  I just -- you know, I don't -- I  
23 don't know the answer for the ranking

1 system, but what we've got is not fair. I  
2 have been on top and I have been on bottom.

3 And, like I say, I don't have an  
4 answer for it, but, anyway, thank you.

5 MR. DONALD RAY WILKES: I'm  
6 Donald Ray Wilkes from Geneva County,  
7 Alabama.

8 There's been a lot of things  
9 discussed here; a lot of things that I've  
10 dealt with. One thing that I'd like to  
11 mention, a lot of it's been talked about,  
12 is upgrades.

13 And the biggest thing in our  
14 input into chickens are feed. The  
15 technology that's available today, why  
16 aren't there some sort of technology on  
17 that truck to let them know that this house  
18 and this bin putting this much feed in it.  
19 If they can do it at a feed lot where  
20 there's cattle running across the trough  
21 there and he moves a foot and knows he's at  
22 the wrong spot, why can't this be done with  
23 chicken feed because I had it happen to me?

1           A load of feed came in on a  
2 Saturday. When it -- so I had the best  
3 feed conversion of anybody, wasn't nobody  
4 around me.

5           So they came down and I told them  
6 to go back and look for the feed tickets.

7           He said, "We haven't got it".

8           I told him to come back on that  
9 Friday if they didn't get it because all  
10 they was going to do was hurt another  
11 grower.

12           So I produced the ticket for him.

13           He said, "We haven't got it".

14           A week later in the mail they  
15 made up a ticket and sent it to me. So the  
16 technology that's available today, why  
17 aren't they upgrading the feed trucks.

18           Thank you.

19           MR. ALTON TERRY: I guess a lot  
20 of you might know who I am. I'm Alton  
21 Terry. All I wanted to do was watch my  
22 chickens get weighed. The company wasn't  
23 doing it, it wasn't letting us watch our

1 chickens get weighed.

2 I was on the horn to Jim Baker,  
3 the former GIPSA administrator.

4 He said, "No, you have the right  
5 to watch your chickens get weighed".

6 I knew that they were messing  
7 with the weights in our complex, I knew  
8 that they were doing that, but every time I  
9 wanted to go and watch my chickens get  
10 weighed they would never let me weigh it.  
11 And, as I understand it, the complex  
12 manager even had to sign off that we got to  
13 watch our chickens get weighed.

14 I want to know why the Packers  
15 and Stockyards Act isn't working --  
16 administration does not have real penalties  
17 for me asking this question, for me to  
18 watch my chickens get weighed, and for a  
19 few other little things, they cut me off  
20 from growing business and cost me hundreds  
21 of thousands of dollars.

22 Where is the penalty to them?

23 If they can't weigh a chicken

1 right should they even be allowed to weigh  
2 the chickens, you know? Maybe that  
3 function, that part of vertical integration  
4 should be taken away from them. If they  
5 can't weigh the feed right and give a  
6 ticket right to us, maybe that should be  
7 diversified -- you know, divested from  
8 their part of their integration. If they  
9 can't handle their business correctly and  
10 want to cheat the farmer with their power,  
11 their market power that they have, that --  
12 those parts just need to be taken away from  
13 them.

14 Now, I understand the Packers and  
15 Stockers Act is being undermined by this  
16 proof to harm to competition. When they're  
17 cheating all of these farmers out here,  
18 they're getting a monetary advantage in the  
19 market.

20 When they're all doing it they're  
21 colluding in that -- that -- in getting  
22 that advantage from the farmers. They're  
23 making money off of the farmers by farming



1 the farmers and that gives them a  
2 comparative advantage to any new entrant in  
3 the market that wants to come in.

4 And, so, you know, they're  
5 colluding already. And that's the excuse  
6 that the federal judges say that we -- you  
7 know, that we can't have this law enforced.

8 I want to know something, do  
9 these guys not know the difference between  
10 or and and? Do they not think the people  
11 who legislated this law know the difference  
12 between or and and? I mean they did know  
13 the difference.

14 These prohibitions were there so  
15 that these companies right here could not  
16 cheat the farmer to gain value and to be in  
17 the marketplace competing with each other.  
18 It reduces the price of the market that all  
19 of the people get in the market. And if I  
20 get cut off of chickens I can't get ten  
21 other growers and go and compete with them  
22 because they're cheating growers to get a  
23 lower price.

1           I mean, this is ridiculous what's  
2       been happening with these federal judges in  
3       the court cases.

4           And, you know, if Congress needs  
5       to act -- I mean, they've acted time and  
6       time and time again, maybe we need to get  
7       rid of a few judges, maybe we need to get  
8       the House Judiciary Committee to take out  
9       some of these judges who are just siding  
10      with these corporations and cheating the  
11      family farmer.

12           I mean, what else can we do?

13           That's what the Constitution  
14      allows, maybe the Justice Department should  
15      ask for that.

16           MR. WEAVER: I don't know if  
17      gentlemen were here for the last panel that  
18      I was on. There's a couple of points that  
19      I didn't get to finish on that panel that  
20      I'd like to clarify for the folks here if  
21      you don't mind. And it's directed to you,  
22      too, because these are things that you can  
23      have input on, too, and, hopefully, make

1       some changes on.

2                   They didn't give me the  
3       opportunity to express my example about the  
4       KFC price, \$26.99 for a 12-piece bucket of  
5       chicken. And us, as growers, got 30 cents  
6       of that. And that being the case, there is  
7       something fundamentally wrong with -- with  
8       our private enterprise system here in this  
9       country.

10                   But when I do -- I had these  
11       chickens if I raised them, I had them for  
12       at least 35, 36 days. The integrator has  
13       them for three days; the day they get them  
14       from the layer; the day they take them out  
15       of the hatchery and bring to me; and the  
16       day the process them. So, you know, where  
17       is the equity in that?

18                   We've got them ten times longer  
19       than the integrators do and they make, Lord  
20       knows, how much more profit than we do  
21       because they'll never tell us.

22                   And the example that I had of a  
23       settlement from 1985. I don't know if you

1 gentlemen saw that. We have proof that in  
2 1985 growers were making 4.85 cents a  
3 pound. And today our base pay is 5.05  
4 cents, two-tenths of a cent a pound more  
5 than it was in 1985. How is that fair?

6 Look -- look how much all of  
7 other costs have increased, fuel,  
8 equipment, labor, taxes, insurance, but  
9 two-tenths of a cent a pound increase.

10 So we -- we have to rely -- we --  
11 we can't do it as individuals. Even as  
12 associations, we don't have the power or  
13 the authority over the mega corporations  
14 that run agriculture in this country that  
15 you folks do. And to me, that's your job.

16 We need your help to change the  
17 way that agriculture is run in this  
18 country, you and the Department of Justice.  
19 I forgot, we got the Department of Justice  
20 here, too. Please help us. We need your  
21 help.

22 MR. MARK HUDSON: Hello. My name  
23 is Mark Hudson. I'm a poultry grower from

1 Red Boiling Springs, Tennessee up near the  
2 Kentucky line got involved in the poultry  
3 industry 2004. And, probably, as many here  
4 would tell you, I picked the absolute worst  
5 years to get -- to get into the poultry  
6 industry.

7 The issues I'd like to -- like to  
8 bring to light probably isn't as pertinent  
9 to GIPSA as it just the finances of the  
10 poultry industry.

11 As Professor Taylor alluded to  
12 earlier, one of the unintended consequences  
13 of vertical integration is that it has  
14 created a blackhole of information.

15 In other words, those people that  
16 -- that would be on that waiting list to  
17 get into the poultry industry do not have  
18 good and accurate information that is  
19 unbiased from the industry.

20 Looking back into my own  
21 mistakes, that would be the chief mistake. I  
22 did search at great length to find the  
23 pertinent information, not just necessarily

1       just -- just the costs, but the units, how  
2       many kilowatt hours of electricity, how  
3       many gallons of gas per -- per house top.  
4       I tried to find that information and that  
5       information did not exist. Both myself and  
6       my lender relied on the cash flow statement  
7       as delivered by the -- by the integrator.

8                 Now, I think we've heard  
9       testimony numerous times today that those  
10      -- those particular cash flow instruments  
11      are not accurate. And both myself and the  
12      lender based their -- their decision to go  
13      with the loan and go into production on  
14      that particular document. That document  
15      wasn't accurate from the first flock that I  
16      placed and set. I think their estimate, at  
17      that time, was that it would be a 28 -- 28  
18      cents out of every dollar would go to cover  
19      my variable costs. And that would leave me  
20      about at 72 -- 72 cents out of every dollar  
21      to handle my fixed costs, you know, my  
22      personal income and to maintain the  
23      facilities.

1           And the situation that we've got  
2 into on the facilities is that we have far  
3 exceeded the threshold of diminishing  
4 returns.

5           The capital investment of these  
6 facilities, while they may be greatly  
7 benefiting the integrator, are not  
8 returning any value to us whatsoever. When  
9 you compare that to the fact that we're  
10 making to within a very small fraction of  
11 we were generating in income in 1985. The  
12 poultry industry is in great danger of  
13 self-regulating itself because these truths  
14 as to how much it costs to operate things,  
15 and also the overhead cost and ability of  
16 income to sustain that, will tell on itself  
17 eventually unless something is changed  
18 about the industry.

19           So the industry representatives  
20 are here. This is a great threat to you.  
21 It's already a present threat to the  
22 growers, but if you want to continue to  
23 grow in the United States, you're going to

1 have to find out how to overcome this.

2 Either it has been mentioned, you  
3 cosign on, you become a full partner with  
4 us, or you pay for the part that's going to  
5 return you some money and leave us the part  
6 of the investment that returns us some  
7 money, but we will have to partner on this.

8 And apart from any GIPSA issues  
9 that may come up, you're facing a real  
10 economic problem in the United States on  
11 overhead and the inability to sustain that  
12 overhead with the income that you're  
13 returning to us.

14 So that would be my statement.

15 Thank you.

16 MR. FERRELL: Well, seeing no  
17 more folks wanting to provide comments,  
18 suddenly you got bashful. No, I'm just  
19 kidding.

20 Well, I just want to thank  
21 everybody for coming to today's competition  
22 workshop. I think we heard a number of  
23 issues today and we learned a lot from our



1 panelists. And I thank them for taking the  
2 time to participate today.

3 I especially want to thank the  
4 president of Alabama A&M and all the folks  
5 here at the University that did everything  
6 they could to get everything ready and they  
7 did a great job, and I thank them greatly  
8 for doing that.

9 I also thank our folks at USDA  
10 and DOJ for helping get all the logistics  
11 and everything put together. And, as I  
12 have said at the Iowa workshop, I  
13 appreciate the good working relationship  
14 we've had with the Department of Justice  
15 working on these issues and looking forward  
16 on that.

17 I want to thank Congressman Davis  
18 and Alabama Agricultural Commissioner Ron  
19 Sparks for attending this morning.

20 And I will just mention that our  
21 next competition workshop will be held on  
22 June 25th. And it will focus on  
23 competition in dairy issues in Madison,

1 Wisconsin. Then we'll have a livestock  
2 competition workshop on August 27th in Fort  
3 Collins, Colorado. And then a workshop on  
4 margins on December 8th in Washington,  
5 D. C.

6 I will turn it over to, Dudley,  
7 or, Bill, if you have any comments.

8 MR. STALLINGS: I just want to  
9 reiterate on behalf of the Department of  
10 Justice our thanks to the Alabama A&M  
11 University. It's been truly a privilege  
12 for us to be here. And a lot of people put  
13 in a lot work behind the scenes to get this  
14 -- to get this event going and -- and I  
15 think we had a really good and productive  
16 day today.

17 I especially want to thank all of  
18 you for coming here. We have heard  
19 throughout the day that there -- there is a  
20 real hardship in you being here, either for  
21 fear of retaliation or just the mere fact  
22 of having to take a day off of work to come  
23 here and tell your story. We have -- we

1 have heard your stories, we -- we  
2 understand them, we appreciate them and we  
3 understand the importance of the issues  
4 that have been talked about here today. So  
5 once, again, I just want to thank you all  
6 for -- for being here.

7 MR. DUDLEY: I'd just like to say  
8 that -- I want to reiterate and tell you a  
9 fact. The last time that the Packers and  
10 Stockyards Act was on a presidential agenda  
11 was on Woodrow Wilson's agenda. That's  
12 back when it was passed.

13 The Act is on President Obama's  
14 agenda. I think we have shown today that  
15 we are serious about this. To have the  
16 Secretary of Agriculture, to have the  
17 Attorney General, the Assistant Attorney  
18 General here. If for nothing else, it  
19 costs a lot of money to get them down here.

20 But they are very, very  
21 interested, as we are, in solving problems  
22 in agriculture. It is very important, not  
23 only to the industry, but to the producers,

1 the farmers and the consumers and we're  
2 committed to do so. And I want to thank  
3 all of you for taking time out of your busy  
4 schedules to come and visit with us and  
5 make comments.

6 MR. WEAVER: We owe thanks to  
7 these people right here. So they need a  
8 really big hand.

9  
10 END OF HEARING  
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C E R T I F I C A T E

STATE OF ALABAMA )

SHELBY COUNTY )

I, ROBERT KEITH KENNEDY, Notary Public for the State of Alabama at Large, hereby certify that I am the Certified Court Reporter who made machine shorthand notes of the foregoing proceedings at the time and place stated in the Caption thereof; that I later reduced my shorthand notes into typewriting; that the foregoing pages numbered seven through three hundred seventy-two, both inclusive, contain a full, true, and correct transcript of proceedings had on said occasion.

I further certify that I am in no way related to nor employed by any of the parties, the witnesses or counsel, and that I have no interest in the outcome of this matter.

Given under my hand and seal this the 6th day of June 2010.

---

Robert Keith Kennedy  
CCR License No. 318

My Commission Expires  
September 5, 2010